ECONOMICS
& Sociology

Bosáková, I., Kubíček, A., & Strouhal, J. (2019). Governance codes in the developing and emerging countries: Do they look for the international role model?. *Economics and Sociology*, *12*(3), 251-272. doi:10.14254/2071-789X.2019/12-3/17

GOVERNANCE CODES IN THE DEVELOPING AND EMERGING COUNTRIES: DO THEY LOOK FOR THE INTERNATIONAL ROLE MODEL?

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Received: February, 2019
1st Revision: May, 2019
Accepted: August, 2019

DOI: 10.14254/2071-789X.2019/12-3/17

ABSTRACT. Over the last decade, a growing number of developing and emerging countries have begun addressing corporate governance practice and issued a national governance code. This paper analyses and compares the code contents and approaches of the 11 developing and emerging countries after the latest revision of the OECD Principles of Corporate Governance to examine whether these countries follow the international best practice despite the national specifics differ from those of developed countries. Individual codes are subjected to content analysis to evaluate the level of compliance with the OECD Principles. This paper goes beyond the well-known particulars of developed markets and provides a rare insight into the development of corporate governance frameworks in the developing and emerging countries in a cross-country manner. We contribute to recognition and assessment of good corporate governance in developing and emerging countries and examine what impact the OECD Principles have had beyond its membership base of high-developed countries.

***JEL Classification*:** G34

Keywords: corporate governance codes, comparative analysis, OECD, emerging countries.

Introduction

The latest global crisis has been a major eye-opener, which has rekindled the debate over the role of corporate governance in preventing corporate scandals and other wrongdoings. Corporate governance is thus receiving attention among regulators and legislators who shape and reinforce its foundations. Besides regulation in the form of hard law, corporate governance codes (hereafter codes) represent a vital pillar of these foundations. A code is a set of provisions that address relevant areas of corporate governance and promotes best practices (Aguilera & Cuervo-Cazzura, 2009).

Over the last decade, developing and emerging countries have joined the ranks of developed countries and have been adopting such codes (Mahadeo & Soobaroyen, 2016, Okike

& Adegbite, 2012, Shehata, 2015). The growing numbers of codes across the world have intensified efforts to answer the long-lasting question of whether increasing globalisation pushes towards the convergence of local governance practices into the global model of best practice.

There is little doubt that market integration and liberalisation, pressure from institutional investors and multinational institutions create pressure on the form of corporate governance at the national level (Hansmann & Kraakman, 2004, Mallin, 2002, Stulz, 2005). A country that adopts a governance code in line with international standards may become more attractive in the eyes of foreign investors. Developing economies thus have a major incentive to adopt international governance standards (Stulz, 1999).

Current research shows that international codes have had a significant influence on the development of codes around the world (Aquilera & Cuervo-Cazurra, 2009; Cuomo et al., 2016; Reid, 2003). Their recommendations are often incorporated into the national codes and explicitly referred to in the preamble. This is not a surprise since codes issued by transnational organisations aim to promote best practice internationally. Countries, especially developing and emerging ones, may look at such a respectable code for inspiration and adopt its recommendations at the national level, contributing to higher level of global convergence of corporate governance standards.

However, there is a major setback for the push of the globally adopted corporate governance model. The fundamental problem to be addressed by governance mechanisms differs around the world. In the Anglo-American countries, the key governance issue is the relationship between entrenched managers and dispersed shareholders, while in continental Europe and the rest of the world, including developing and emerging markets, it is to protect the interests of minority shareholders from the controlling owners (Young et al., 2008). A global convergence thus may be more of a problem than a solution (Enriques & Volpin, 2007; Lazarides & Drimpetas, 2010) and it is necessary to ask whether looking for inspiration in international codes is actually desirable for developing countries.

In recent years, scholars have begun questioning the utility of governance codes, inspired by developed countries, in developing and emerging countries (e.g., Chen et al., 2011, Krambia-Kapardis & Psaros, 2006, Uddin & Choudhury, 2008; Wanyama et al., 2009). Critics are concerned about the viability of these codes, when confronted with concentrated ownership structure (Chen, 2010), poor institutional environment of developing the market and the fear that they might be implemented in a relatively superficial manner (Mahadeo & Soobaroyen, 2016, Wanyama et al., 2009).

The focus of this paper is to examine whether developing and emerging countries through national codes adopt internationally recognised corporate governance best practices. For this purpose, we have chosen the OECD Principles of corporate governance as a representative of the international best practice. The OECD Principles are used or recommended by many international organisations as a standard of best practice. Due to their international character and in particular its goal to promote the best practice, this code has a significant impact on the contents and forms of codes beyond its member states, thus indirectly contributing to global convergence.

The structure of the remaining paper is as follows. First, we introduce the OECD Principles of Corporate Governance and changes in the latest revision reflecting the recent global developments. The subsequent section briefly discusses literature on the adoption of corporate governance codes at the national level. Then we proceed with the analysis of the national codes issued in developing and emerging countries after the latest update in the OECD Principles. Finally, we discuss our findings in the light of convergence in the international best practices.

The central finding of the analysis is that many of the code issuers found the "comply or explain" approach insufficient in the emerging country context and opted for a stricter approach to ensure firms' compliance with the national code. Thus, emerging and developing countries do not form a homogeneous group looking for the role model to blindly adopt the international best practices, but rather aim to improve local corporate governance. This trend suggests that the convergence of governance practice to the global standard is not likely in the near future.

1. OECD principles of corporate governance

The First OECD Principles of Corporate Governance were adopted in 1999 and have since become an international benchmark and a globally recognised standard for assessing and improving investors, corporations and other parties that play a role in developing good governance and management. The principles are intended to help both OECD country member governments, but also other governments around the world, in their efforts to improve the institutional framework for corporate governance. The Principles primarily focuses on publicly listed companies but can also be a useful tool to improve governance in non-listed, state and private companies.

The objective of the latest revision called the G20/OECD Principles of Corporate Governance (from now on "the OECD Principles") from 2015 is to ensure that they are of a high quality, relevant and useful to be considered the primary tool for implementation of corporate governance framework at the national level taking into account developments in the corporate sector and capital and financial markets. Partnership with the G20 gives the Principles global significance and underlines the fact that they reflect experiences and ambitions in different countries with different legal systems and at various stages of development.

