Proceedings of the 2nd International Conference on Management Research and Economic Development
DOI: 10.54254/2754-1169/84/20240796

Duties of Board in Maximizing Shareholder Value During Acquisitions: A Comparative Analysis Between UK, US and China

Qiurui Xie[1,a,*]

[1]The University of Manchester, Oxford Rd, Manchester, UK
a. qiurui.xie@postgrad.manchester.ac.uk
**corresponding author*

Abstract: Focusing on the legal and strategic frameworks in China, the United States (especially Delaware), and the United Kingdom, this paper provides a comparative analysis of the roles and responsibilities of corporate boards in maximizing shareholder value in the acquisition process. It explores the varied legal frameworks to set board responsibilities, the strategic roles of boards in decision-making, and the challenges in balancing the interests of boards and shareholders. This paper further discusses the importance of conflicts of interest between boards and shareholders, transparent communication, and ethical standards, and how these factors affect the realization of value in acquisition decisions. It highlights regional case studies to illustrate the practical application of these principles in different legal and cultural contexts, emphasizing the need for boards to navigate complex regulatory landscapes and shareholder expectations to drive successful acquisition outcomes. This entails adopting practices like enhanced due diligence, independent oversight, and transparent communication to navigate the complexities of global corporate governance effectively.

Keywords: Board of directors, acquisitions, shareholder value, corporate governance, strategic decision-making

1. Introduction

In the complex context of acquisitions, the role of the board of directors is vital in navigating the complex balance between maximizing shareholder value and ensuring overall company growth. The central debate surrounding the duties and decision-making processes of boards in such acquisitions, highlighting the varying approaches and legal frameworks in China, the US(Delaware), and the UK matters. It delves into the complex issue of aligning the interests of the board with those of shareholders, a task often filled with challenges and conflicting objectives. The study by Datta, Basuil, and Agarwal in the International Business Review, which looks at how board characteristics affect post-acquisition performance in cross-border mergers and acquisitions, is one example of the research in the field that highlights the challenge of balancing the interests of shareholders and improving overall company value during acquisitions [1]. This paper addresses this tension. The introduction prepares the reader for a thorough analysis of several case studies from each of the three regions. These cases will show in detail how boards perform their duties in different legal and cultural contexts,

© 2024 The Authors. This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (https://creativecommons.org/licenses/by/4.0/).

DOI: 10.54254/2754-1169/84/20240796

giving readers insight into the challenges of board value balancing and the complexities of corporate governance in the acquisition world.

2. The Role of The Board of Directors in Acquisition Decisions

The board plays a crucial role in the company's acquisition decisions. And the role it plays in its is diverse and multifaceted, involving a combination of its rights and responsibilities as defined by the legal framework and its strategic responsibility to be accountable to the company. In the following discussion, we will discuss two key aspects in depth. The first is a comparison of the legal frameworks in China, the UK and the US state of Delaware with regard to the board's responsibilities, and the strategic role and rights of the board in assessing judgements and making decisions on takeover proposals.

2.1. Legal Frameworks Defining Board Responsibilities in the UK, the US and China

The design of the legal framework for board responsibilities in takeovers varies considerably across legal jurisdictions.

2.1.1. The UK

In the UK, the Companies Act 2006 sets out the duties of directors, emphasising that directors must act within their powers, promote the success of the company, exercise independent judgment and avoid conflicts of interest. The Act aims to ensure transparency and accountability in directors' decisions, particularly in terms of how they benefit the company and its shareholders in the long term.

Directors must ensure that their decisions to acquire or merge with another company are in line with the company's objectives and beneficial to its shareholders. This involves a careful evaluation of the potential risks and rewards of the acquisition, as well as consideration of long-term impacts on the company's growth and profitability[2]. Furthermore, the Act mandates a level of transparency and accountability in directors' decisions. This is crucial during acquisitions, where decisions can significantly impact shareholder value. Directors must provide clear and detailed explanations for their actions and how they align with the company's interests.

