

科学研究費助成事業 研究成果報告書

平成 30 年 9 月 7 日現在

機関番号：13901

研究種目：若手研究(B)

研究期間：2016～2017

課題番号：16K17024

研究課題名(和文) Does Corporate Law Matter to Executive Compensation?

研究課題名(英文) Does Corporate Law Matter to Executive Compensation?

研究代表者

McGinty Sean (McGinty, Sean)

名古屋大学・法学研究科・特任准教授

研究者番号：40706818

交付決定額(研究期間全体)：(直接経費) 1,000,000円

研究成果の概要(和文)：この研究は、会社法と報酬との関連性を検討した。日本、ドイツ、カナダ、英国、米国の5つの法域の法律を、それぞれ違う法的伝統と異なる報酬から見てみました。カナダと英国は、米国ではエグゼクティブ・ペイ・コストを控除しているが、その程度は、これらの社会全体での所得格差の拡大と相関している。日本とドイツでは、報酬水準は対照的に緩やかなままであるが、同じ期間に若干上昇する。この研究では、調査対象国の執行役員給与の規制に大きなばらつきがあるものの、これらの差のみが対照的な補償レベルを説明しているという結論を導き出すことは困難であることが分かった。

研究成果の概要(英文)：This research looked at the relevance of corporate law to executive compensation. It looked at the laws of five jurisdictions - Japan, Germany, Canada, the United Kingdom and the United States - from differing legal traditions and with differing levels of executive compensation. Executive pay in the United States and, to a lesser extent, Canada and the United Kingdom has become extremely high in recent decades in a trend that correlates with growing income inequality across those societies generally. In Japan and Germany executive compensation levels remain more modest in contrast, though increasing somewhat over the same period. The research finds that although significant variation exists in the regulation of executive pay across the countries examined, it is difficult to draw the conclusion that these differences alone explain the contrasting compensation levels observed.

研究分野：Corporate Law

キーワード：Corporate Law

1 . 研究開始当初の背景

This research project began in April of 2016. It examines the connection between executive compensation levels on the one hand and corporate law rules regulating such compensation on the other, in a comparative context. Growing levels of executive compensation relative to that of average workers over the past three decades has led to increased academic interest in the determinants of top corporate executive compensation levels and their composition. The literature in the field of corporate law has only made limited head roads into developing a comparative understanding of differing legal approaches to executive pay, instead largely focusing either on regulations in particular countries (especially the United States) or on comparisons of individual rules (such as Say on Pay laws). This research seeks to fill this lacunae in the current literature.

This research also seeks to contribute to a separate line of literature which has been focused on the effects of differences in corporate law rules to economic outcomes across countries by adding a consideration of executive compensation, a type of economic outcome that this literature has yet to address. A subordinate claim it looks into is whether differences between common and civil law legal systems plays any role in this area.

2 . 研究の目的

This research seeks to answer the following questions. The first (in no particular order) it asks is whether there is an identifiable set of common corporate law rules across jurisdictions which are relevant to the level or composition of executive compensation. The second question it asks is whether significant differences in these rules exist across countries. Finally it asks whether any observed differences in such rules are correlated with differences in compensation levels or structure across countries.

The main hypothesis these questions seek to test is whether or not corporate law itself is a relevant factor in explaining corporate executive pay differences across jurisdictions. Other works have placed

emphasis on competing factors such as corporate cultural norms and corporate governance mechanisms, but this research focuses specifically on the relevance of rules contained in black letter corporate laws.

3 . 研究の方法

This research has consisted of two distinct phases. In the first phase, which continued previous research, it looked specifically at rules governing executive compensation in Japan's Companies Act and how these have been enforced (through shareholder voting and litigation, mostly related to Article 361 of the Companies Act governing director pay). In the second phase it has expanded this and adopted a comparative methodology. This second phase examines the corporate law rules related to executive compensation of five countries – the United States, Canada, the United Kingdom, Japan and Germany. These countries are chosen since they represent major economies which come from both the civil law and common law traditions. They also exhibit contrasting levels of executive compensation. The United States lies on the extremely high end of the executive compensation scale, while Japan lies on the more moderate end and the other three lie somewhere in between.

The research compares the main corporate law statutes in each jurisdiction (using Delaware law in the United States, and the Federal Canada Business Corporations Act in Canada, the two countries with multiple corporate laws) with respect to executive compensation. Particularly it looks at rules in three broad categories. First are those which govern the process of setting executive pay – which actors in corporate governance are given what role by the law in setting pay (particularly the distinct roles played by the general meeting of shareholders and the board of directors or other supervisory organs). Second are those related to the disclosure of executive pay: what has to be disclosed, when and to whom. Third are those which relate to challenges to executive pay – both remedies which give constituents (such as shareholders) the right to challenge pay in court (through derivative lawsuits or other mechanisms) and those which give executives the right to demand it (in other words to bring actions against the company

for pay). The research then analyzes these rules in each country, drawing upon previous literature to make broad comparisons on whether each, taken as a whole, may play a limiting role on executive pay (for example by making it more difficult to approve high compensation contracts ex ante, or open them to greater risk ex post through litigation) or do the opposite (for example by making it easy to approve such contracts ex ante or exposing them to limited risk ex post). From there the research looks to whether we can draw any correlations between stronger (weaker) legal rules controlling compensation and lower (higher) levels of compensation. For information on executive compensation levels a variety of secondary sources are drawn upon.

4 . 研究成果

With respect to the first phase (Japan) the research finds that the Companies Act rules play a modest role in shaping executive compensation, but that this is not determinative. In the second phase the (preliminary) results of the research indicates that there is a diversity in the substantive rules governing executive pay across the jurisdictions examined. This diversity extends across all three types of rules examined: approval process of pay, disclosure rules and remedies.

Despite this variation, drawing conclusions as to the relevance of the law to differing levels and composition of executive pay is difficult. This is owing to the lack of correlation between stronger rules that might limit pay on the one hand, and compensation levels on the other. This does not preclude legal rules from playing a role but rather suggests they play a complimentary role to other institutions in the pay setting process.

5 . 主な発表論文等

(研究代表者、研究分担者及び連携研究者には下線)

[雑誌論文] (計 1 件)

Sean McGinty, David Green, “What Shareholders in Japan Say About Pay: Does Article 361 of Japan’s Companies Act Matter?” Asian Journal of Comparative Law (2018)

[学会発表] (計 1 件)

Sean McGinty, “Executive Compensation in Japanese and Canadian Corporate law: Does Legal Origin Matter?” Italian Japanese Association for Comparative Law III Biennial Conference (2017)

[図書] (計 件)

[産業財産権]

出願状況 (計 件)

名称 :
発明者 :
権利者 :
種類 :
番号 :
出願年月日 :
国内外の別 :

取得状況 (計 件)

名称 :
発明者 :
権利者 :
種類 :
番号 :
取得年月日 :
国内外の別 :

[その他]
ホームページ等

6 . 研究組織

Nagoya University Graduate School of Law

(1) 研究代表者 Sean McGinty
(McGinty, Sean)
Nagoya University Graduate School of Law
Designated Associate Professor

研究者番号 : 4 0 7 0 6 8 1 8

(2) 研究分担者
()

研究者番号 :

(3) 連携研究者
()

研究者番号 :

(4) 研究協力者
()