The 2015 revision of the Principles consists of six chapters: I. Ensuring the basis for an effective corporate governance framework; II. The rights and equitable treatment of shareholders and key ownership functions; III. Institutional investors; securities markets and other intermediaries; IV. The role of stakeholders in corporate governance; V. Disclosure and transparency; VI. The responsibilities of the board. Each of them has an introduction that presents the main principle, which usually consists of several sub-descriptions, and commentary that serves for a better understanding and implementation.

The 2015 Principles do not differ dramatically from the 2004 Principles. Virtually all 2004 recommendations are also contained in the latest version. Some of them are supplemented by partial recommendations or more specifically formulated to make them somewhat stricter. The most significant changes are to be found in the second and third chapters, where some recommendations were rearranged- the second chapter now combines the former second and third chapter and thus free up space for a new chapter primarily devoted to institutional investors, stock markets and other intermediaries.

The new recommendations introduced in the 2015 revision can be divided into four categories, on the basis of whom they are addressed to and what they are concerned with. We have recommendations on stock markets; cross-border ownership and cross-listing; emphasis on disclosure of capital structures and conflicts of interest; and the responsibility of the governing bodies.

2. Literature review of governance codes

While the first code was issued in the United States back in 1978, the code diffusion to countries around the world has truly begun with the Cadbury Report from the UK in 1991.

Despite its rather long existence and importance, the academic research devoted to the codes took up only in the last decade.

First studies established that the reasons behind the rapid diffusion of codes around the world have been either need for legitimacy or efficiency as endogenous and exogenous forces drive countries to adopt a governance code (Aguilera & Cuervo-Cazurra, 2004). Exogenous forces push for a higher level of legitimation. Lawmakers and regulators are pressured to keep in line with international best practice in order to prevent devastating corporate scandals that may damage their legitimacy. Endogenous forces refer to domestic stakeholders who are concerned about the efficient protection of their interests and therefore demand a code of good governance to secure them and to enhance the efficiency of existing systems. Exogenous forces are presented by international pressures to harmonise and legitimate local corporate governance framework. Later studies employed this reasoning to examine code adoption and diffusion in different developed countries and legal systems (e.g. Hermes et al. 2006, 2007, Zattoni & Cuomo, 2008).

The fundamental element of the codes since the Cadbury report is its voluntary nature based on the "comply or explain" principle. This approach implies that companies either comply with the individual code recommendations or explain the reason for their non-compliance. Such form of enforcement allows an organisation a certain degree of flexibility - to choose the governance structure that will lead to company goals while guaranteeing better market transparency (Aguilera & Cuervo-Cazurra, 2009, Cuomo et al., 2016). Shareholders are those who ultimately decide whether the company explanation is credible and sufficient. The OECD principles are built on and promote this approach.

There is no doubt that "comply or explain" approach is popular, both in the eyes of shareholders and board members, in the Western world (Keay, 2014), but is it also effective? Several studies in recent years have challenged the approach and their findings cast doubt about the idea behind the approach (Andres & Thiessen, 2008, Arcot et al., 2010, Keay, 2014, Nerantzidis, 2015) and have started to call for more restrictive regulation to achieve the key objective of the code, i.e. transparent and effective corporate governance framework (Hooghiemstra and van Ees, 2011).

Scholars in developing and emerging countries have joined these voices as they expressed concern about the suitability of this approach in the local poor institutional (Okike & Adegbite, 2012, Uddin et al., 2017, Young et al., 2008) and cultural (Lau & Young, 2013) environment. Although in many developing and emerging countries the legal system does not differ much from the developed countries due to their colonial past (Acemoglu et al., 2001, Claessens & Yurtoglu, 2013), according to these scholars, these countries should acknowledge that corporate governance is also shaped by the internal or local factors that may hinder the effectiveness of adopted corporate governance code.

3. Methodology

To examine to what extent the national codes of the developing and emerging countries are in accordance with the OECD Principles, we first consult the European Corporate Governance Institute (ECGI) database to identify the suitable codes for our sample.

We apply the following inclusion criteria to ensure the consistency of the content analysis process:

- A code has been issued in the country categorised as a developing economy or economy in transition on the list of World Economic Situation and Prospects report published by the United Nations (United Nations, 2018).

- A code was issued after the latest revision of the OECD Principles in September 2015. The national issuer has thus had an opportunity to evaluate and potentially update the national code.
- A code issuer must be an authority responsible not only for the code drafting but also for supervision and enforcement.
- A code is addressed primarily to listed companies. In other words, codes addressed to investors, non-profit organisations, and other specific types of companies, as well as various drafts and white papers, are excluded for the obvious reasons.

To put our inclusion criteria into perspective- since the OECD Principle publication in September 2015 until the data collection in May 2018, 68 codes of all kind have been issued. A simple comparison of the numbers until 2014 reported in the recent review (Cuomo et al., 2016) gives evidence of that the publication pace of the first codes and revisions in our timeframe has not slowed down; on the contrary. The growing trend suggests that the best practices of corporate governance at the international and national levels continue to develop.

In terms of code issuers, two international organisations (OECD and ICGN) and 39 countries have issued codes (including the Isle of Man) in our timeframe. Of these 39 countries, 17 countries are categorised as developing and thus we focused on the codes issued in these countries. These countries issued all together 24 codes, but only in 11 countries codes were addressed to the companies listed on the local stock exchange. The sample hence consists of 11 codes from the developing and emerging countries published after the latest revision of the OECD Principles.

Before the code analysis, we must comment on several necessary adjustments and aspects of the analysis. As the structure and wording of the national codes differ from each other, the wording of the OECD Principles and sub-principles was reformulated in a simplified manner that reflects the essence of the given principle and facilitates the identification of the certain recommendation in the individual national codes.

The first chapter of the OECD Principles, devoted to local regulatory and legislative bodies to ensure the basis for corporate governance framework at the national level, is not going to be analysed. However, since the first chapter establishes that corporate governance code should be based on the “comply or explain” approach. We examine how individual countries approach to code enforcement.