The Companies Act 2006 therefore provides comprehensive rules and guidance on the duties of boards of directors in takeovers, focusing primarily on the importance of fiduciary duties, the duty of care in takeover judgement and decision-making, and what is in the best interests of the company and its shareholders. The Act is a significant positive contribution to the promotion of good corporate governance [3].

2.1.2. The U.S. (Delaware)

Delaware's corporate law is a leading authority in American corporate jurisprudence and sets important precedents that influence corporate governance across the United States. The state's legal framework for the duties and responsibilities of directors is primarily based on common law principles, as established through a substantial body of case law.

In Delaware, a director's fiduciary duty includes several key responsibilities, each of which is supported by comprehensive case law. The most important of these is the "Duty of Care," which requires directors to be well informed and diligent in their decision-making. The Delaware Supreme Court clearly emphasized this special responsibility in the landmark case Smith v. Van Gorkom, 488 A.2d 858 (Delaware, 1985). Complementing the duty of care is the duty of loyalty, which is the Paramount requirement that directors must always act in the best interests of the company. This requires avoiding any conflicts of interest and avoiding self-dealing. A classic example of this

DOI: 10.54254/2754-1169/84/20240796

obligation is Stone v. Ritter, 911 A.2D 362 (Del. 2006), which vividly illustrates that directors must act in good faith and refrain from taking actions that might benefit them at the expense of the company.

The duty of loyalty and the duty of good faith are closely linked, essentially requiring company directors to always act honestly and with the company's best interests at heart. This concept was explored in a well-known legal case involving Walt Disney Co., where the court stressed the importance of directors genuinely committing to the company's welfare. Moreover, when looking at directors' decisions, the courts in Delaware often use what's called the business judgment rule. This idea suggests that if directors are making decisions thoughtfully, with the right information, and truly believe they're doing what's best for the company, then their decisions are respected. So, Delaware law combines these principles with the business judgment rule to create a strong expectation that directors will always act in ways that benefit the company and its governance. This approach helps ensure that the company is managed in a responsible and beneficial manner for all involved.

In making judgements and decisions about acquisitions, Delaware courts generally apply the business judgement rule as a core principle, a rebuttable presumption that binds boards of directors that rights should be exercised in good faith, on an informed basis, and in the best interests of the company [4]. This gives boards of directors more latitude to exercise their rights autonomously, and local companies are more dynamic in their acquisitions.

2.1.3. China

The controversy over the director-centred and shareholder-centred models of corporate governance in China continues to rage, and the legal framework provisions of the Chinese Company Law suggest a hybrid approach to them, combining features of both models.

Specifically, firstly, the law ensures a legal basis for directors to exercise their powers by delineating the components of the board of directors and granting them due rights, reflecting their key role in corporate governance. For example, in the case of small enterprises, the law allows for only one director, reflecting the full consideration of his decision-making power. Elsewhere, Chinese company law supports the idea that companies should consider the interests of a wide range of stakeholders and provides for employee representation on the board of directors, which is a manifestation of shareholder-centrism. Fiduciary duty, on the other hand, has still not been introduced in its entirety in China due to the ambiguities, rigidities and other imperfections that still exist in China's corporate legal system. However, in the implementation of fiduciary duties, Chinese company law emphasises that directors should protect the interests of shareholders when exercising their powers, while giving them an important role in corporate governance. There are also strict provisions on directors' accountability and the introduction of additional supervision by the supervisory board, which serve to monitor their role in safeguarding shareholders' interests [5]. These initiatives promote a balance of rights and provide a positive result in aligning the exercise of directors' rights with the interests of the company and shareholders, giving full play to the governance framework. In addition, the administrative and criminal penalties that directors will suffer if they violate the law have been repeatedly brought up in the general legal environment, which is conducive to the development of a culture of ethical behaviour and compliance, so that the directors voluntarily accept the supervision and safeguard the interests of shareholders. This convergence of corporate governance principles reflects the unique position of Chinese boards in the corporate governance process, balancing directive leadership with stakeholder inclusion in terms of overall direction.

