

Corporate Groups: Corporate Law, Private Contracting and Equal Ownership

Maribel Sáez Lacave

Universidad Autónoma de Madrid & ECGI

María Gutiérrez Urtiaga

Universidad Carlos III de Madrid & ECGI

In this paper we provide a simple and general framework that explains the nature of groups, their corporate governance problems and their ownership structures as the result of the double nature of the controlling shareholder in the group as both shareholder and stakeholder of the subsidiary. We use this framework to conduct an economic and empirical analysis that explores the limitations of regulation and shareholders' agreements to deal with this dual nature of the parent. Our analysis is able to explain the extreme ownership structures prevalent across groups as solution of last resort to unresolved corporate governance problems when regulation is inefficient and transaction costs limit the use of contracts to provide shared control. We go on to test these ideas conducting an empirical study that explains groups ownership structures and allows us to derive important policy implications. First, it exposes the structural limitations that corporate law encounters to contain the corporate governance problems of groups. Second, it calls for an acknowledgement of the crucial role of shareholders agreements in corporate governance. Shareholder agreements offer the best alternative to protect parent and subsidiary from mutual opportunism, while preserving the incentives to cooperate. Guarantying the enforceability of these contracts offers jurisdictions the most efficient way forward to reduce expropriation in corporate groups.