For the reliability and consistency of the analysis, one of the authors carefully read all the codes. Subsequently, the information was extracted and tabulated in a checklist of the individual OECD provisions and the national codes in the appendix. The recognition of the individual OECD recommendations in the national code was marked with "yes", or “no” otherwise.

4. Empirical results and discussion

4.1. Descriptive analysis

Table 1 shows key information on the countries´ characteristics and their respective codes. According to the publication year of the previous version of the national code, we see that some countries responded to the financial crisis rather quickly and thus the latest version published after September 2015 is, in fact, their second revision since the end of the crisis.

Next, we provide the information on the number of the included provisions and code approach to compliance that are the subject of the analysis. In this respect, we also take into account whether the country has a separate stewardship code dedicated to shareholders, in particular to institutional investors.

From the perspective of the legal system, a purely "civil law" as well as "common law" systems are represented. However, a majority of the countries rely on a mixed legal system of civil, common, customary and religious law.

The index of regulatory quality captures the perception of the government ability to propose and implement effective regulations for private sector development. Data shows that governments of Nigeria and Egypt lack the regulatory capabilities.

Last two rows of Table 1 informs about the characteristics of the capital market. The market size is measured by the number of listed companies. The ownership structure may foreshadow the roots of potential governance issue. In our sample, concentrated ownership is typical of every single country.

Table 1. Countries´ characteristics and codes

Country	Brazil	Egypt	Malaysia	Mauritius	Nigeria	Oman	Saudi Arabia	South Africa	Taiwan	Thailand	The Philippines
Year of the current version	2016	2016	2017	2016	2016	2016	2017	2016	2016	2017	2016
Year of prior version	2009	2005	2004	2004	2011	2002	2010	2009	2010	2012	2009
No. of included recommendations	72 of 80	62 of 80	57 of 80	66 of 80	66 of 80	62 of 80	66 of 80	62 of 80	62 of 80	66 of 80	67 of 80
Code approach	C/E	C/E	A/E	A&E	B	B	B	A&E	C/E	C/E	C/E
Stewardship code	Yes	No	Yes	No	No	No	No	Yes	Yes	Yes	Yes
Legal system	Civil law	Muslim /Civil law	Muslim /Common /Customary law	Civil /Common law	Common /Muslim /Customary law	Muslim /Customary /Civil law	Muslim law	Civil /Common law	Civil law	Civil law	Common / Civil law
Regulatory quality	-0,21	-0,92	0,71	1,03	-0,92	0,61	0,08	0,21	1,29	0,17	0
Capital market size	436	251	893	46	161	113	176	303	901	656	262
Ownership structure	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO

Indicator	Definition	Year	Source
Code approach	A&E- Apply and Explain, A/E- Apply or Explain an alternative, B-Binding, C/E- Comply or Explain		
Legal system	Civil law, Common law, Customary law, Muslim law and Mixed law systems	2018	JuriGlobe
Regulatory quality	Perceptions of the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development. (-2.5 weak; 2.5 strong)	2016	The World Bank Institute
Capital market size	Number of listed companies	2016	The World Bank
Ownership structure	CO- Concentrated ownership	2016	OECD, 2017a, b

4.2. Analysis of codes contents

The list of all Principles provisions and their inclusion by each national code is reported in Table 2. The Roman numerals indicate the basic principles, and the alphabet with the Arabic numbers the sub-principles further elaborating the given principle. To maintain consistency across the various codes, the table is divided into several sections corresponding to the chapters of the OECD Principles. As we explained above, the first chapter deals with the regulatory and legislative bodies, and for this reason, it was not included in the analysis.

The rights and equitable treatment of shareholders and key ownership functions

The second chapter of the OECD Principles is dedicated to shareholders, their protection and exercise of rights, equality of all owners, the right to information, their active participation in company governance. As expected, the principles of this chapter are sufficiently covered by the national codes. One of the few shortcomings in this area for many national codes is that not all rights of the shareholders (II.A.1, II.A.2, II.A.6.), and the fundamental corporate changes to which they are entitled to participate in the decision (II.B.1, II.B.2, II.B.3) are listed.

All codes state that shareholders have the right to elect and remove members of the governing bodies. In addition, Brazil sets out specific measures to facilitate the involvement of minority shareholders in the process. The information provided to shareholders on candidates differs between countries. Brazil, Saudi Arabia and South Africa enumerate general requirements, namely candidate´s name, qualification and relationship with the company, to stipulate the right of shareholders to information. Some other countries require or recommend that candidates undergo a formal screening process, such as approval by nomination committees.

After the financial crisis, the need for greater involvement of shareholders, not only controlling shareholders but also the minority and mainly the institutional, in the governance of the company has begun to be emphasized. Several codes, namely South Africa, Saudi Arabia and Nigeria do not include recommendations on the possibilities and use of information technologies in voting, the possibility of voting in person or absentia, either electronically or through their representatives, or from abroad (II.C.5, II.C.6.). This recommendation is important in terms of encouraging active shareholder participation in corporate governance by voting at general meetings.

In this respect, several codes (Philippine, Malaysian, Thai, Egyptian or Brazilian) go beyond the standard set by the OECD Principles and promote a vote by proxy and use of electronic means to facilitate shareholder participation in general meetings. Companies are encouraged to use digital broadcasting, electronic signatures and certification, digital voting reports, as well as nominating voting agents to obtain the powers of the shareholders and to vote in accordance with their instructions.

The second chapter also contains recommendations on transactions between related parties and the resolution of this conflict of interest (II.F.). While some codes (the Brazilian and Omani) specifically dedicated a whole chapter to these transactions and directly address conflicts of interest, some of the national codes pay to this area much less attention or do not touch this topic at all (Malaysian code).

However, it is important to mention that this area is typically covered by company law and other related regulatory frameworks which define and deal with related party transactions through a combination of measures such as mandatory disclosure, approval by the governing bodies, and shareholder approval. The law also helps to establish a procedure for approving these transactions to minimise their negative impact. Some countries (Brazil, Saudi Arabia, South Africa and Mauritius) have adopted International Accounting Standard 24 (IAS 24) or have their IAS 24-based local accounting standards under which all listed companies must disclose in their annual report all transactions with directors, senior managers and large shareholders. In Malaysia, the Philippines, Thailand, the law also requires the disclosure of transactions with related parties.