In short, China's corporate governance model seeks to strike a balance between director-centrism and shareholder-centrism, using both a legal framework and a moral ethos in which the board of directors is empowered to manage the company, while the principle of shareholder relevance aligns its actions with the position of shareholders and stakeholders. This approach reflects the integration

DOI: 10.54254/2754-1169/84/20240796

of diversity in China's choice of corporate governance models, which focuses on the interconnectedness of interests and sets the framework in a holistic manner.

The UK approach is characterized by a structured statutory framework with a focus on transparency and accountability, while the Delaware system is characterized by flexibility and significant discretion given to directors under business judgment rules [6]. The Chinese model is a hybrid approach that incorporates both director-centric and shareholder-centric governance elements, while also adding oversight mechanisms and stakeholder consideration mechanisms. Each regime embodies its own balance between providing guidance and discretion to directors in their decisions and ensuring that the interests of shareholders and wider stakeholders are protected, particularly in the case of takeovers.

2.2. The Strategic Role Of the Board In Assessing and Deciding on Acquisition Proposals

The board's evaluation of and decision-making on takeover offers is of strategic importance in guiding the future direction of the company and, in particular, in maximising the benefits for shareholders during the M&A process. However, the general legal and corporate governance environment in different regions (this paper focuses on the UK, US especially Delaware and China) will have a subtle impact on their role.

In both the UK and the US, boards tend to prioritise the interests of shareholders and closely monitor the business to ensure it meets its strategic objectives. Rigorous risk management is emphasised, encompassing due diligence and evaluation. Independent boards provide objective advice to management and promote practices that improve shareholder value and transparency. This involves constructive criticism of financial forecasts and merger plans, particularly when selling companies, to ensure that shareholders' interests are maximised. In contrast, the aacquisition strategies of Chinese listed companies take more account of shareholders' interests and reflect national policies and social objectives [7]. The role of the supervisory board in overseeing the company's performance adds to the complexity of the decision-making process. Risk management strategies should be consistent with local laws and national regulations [8]. This governance model aims to achieve good governance, both in terms of compliance with national policies and social responsibility. This comparative analysis shows that there are differences in corporate governance practices in different regions. Unlike the UK and the US, which focus on shareholder interests, China takes a more integrated approach, balancing shareholder interests with stakeholder interests, including consistency with national policies.

As a result, the board's role in M&A decision-making encompasses a range of trust, strategic and legal responsibilities. The board must be well versed in these responsibilities to ensure that the M&A not only enhances shareholder value, but also meets the highest standards of corporate governance.

3. Conflict and Balance: Board vs. Major Shareholders

3.1. Conflict

Conflicts of interest between boards and major shareholders during acquisitions are a critical aspect of corporate governance. These conflicts arise when the personal interests of board members or major shareholders collide with the broader interests of the company and its stakeholders. In the context of acquisitions, board members are expected to act in the best interests of the company, which often involves maximizing shareholder value. However, conflicts can arise in several scenarios below.

Conflicts in board decisions during acquisitions can stem from a confluence of factors, each contributing to the complexity of corporate governance. Personal gains, such as a CEO favoring an acquisition for self-benefit, can create conflicts when these decisions do not align with the long-term interests of the company and its broader shareholder base. This issue is often exacerbated by differing

DOI: 10.54254/2754-1169/84/20240796

strategic visions, where individual shareholders or board members might advocate for acquisitions that align with their personal investment strategies rather than the company's overarching strategic plan [9]. Information asymmetry presents another significant challenge. Board members, privy to in-depth information about potential acquisitions, may inadvertently or deliberately create a trust deficit with shareholders, especially if the latter perceive a lack of transparency or believe critical information is being withheld. Such scenarios can negatively impact shareholders' confidence in the board's decisions and their investment choices. Valuation disputes are a recurrent source of conflict, particularly in the determination of a target company's worth during an acquisition. Board members may agree to a higher purchase price to expedite the deal, potentially leading to overpayment. This approach can be contentious, especially among minority shareholders who might perceive the valuation as not reflective of the best value for their investment. Such disparities in valuation perspectives can lead to significant discord within the company, affecting its market reputation and shareholder relations.