According to some of the codes, the governing body should approve RPTs in the interests of all shareholders. In the framework of the approval procedures, the independent members of the governing body have a pivotal role to play. Provision to disclose material interest of the members of the governing body or key executives in a given transaction or matter was found in all codes but the Malaysian one.

Protection of minority shareholders (II.G.) is essential in countries with concentrated ownership, in particular, if there are legal and regulatory weaknesses. Otherwise, minority shareholders are exposed to potential abuse from the controlling shareholder/s who may abuse their position at the expense of other shareholders and other stakeholders

As we informed earlier, concentrated ownership is typical of most of the analysed countries. For example, the Nigerian code has a special section devoted to the protection of minority shareholders. In order to protect minority shareholders and other stakeholders, minority shareholders should be entitled to submit items for inclusion in the program of the company general meeting. Other mechanisms for the protection of minority shareholders included in the national codes are the use of cumulative voting, effective communication and accountability of the governing body to ensure that minority shareholders are treated fairly and are protected from undesirable actions of controlling shareholders.

Concurrently, controlling shareholders have an obligation to discuss with minority shareholders large or extraordinary transactions that could have a significant impact on the company, including acquisitions or divestments, capital restructuring, business model changes, and others in order to prevent assets and profit transferring.

Institutional investors, stock markets and other intermediaries

The third chapter devoted specifically to institutional investors and other intermediaries is a novelty of the latest OECD Principles. The recommendations established in this chapter are among those most poorly represented in the analysed codes, although all codes emphasise that the earlier discussed owners' obligations apply to all shareholders.

However, as the OECD Principles emphasise the crucial role of institutional investors in the corporate governance, provisions regarding institutional investors and other intermediaries (III.A, III.B, III.C) were considered as included only if directly addressed to institutional investors or other intermediaries. In this manner, only codes in South Africa and Nigeria, partly in Mauritius, meet such condition.

That does not mean, however, that other countries are lagging behind international development. Like many developed countries, Brazil, the Philippines, South Africa, Malaysia, Taiwan, and Thailand have issued a stand-alone stewardship code dedicated entirely to the issues of institutional investors and other intermediaries in detail.

While in all countries, companies must disclose their governance policies, compliance with the national governance code, and adhere to the regulatory framework of the country or the stock market on which they are listed, the national codes do not make any mention of cross-border and cross-listings (III.F). Only the Mauritanian code contains a paragraph, that mentions foreign companies, states that foreign companies that comply with other national or international codes with similar objectives as the national code will probably not duplicitously apply both codes.

Principle III.G. is not covered by national codes, as this recommendation is addressed to the securities market, which should strive for a fair and effective determination of investment prices and access to market information, which is necessary for the exercise of shareholders' rights.

The role of stakeholders in corporate governance

Most national codes underline the importance of protecting rights and monitoring interests not only of shareholders but also of all other stakeholders. Some go one step further and recommend setting up a separate body or position within the company organisational structure that would deal specifically with stakeholders' relationships and communication. Therefore, Thailand and the Philippines explain the role of Investor Relations Officer responsible for regular, effective, and fair communication with shareholders and other stakeholders. The Malaysian code deals specifically with communication with stakeholders. The Nigerian code contains recommendations on the establishment of the company investor portal and so on.

South African code has embraced a "stakeholder-inclusive" approach as it declares that the best interests of the company are not always in line with the interests of its shareholders. It means that interests of multiple stakeholders whether shareholders, employees, consumers, communities or environmental interests intertwine in managerial decisions and actions, and the governing body and management should understand, respect and strive to achieve the interests of all these parties. Incorporating legitimate and reasonable stakeholder needs means that the governing body considers other stakeholders not a mere tool of shareholder wealth maximisation, but that it gives parity to all sources of value creation. Inspired by the South African code, Mauritius has also adopted a hybrid model of corporate governance that combines market-centric and relationship-based engagement, typical for Anglo-American and European continental model respectively.

The principle of developing mechanisms for employee participation in corporate governance (IV.C.) is embraced only by two codes. The Philippine code encourages a governance body to put in place policies, programs and procedures to encourage employees to actively participate in the realisation of the company's goals and management, for example through remuneration or representation in a governing body. The Saudi Arabian code proposes programs to increase employee participation in the governance, for instance, by the setting up of committees or workshops, where an employee may share their opinions and discuss significant decisions; creating a scheme for share provision, pension programs or an independent employee fund.

On the contrary, the Brazilian code recommends avoiding the nomination of internal organisational members, including employees, to the board of directors and opt exclusively for external and independent directors.

However, it should be emphasised that the extent to which employees participate in corporate governance depends on national legislation (for example co-determination as a compulsory employee representation in a governing body). Such countries typically have a two-tier governing body model or allow to choose between one and two-tier models.

Sub-principle IV.F. recommends that a complement to the corporate governance system be the framework for solving insolvency and the effective enforcement of creditors' rights. Separately, this framework is not part of any national code. The legal framework regulating corporate insolvency varies considerably in each country.

Disclosure and transparency

In addition to the financial and operational results, the new OECD Principles emphasises the disclosure of non-financial information such as company objectives, policies, ethics of their business; access to the environment and more. The area of disclosure and transparency is well covered in the national codes. All national codes deal with a great deal of specific information that companies should make public, as well as how, when, and where to publish it.

The only weakness in some national codes is the lack of attention to the disclosure of transactions between related parties. In other countries, the disclosure of such transactions is a legal requirement. For example, the Mauritian code, in particular, discusses the disclosure of details when a governing body decides to provide any means for charitable or political purposes. In Nigeria and South Africa, the role of the governing body is to supervise and monitor continuously the consequences of the company activities and how it affects its status as a corporate citizen. Corporate social responsibility policy is also included in the Omani and Egyptian codes.

The responsibilities of the board

The substantial part of the national codes is devoted to the governing body, its functions, duties, independence, structure, board committees, its efficiency, competence and the training of its members. The amount and depth of their recommendations are undoubtedly higher and more detailed than those of the OECD Principles. It is therefore not surprising that all of the national codes fully cover the Principles recommendations. We want to comment on the most progressive ones that reflect the recent development of international practice beyond recognition in the OECD Principles.

Board diversity

It is advisable that the governing body and its committees have a particular mix of skills, experience, and knowledge of the members in order to perform their duties effectively as a board. Other forms of diversity, such as gender diversity theoretically may also help to avoid "group thinking" and make the decision-making process more efficient.

The Mauritian code provision on the board diversity, for instance, suggests having at least one male and one female board member. Companies are also encouraged to adopt anti-discrimination policies in occupying key positions in terms of disability, sexual orientation, gender, race, religion, or age. Additionally, all governing bodies should also have at least one permanent Mauritius resident.

The codes in the Philippines and Nigeria also recommends developing a diversity policy on gender, age, ethnicity, and culture. As regards to gender diversity, it recommends increasing the number of directors. In Malaysia, the governing body reports in its annual report a company policy on gender diversity, its objectives and measures to achieve it. In the case of large companies, at least 30 per cent of members must be women. The South African code includes a need for diversity in terms of knowledge, skills and experience, as well as age, culture, race and gender. Companies should disclose the goals set for gender and race representation in the governance and the progress made about these goals. The Brazilian Code also reminds that women have the same opportunities to get to the top positions in the organisation.

On the other hand, there are codes from Saudi Arabia and Oman that do not debate diversity at all.

Board independence

All codes, at a minimum, recommend the separation of CEO and chairman positions and emphasize the independence of the chairman. Codes thus reflect internationally shared recognition of the benefits of the independent governing body, especially in situations of conflict of interest. Nevertheless, there are different views on the adequate number of independent members across countries.

The Brazilian code recommends at least 30 per cent of the directors to be independent, Saudi Arabia one third and at least two in absolute numbers. South Africa requires a majority of directors to be non-executive. In Oman, The Philippines and Thailand all or the majority of members should be non-executive with at least one third being independent. The Nigerian code recommends that the number of non-executive members should not be less than two-thirds, with independent directors no less than half of the non-executive ones. Malaysian code states that at least half of the directors should be independent, in large companies a majority.

The definition of the independent member varies widely between countries, in particular as regards the term limits and independence from the major shareholders.

Remuneration of members of the board and key executives

The governing body is responsible for the development and disclosure of the remuneration policy covering the key executives and board members. In Brazil and Saudi Arabia listed companies have to declare a remuneration policy, as well as the total amount of rewards, as well as the individual remuneration paid (in case of Brazil most and least compensated directors, Saudi Arabia remuneration for all directors and five top managers). The South African code goes step further as it proposes to disclose the compensation of the individual board members.

The codes of other countries also state the need for a remuneration policy for the governing body, the committees and management and its regular disclosure. Moreover, all of them call for shareholder´s approval, also called say on pay. In Brazil, shareholders approve the remuneration amount by law. Saudi Arabia has set maximum limits on remuneration.

4.3. Analysis of codes approach

The critical element of the corporate governance code is the way how it approaches compliance with the code provisions. As seen in Table 1, almost half of the analysed codes, namely Brazil, Egypt, Philippines, Taiwan and Thailand, opted for the predominant "comply or explain" approach promoted by the OECD Principles that combines voluntary compliance with the mandatory disclosure of the company situation. Companies thus do not have to comply with all the code provisions necessarily but must indicate and explain their reason for non-compliance.

In Nigeria, Oman and Saudi Arabia, the code approach is binding, so compliance with the code provisions is mandatory. Violation leads to sanctions against individuals and companies. Enforcement of code rules is the responsibility of the regulatory body.

Malaysia has moved from the "comply or explain" approach to "apply or explain an alternative approach" that is expected to promote a more meaningful application of good governance practice. Under this approach, a governing body should apply procedures to take account the context in which the company operates, its size, complexity and nature of the risks it faces.

If a governing body concludes that it is not possible to implement some of the code principles, a company should apply a suitable alternative so that the intended outcome set out by the code is achieved. Malaysian listed companies must provide a meaningful explanation of how they apply the principle in practice. If a deviation occurs, the company must provide an explanation, describe the alternative procedure it has adopted; and how this alternative achieves the expected outcome.

The last approach that has emerged among the analysed codes is "apply and explain" employed by Mauritius and South Africa. It has evolved from the "apply or explain" approach employed in the previous version of the South African code and went one step further in terms of code provision enforcement. Companies under the code must adopt all the code principles and explain how they have applied them. All principles represent the ideal state that an organisation should strive to provide sound corporate governance.

However, the absurd and mechanical adoption of procedures is not an intention of this approach. A governing body should decide how to apply each principle and explain a progress a company has made to achieve it. If there is a significant deviation from any of the principles, the annual report should provide an explanation. This deviation may be due to individual circumstances and, in particular, to the size, complexity of activities, sector, or nature of the company's risks. While shareholders and regulators have the right to challenge unconvincing explanation, an explanation should not automatically be considered a violation of the code.

This approach is considered innovative and gives a new impetus to corporate governance and management as it helps to provide a higher degree of compliance while keeping a certain degree of flexibility so typical of the corporate governance codes.

4.4. Further analysis

Although the data sample is not particularly large, we found and discussed the differences between the national codes in the number of the included provisions and the code approach to enforcement. Given the existing variability among the national codes, we can further look at our sample from a quantitative perspective.

An analysis of the code approach suggests the end of the era, where the governance codes act solely as a voluntary tool based on the comply or explain the approach. A large part of the codes does not rely on responsible behaviour of the concerned firms but creates regulatory pressure to comply with the code provisions. For this reason, the sample can be divided into two groups based on the code approach. One group is represented by five codes that promote the “comply or explain” approach and remain voluntary; 6 codes in another group resorted to a higher level of enforceability.