These conflicts highlight the intricate balance boards must maintain between personal interests, strategic vision alignment, transparent communication, and equitable valuation in the complex landscape of corporate acquisitions. The resolution of these conflicts requires not only a deep understanding of the multifaceted nature of corporate governance but also a commitment to ethical standards and shareholder value maximization.

The legal frameworks in different jurisdictions provide various mechanisms to manage and mitigate these conflicts below.

In the US, particularly Delaware, the judiciary plays a significant role in resolving these conflicts. Delaware courts have established precedents through cases like Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., where the board is obligated to secure the best price reasonably available for stockholders in a sale. The courts also scrutinize the role of boards in ensuring fair and unbiased decision-making in acquisitions.

In the UK, the Companies Act 2006 codifies directors' duties, including the need to avoid conflicts of interest and to act in the best interests of the company. The UK Corporate Governance Code also provides guidelines for boards to manage conflicts effectively [10]. In China, the Company Law outlines directors' duties, emphasizing the importance of acting in the company's best interests. However, given the unique corporate governance environment in China, including state influence, resolving these conflicts might involve additional considerations. To address and manage these conflicts, companies often establish independent committees to oversee acquisition processes, ensuring that decisions are made without undue influence from conflicted parties. Additionally, transparency and communication with shareholders are crucial in mitigating conflicts, as they help build trust and ensure that all parties are informed about the acquisition process.

In summary, conflicts of interest between boards and major shareholders during acquisitions are a complex and significant aspect of corporate governance. The resolution of these conflicts requires a careful balancing of various interests, transparent communication, and adherence to legal and ethical standards. The approach to managing these conflicts varies across jurisdictions but is centered on the principles of fairness, transparency, and the best interests of the company and its shareholders.

3.2. Balance: Maximizing Shareholder's Value

Balancing the interests of boards and shareholders, particularly in the context of acquisitions, is central to maximizing shareholder value. This balance involves ensuring that the board's decisions are aligned with the best interests of shareholders and that they contribute to the long-term success and growth of the company.

In the complex arena of corporate acquisitions, the board of directors plays a pivotal role in ensuring that any proposed transaction aligns with the company's strategic objectives, thereby

maximizing shareholder value. This task requires a comprehensive evaluation of both the financial and strategic implications of the acquisition. A notable example of this responsibility is demonstrated in the landmark case of Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., where the Delaware court established the principle that the board has a fiduciary duty to secure the best possible price for shareholders in the context of a sale. This case emphasizes the board's critical role in not only protecting but also enhancing shareholder interests during acquisitions.

To ensure balance and fairness in the acquisition process, boards frequently establish independent committees tasked with the meticulous evaluation of acquisition proposals. These committees operate autonomously, devoid of any influence from potentially conflicted directors or major shareholders. The importance of such independence in decision-making was spotlighted in the Empire Resorts case, where the Delaware court rigorously examined the committee process for potential flaws, thereby underscoring the significance of autonomous and unbiased evaluation in safeguarding shareholder interests.

Another crucial aspect of the board's role is conducting thorough due diligence to fully comprehend the risks and benefits associated with a potential acquisition. This process encompasses a detailed evaluation of the target company's financial health, its position in the market, and the challenges that might arise during the integration process. The due diligence undertaken by the board is indispensable in ensuring that the acquisition not only aligns with the company’s strategic objectives but also contributes positively to the value offered to shareholders.

Equally important is the board's responsibility to maintain open and transparent communication with shareholders throughout the acquisition process. This duty involves providing shareholders with regular updates on the progress of the transaction and elucidating the rationale behind key decisions. The criticality of this transparency was highlighted in the Amtrust Financial Services case, where the Delaware court emphasized the necessity of clear and candid communication, particularly in transactions involving controlling shareholders.