An average number of provisions in accordance with the OECD Principles for the individual groups are 65,8 and 63,2 out of the total 80, respectively. Since the groups are too small and unequal and we cannot assume that data come from normal distributions, parametric methods are out of the question. For this reason, to test whether there is the difference in a number of the included provisions among these two groups with different code approach, we chose the Wilcoxon rank-sum test and used the Wilcoxon-Mann-Whitney Test tool (Marx et al., 2016). The two-sided test revealed that this difference in the overall average accordance is not statistically significant (sig .398) suggesting that the content of the code does not necessarily depend on the way they are enforced.

It is likely that during the national code drafting, an issuer seeks inspiration or so to say role model beyond the country borders. In this article, we assume that this role model is the OECD Principles since they have represented the worldwide foundation for good corporate governance for the last two decades. It is evident that its principles have inspired the issuers of codes around the world. However, the OECD Principles is not the only source of inspiration, and it is possible that publishers devote varying degrees of attention to its recommendations. Therefore, we examine whether the code issuers that directly refer to the OECD Principles were more diligent in adapting the OECD recommendations at the national level and thus are in higher accordance. In our sample, this is a case in Brazil, Philippines, and Thailand which specifically refer to the OECD Principles in the preamble section. The average number of provisions included in these codes is 68,3 in comparison with average 62,9 provisions for the rest of the sample. In this case, the two-sided Wilcoxon rank-sum test confirmed the groups´ difference being significant (sig .048).

From this result we can conclude that the OECD still has its weight as a role model of the international best practice. Not only do these three codes have a significantly greater number of provisions in compliance but they also operate on the "comply or explain" approach promoted and recommended by the OECD.

4.5. Discussion

The encouraging finding of our study is that the developing and emerging countries have periodically revised their codes and responded to the governance challenges countries and companies must face in the current world. Based on a comparative analysis of the content, the most recent OECD Principles of Corporate Governance revised in 2015, and their basic provisions are overall well covered in the national codes issued in the succeeding years, although some deviations remain.

The most common neglect across the analysed codes are the provisions addressed to institutional investors, which have been the subject of much attention by the OECD in recent years. That is not necessarily a weak point of the national governance framework, because six out of eleven countries have published a stewardship code dedicated to the particular issue.

Naturally, the codes of some countries excel over others. In terms of scope and detail, Brazil, South Africa, or Nigeria go even beyond the standard established by the OECD.

This is especially important because, despite the findings how the global financial crisis revealed poor governance practice and lacking business ethics (Burianová & Paulík, 2014; Belas et al., 2014, Kirkpatrick, 2009), the Principles have been expanded only by a few provisions and have been criticised for taking enough lessons from the crisis (TUAC, 2015). Numerous critical issues, such as CEO/chairman duality, board diversity, information disclosure on the social and environmental impact, are just mentioned in the commentary and not incorporated into the principles. Unfortunately, this approach diminishes its impact and the likelihood of being adopted in a unified or expected manner.

Principles, for instance, mention the position and role of the company secretary in the commentary but does not elaborate on its role. Most national codes, on the other hand, speak of the need for an experienced and qualified company secretary to assist with the duties of the governing body and delve to its functions and qualifications in detail.

A focus of the Principles on the lowest common denominator is perhaps not the most appropriate approach. The Principles, as a non-binding instrument of the well-respected international organisation that brings together the world´s most developed economies, should lead corporate governance frontier and strive for the highest standard of effective and transparent governance mechanisms.

In our opinion, given the global development burdened by the growing volatility and short-termism, the main limitation of the latest Principles is the fact that the content remains anchored in the persistent philosophy of the shareholder value maximisation. Many of the analysed codes are indeed ahead of the OECD Principles in this sense. Such as the area of governing bodies, enforcement, disclosure, emphasis on the needs of all stakeholders.

When it comes to code compliance approach, countries are diverging in the opinion of the voluntary component of the governance framework. On the one side, we have countries under the civil law that continue the tradition of governance codes as a voluntary component of the national corporate governance framework with "comply or explain" approach. Further proof that these countries keep with the international development in developed markets also speaks the fact that apart from Egypt, all of them have also issued a stand-alone stewardship code.

However, the governance problems in the developing and emerging countries may not lie only in the poor content of the code, but the overall weak institutional environment. The weaker the regulatory framework, the lower the overall quality of corporate governance due to weak ability to enforce it. The "comply or explain" approach, which in practice means company choose which recommendations to adopt, if any at all, maybe not be the most appropriate in such countries.

To rely purely on companies that they will behave in a disciplined manner and implement voluntary costly control mechanisms is naive. Many developing countries cannot count on market pressure that in developed countries serve as an alternative mechanism. A good example provides the corporate governance framework in Egypt. The latest, third version of Egyptian Code from 2016 is based on the OECD Principles. However, it is not sufficiently implemented, and the level of disclosure of firm compliance is weak. In 2014, only two of the top ten listed companies provided an annual report together with the disclosure of code compliance by "comply or explain" approach (EBRD, 2017). The institutional and regulatory environment supporting corporate governance framework does not appear to be strong, and at the same time, there is not adequate pressure from the investors to change.

On the other hand, there are countries where a code ceases to serve the role of a voluntary tool as its provisions are straightforward mandatory. These codes de facto aim to set a minimum standard for listed companies at the expense of flexibility.

Between these two poles, there is a group of three countries (South Africa, Mauritius, and Malaysia) that have chosen the middle way that may present a more appropriate alternative in the context of the developing and emerging economies. Looking at the previous code versions in all three countries, we can see a shift from reliance on the activism and stewardship of shareholders towards the higher authority of the regulatory body to determine the suitable governance model. Under their approaches, companies must aim to improve their governance mechanisms while explaining the applied solution.

As seen in the case of Mauritius which latest code of 2016 adopted the "apply and explain" approach. The study of the compliance with the prior code version based on the "comply or explain" showed that the Mauritanian companies only chose the easy to implement and general elements of the Code. Inconvenient recommendations, such as disclosure of ownership structure or remuneration policy, were ignored (Mahadeo & Soobaroyen, 2016).

Contrary to the binding approach, companies may deviate from implementing provision if the circumstances do not allow. At the same time, this approach forces companies to think about the individual code provisions as they must propose and be able to justify the alternative solution.