Furthermore, managing conflicts of interest is an integral part of the board's role in acquisitions. This management includes the recusal of conflicted directors from decision-making processes and ensuring that personal interests do not unduly influence the board's decisions. The significance of effectively handling these conflicts was exemplified in cases like In re Pilgrim’s Pride Corp. Derivative Litigation, which underscore the paramount importance of conflict management in protecting and advancing shareholder interests.

In addition to these responsibilities, the board must also ensure that the acquisition complies with all relevant legal and regulatory requirements. This compliance is vital not only to protect the company from potential legal risks but also to reinforce shareholder confidence in the integrity and legality of the transaction. Adherence to securities laws, antitrust regulations, and industry-specific regulations is essential in maintaining the legitimacy and ethical standards of the acquisition process.

Lastly, for significant acquisitions, obtaining shareholder approval is often a legal necessity. Beyond mere legal compliance, actively engaging shareholders in the decision-making process can yield valuable insights and bolster trust between the board and the shareholders. This engagement is instrumental in ensuring that the board's decisions are reflective of the collective interests of all shareholders and contribute to the overall success and sustainability of the acquisition.

In summary, balancing the interests of boards and shareholders in acquisitions involves a multifaceted approach that includes strategic alignment, independent decision-making, thorough due diligence, transparent communication, effective management of conflicts, legal compliance, and shareholder engagement. This balanced approach is crucial for maximizing shareholder value and ensuring the long-term success of the acquisition. The legal frameworks in different jurisdictions, such as the US (Delaware), the UK, and China, provide various mechanisms and considerations for achieving this balance, reflecting the global diversity in corporate governance practices.

DOI: 10.54254/2754-1169/84/20240796

3.2.1. Cases in Regions

To illustrate how conflicts are balanced and shareholder value is maximized in acquisitions, let's examine a case from each of the three jurisdictions: the US (Delaware), the UK, and China.

3.2.2. United Kingdom

Cadbury's Takeover by Kraft: The takeover of Cadbury by Kraft Foods in 2010 is a prominent example of balancing conflicts and maximizing shareholder value in the UK. Cadbury's board faced a conflict between securing the best possible offer for shareholders and preserving the company's independence. Despite initial resistance, the board eventually accepted Kraft's improved offer, considering it to provide better value to shareholders. The UK's Takeover Panel played a crucial role in ensuring fair play and transparency throughout the takeover process, emphasizing the importance of regulatory bodies in overseeing acquisitions and protecting shareholder interests.

3.2.3. United States (Delaware)

Tesla's Acquisition of SolarCity: In this notable case, Tesla's acquisition of SolarCity raised conflicts of interest concerns as Elon Musk, Tesla's CEO, was a major shareholder in both companies. The Delaware Court took a detailed look at a deal involving Tesla, focusing particularly on Elon Musk's involvement, like him talking to the Tesla board about the deal and being present at board meetings. Despite concerns, the court found that the Tesla board wasn't pressured into agreeing to the deal terms or its timing. The board's independent committee really stood up for the shareholders, actively questioning and challenging the opinions of Musk, who was in a conflicting position. This case highlights how important it is to have an unbiased board or special committee to manage such conflicts and make decisions that are good for the company and its shareholders, ensuring that the interests of the shareholders are front and center.

3.2.4. China

Vanke's Hostile Takeover Battle: In one of China's most high-profile corporate battles, Vanke, a major real estate developer, faced a hostile takeover attempt by Baoneng Group. The conflict arose when Baoneng, previously a minor shareholder, rapidly increased its stake in Vanke, becoming its largest shareholder. Vanke's board opposed the takeover, citing concerns about Baoneng's heavy use of leveraged financing. The China Securities Regulatory Commission (CSRC) intervened, emphasizing the need for market stability and fair practices. This case underscores the unique role of regulatory bodies and state influence in Chinese corporate governance, where balancing conflicts often involves aligning corporate actions with broader economic policies and maintaining market stability.

These cases from the US, UK, and China demonstrate the varying approaches to balancing conflicts and maximizing shareholder value during acquisitions. They highlight the role of independent boards and committees, regulatory oversight, and the need for strategic decision-making that aligns with both company and shareholder interests.