Conclusion

In this paper, we examined whether the content and approach of corporate governance codes issued in developing and emerging countries reflect the commitment to adopt the global best practice. Eleven national codes were subjected to content analysis to evaluate the level of accordance with the OECD Principles of Corporate Governance in order to determine whether and to what extent the provisions of the influential international organisation, such as the OECD, are accepted as a global governance role model.

Our paper contributes to corporate governance literature by both examining the extent to which the governance codes of influential international organisations, such as the OECD, have affected the contents and approaches of the codes issued in the developing and emerging countries and comparing these codes from the geographically dispersed sample with one another. As a result, we addressed calls for further research as Aquilera, and Cuervo-Cazurra (2009) proposed, and Cuomo et al. (2016) reinforced the importance of the role of the transnational and international institutions in the creation and diffusion of codes deserving of much-needed attention. Although these codes can significantly affect the content and approach of national codes, studies investigating codes at international level are limited in numbers, mostly focusing on the European Union and the impact of its corporate governance policies on the member states (Cicon et al., 2012 Hermes et al., 2006, 2007, Kubíček et al., 2016).

The investigated countries, overall, have issued well-developed codes which content can be compared with those of developed countries. They have not mindlessly followed the international provisions of best practice, neither acted reactively. On the contrary, they have contributed to the development in various areas. One of the major novelties is a shift of some countries from the predominant "comply or explain" approach to stricter approaches to ensuring higher compliance with code provisions.

It should be noted that this paper has some limitations. First, the individual provisions across the codes are described and presented in a different manner. That means that although a provision is identified in multiple codes, one issuer may dedicate to the particular recommendation only a brief paragraph, while others describe and discusses the recommendation in more detail. More detailed provisions arguably improve the overall quality of the code and may help to increase the firm’s compliance. While this is not directly reported in our analysis, we attempted to balance this limitation by commentary on the level of the individual codes. Second, in our analysis, we have not taken into consideration the possibility that the national codes may be influenced by development in neighbouring countries, which may face the same governance challenges.

Each country must consider it's specific political, legal, economic, socio-cultural environment when deciding on the content and form of corporate governance requirements. Achieving the right balance between rules and flexibility is a challenging task for any country, but it is crucial for those where corporate governance is essential for supporting strong economic growth. As we saw in our study, the code issued by the highly respected international organisation might be a starting point for developing and emerging countries seeking to improve national governance framework, but it is not a globally adopted role model. Our analysis suggests that analysed countries head in two distinct directions. One stream continues to adhere to the code typical of the developed countries, while the other sacrifices the voluntariness with the intention of better enforcement at the national level.

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ISSN 2071-789X

Appendix

Checklist of the OECD provisions and the national codes

Principle and sub-principles	**Brazil**	**Egypt**	**Malaysi a**	**Mauriti us**	**Nigeria**	**Oman**	**Saudi Arabia**	**South Africa**	**Taiwan**	**Thailan d**	**The Philippi nes**
II. Chapter - The rights and equitable treatment of shareholders and key ownership functions	●	●	●	●	●	●	●	●	●	●	●
II.The basic shareholder rights include:	●	●	●	●	●	●	●	●	●	●	●
A.1. safe methods of ownership registration	●	○	○	○	○	○	●	●	○	○	○
A.2. to convey or transfer shares	●	○	○	○	○	○	●	●	○	○	○
A.3. access to essential information about the company	●	●	●	●	●	●	●	●	●	●	●
A.4. participation and voting at shareholder meetings	●	●	●	●	●	●	●	●	●	●	●
A.5. to elect and remove members of the board	●	●	●	●	●	●	●	●	●	●	●
A.6. share in the company's profit	●	○	○	●	○	○	●	●	●	●	●
II.B. Shareholders' awareness, approval and participation in the fundamental decisions:	●	●	●	●	●	●	●	●	●	●	●
B.1. change of important documents	●	○	○	○	○	○	●	○	○	○	●
B.2. issue of new shares	●	○	○	○	○	○	●	○	○	○	●
B.3. extraordinary transactions	●	○	○	○	○	○	●	○	○	○	●
II.C Opportunity to participate in general meeting and awareness of its rules	●	●	●	●	●	●	●	●	●	●	●
C.1. the right to information about the general meeting	●	●	●	●	●	●	●	○	●	●	●
C.2. the fairness and the cost-efficiency of voting	●	●	●	●	●	●	●	○	●	●	●
C.3. the opportunity to ask and to come up with items	●	●	●	●	●	●	●	●	●	●	●
C.4. participation in key corporate governance decisions	●	●	●	●	●	●	●	●	●	●	●
C.5. possibility to vote in person or in absentia	●	●	●	●	○	●	○	○	●	●	●
C.6. eliminations of obstacles to cross-border voting	●	●	●	●	○	●	○	○	●	●	●
II.D. The opportunity for all shareholders to consult on their rights	●	●	●	●	●	●	●	●	●	●	●
II.E. Equal treatment of shareholders with the same type of shares	●	●	●	●	●	●	●	●	●	●	●
E.1. information about the rights attached to shares	●	●	●	●	●	●	●	●	●	●	●
E.2. disclosure of capital structures and control	●	●	●	●	●	●	●	●	●	●	●
II.F. Related-party transactions, their approval and compliance with the company interests	●	●	○	●	●	●	●	○	○	●	●
F.1. solution to a conflict of interest	●	●	○	●	●	●	●	○	○	●	●
F.2. duty to report a material interest in any transaction	●	●	○	●	●	●	●	●	●	●	●