4. Conclusion

The comparative analysis of board roles in acquisitions across China, the UK, and the US (particularly Delaware) provides key insights into global corporate governance practices and their implications for future cross-border acquisitions. The analysis highlights the importance of balancing board actions and shareholder interests during acquisitions. In the US, Delaware law emphasizes the board's duty to maximize shareholder value, as seen in the Tesla-SolarCity case. The UK's legal framework,

illustrated by the Cadbury-Kraft takeover, focuses on protecting shareholder interests through regulatory oversight. In China, the case of Vanke's hostile takeover battle demonstrates the influence of regulatory bodies and state policies in corporate decisions. These cases underscore the necessity of independent decision-making, transparent communication, and adherence to legal and ethical standards in managing acquisitions.The evolving nature of corporate governance across different jurisdictions suggests that boards must be increasingly vigilant in navigating legal and cultural differences in cross-border acquisitions. Boards must understand and respect the unique legal and regulatory environments of the countries involved, ensuring compliance and aligning their strategies with the expectations and requirements of these diverse settings.

To effectively manage cross-border acquisitions, boards must engage in enhanced due diligence and risk assessments that encompass financial, cultural, regulatory, and market factors across jurisdictions. The establishment of independent oversight, either through committees or external advisors, is crucial for an unbiased evaluation and conflict mitigation. Additionally, maintaining transparency and open communication with shareholders is essential for explaining acquisition strategies and decisions. Boards are also obligated to ensure that their actions comply with legal and ethical standards in the involved jurisdictions. Embracing continual learning and adaptation to the evolving landscape of corporate governance and legal frameworks globally is vital for navigating the complexities of cross-border acquisitions efficiently.

In conclusion, the role of boards in cross-border acquisitions is becoming increasingly complex and significant. By understanding the diverse legal frameworks and cultural nuances, and by implementing robust governance practices, boards can effectively manage these transactions to maximize company and shareholder value. The lessons learned from the comparative analysis and case studies provide valuable guidance for boards in navigating the challenges and opportunities of global corporate governance.

References

[1] *Datta, D. K., Basuil, D. A., Agarwal, A. (2020). Effects of board characteristics on post-acquisition performance: A study of cross-border acquisitions by firms in the manufacturing sector. International Business Review, 29(3), 101674.*

[2] *Ashraf, T. (2012). Directors' duties with a particular focus on the Companies Act 2006. International Journal of Law and Management, 54(2), 125-140.*

[3] *Watson, S. (2010). The significance of the source of the powers of boards of directors in UK company law. Journal of Business Law, Forthcoming.*

[4] *Carney, W. J., & Shepherd, G. B. (2009). The Mystery of Delaware Law's Continuing Success. U. Ill. L. Rev., 1.*

[5] *Reisberg, A., & Donovan, A. (2018). Pettet, Lowry & Reisberg's Company Law. Pearson UK.*

[6] *Yoshikawa, T., Zhu, H., & Wang, P. (2014). National governance system, corporate ownership, and roles of outside directors: A corporate governance bundle perspective. Corporate Governance: An International Review, 22(3), 252-265.*

[7] *Li, W. A., Xu, Y., Niu, J., & Qiu, A. (2012). A survey of corporate governance: international trends and China's mode. Nankai Business Review International, 3(1), 4-30.*

[8] *Opoku-Mensah, E. and Yin, Y., 2023. Controlling shareholders' influence on acquisition decisions and value creation: An empirical study from China. International Journal of Finance & Economics, 28(2), pp.1965-1980.*

[9] *Benson, B.W., Davidson III, W.N., Davidson, T.R. and Wang, H., 2015. Do busy directors and CEOs shirk their responsibilities? Evidence from mergers and acquisitions. The Quarterly Review of Economics and Finance, 55, pp.1-19.*

[10] *Renneboog, L. and Vansteenkiste, C., 2019. Failure and success in mergers and acquisitions. Journal of Corporate Finance, 58, pp.650-699.*