II.G. Protection of minority shareholders	●	●	○	●	●	●	●	●	●	●	●
II.H. Effective functioning of markets for corporate control	●	○	○	○	●	○	○	○	●	●	○
H.1. Transparency of takeover/sale of assets/mergers	●	○	○	○	●	○	○	○	●	●	○
H.2. Anti-takeover devices not being abused as a shield	●	○	○	○	●	○	○	○	●	●	○
Number of included recommendations	**30 of 30**	**21 of 30**	**17 of 30**	**22 of 30**	**22 of 30**	**21 of 30**	**25 of 30**	**18 of 30**	**23 of 30**	**25 of 30**	**25 of 30**
III. Chapter - Institutional investors, stock markets, and other intermediaries	○	○	○	●	●	○	○	●	○	○	○
III.A. Disclosure of the institutional investors' voting policy and its governance principles	○	○	○	●	●	○	○	●	○	○	○
III.B Voting in accordance with the instructions of the beneficial owner of the shares	●	○	○	○	○	○	○	●	○	○	○
III.C. Disclosure of the material conflicts of interest	○	○	○	○	●	○	○	●	○	○	○
III.D. Resolution of conflicts of interest among corporate governance intermediators	●	●	●	●	●	●	○	●	○	●	●
III.E Protection of the company's internal information	●	●	●	●	●	●	●	●	●	●	●
III.F Cross-border listing and multiple listing solutions	○	○	○	●	○	○	○	○	○	○	○
III.G. Fair pricing of stock markets	○	○	○	○	○	○	○	○	○	○	○
Number of included recommendations	**3 of 8**	**2 of 8**	**2 of 8**	**5 of 8**	**5 of 8**	**2 of 8**	**1 of 8**	**6 of 8**	**1 of 8**	**2 of 8**	**2 of 8**
IV. Chapter - The role of stakeholders in corporate governance	●	●	●	●	●	●	●	●	●	●	●
IV.A. Respect for the rights of stakeholders	●	●	●	●	●	●	●	●	●	●	●
IV.B. Legally protected rights are redressed in case of violation	●	●	●	●	●	●	●	●	●	●	●
IV.C. Development of mechanisms for employee participation in company governance	○	○	○	○	○	○	●	○	○	○	●
IV.D. Access to information for stakeholders participating in the governance process.	●	●	●	●	●	●	●	●	●	●	●
IV.E. Free and safe communication for stakeholders to share their concerns, complaints; whistleblowing	●	●	●	●	●	●	●	●	●	●	●
IV.F. Effective enforcement of creditors' rights and resolution of insolvency	○	○	○	○	○	○	○	○	○	○	○
Number of included recommendations	**5 of 7**	**5 of 7**	**5 of 7**	**5 of 7**	**5 of 7**	**5 of 7**	**6 of 7**	**5 of 7**	**5 of 7**	**5 of 7**	**6 of 7**
V. Chapter - Disclosure and transparency	●	●	●	●	●	●	●	●	●	●	●

V.A. Disclosure of essential information:	●	●	●	●	●	●	●	●	●	●	●
A.1. financial and operating results of the company	●	●	●	●	●	●	●	●	●	●	●
A.2. company objectives and non-financial information	●	●	●	●	●	●	●	●	●	●	●
A.3. major share ownership and voting rights	●	●	●	●	●	●	●	●	●	●	●
A.4. remuneration of governing bodies and executives	●	●	●	●	●	●	●	●	●	●	●
A.5. information on members of the governing bodies	●	●	●	●	●	●	●	●	●	●	●
A.6. related-party transactions	●	●	○	●	●	●	●	○	○	●	●
A.7. foreseeable risk factors	●	●	●	●	●	●	●	●	●	●	●
A.8. issues regarding employees and other stakeholders	●	●	●	●	●	●	●	●	●	●	●
A.9. governance structures and policies	●	●	●	●	●	●	●	●	●	●	●
V.B. Quality of information and compliance with laws, regulations and standards	●	●	●	●	●	●	●	●	●	●	●
V.C. Independence, competence and qualification of audit	●	●	●	●	●	●	●	●	●	●	●
V.D. Expertise and independence of external auditors and their approval by shareholders	●	●	●	●	●	●	●	●	●	●	●
V.E. Effective information channels	●	●	●	●	●	●	●	●	●	●	●
Number of included recommendations	**15 of 15**	**15 of 15**	**14 of 15**	**15 of 15**	**15 of 15**	**15 of 15**	**15 of 15**	**14 of 15**	**14 of 15**	**15 of 15**	**15 of 15**

VI. Chapter - The responsibilities of the board	●	●	●	●	●	●	●	●	●	●	●
VI.A. Members of the governing body should act in the best interests of the company	●	●	●	●	●	●	●	●	●	●	●
VI.B. Fair treatment of all shareholders	●	●	●	●	●	●	●	●	●	●	●
VI.C. Ethical behaviour of the governing body	●	●	●	●	●	●	●	●	●	●	●
VI.D. The key functions of the governing body to fulfil:	●	●	●	●	●	●	●	●	●	●	●
D.1. reviewing corporate strategy, action plans, etc.	●	●	●	●	●	●	●	●	●	●	●
D.2. monitoring corporate governance practices	●	●	●	●	●	●	●	●	●	●	●
D.3. selecting key executives and planning succession	●	●	●	●	●	●	●	●	●	●	●
D.4. aligning remuneration with the company interests	●	●	●	●	●	●	●	●	●	●	●
D.5. ensuring a formal and transparent board nomination	●	●	●	●	●	●	●	●	●	●	●
D.6. resolving conflicts of interests	●	●	●	●	●	●	●	●	●	●	●
D.7. ensuring the integrity of financial statements, etc.	●	●	●	●	●	●	●	●	●	●	●
D.8. overseeing the disclosure of information	●	●	●	●	●	●	●	●	●	●	●

VI.E Independence of the governing body and its members, separation of CEO and chairman positions	●	●	●	●	●	●	●	●	●	●	●
E.1. sufficient number of independent members	●	●	●	●	●	●	●	●	●	●	●
E.2. the independent specialized committees	●	●	●	●	●	●	●	●	●	●	●
E.3. effective work and commitment of the members	●	●	●	●	●	●	●	●	●	●	●
E.4. evaluation of the governing body performance	●	●	●	●	●	●	●	●	●	●	●
VI.F. Access to information for the members of the governing body	●	●	●	●	●	●	●	●	●	●	●
VI.G. Effective mechanisms for employee participation in corporate governance *(if mandatory)*	○	○	○	○	○	○	○	○	○	○	○
Number of included recommendations	**19 of 20**	**19 of 20**	**19 of 20**	**19 of 20**	**19 of 20**	**19 of 20**	**19 of 20**	**19 of 20**	**19 of 20**	**19 of 20**	**19 of 20**