

Научная статья

JEL: K1

УДК: 346

DOI:10.17323/2072-8166.2026.1.269.296

Regulating Independent Directors Impact in BRICS States: Fundamental Issues and Contemporary Challenges



Olga V. Novikova¹, Kira A. Kurganova²

^{1,2} National Research University Higher School of Economics, 20 Myasnitskaya Str., Moscow 101000, Russia,

¹ mailandlaw@gmail.com, <https://orcid.org/0000-0002-0546-6059>

² kakurganova_1@edu.hse.ru, <https://orcid.org/0009-0008-9919-7312>



Abstract

The authors of the study investigate institution of independent directors in BRICS state members (Brazil, Russia, India, China, South Africa) as a transplanted element of Anglo-American corporate governance. A goal of exploration is to test the widespread assumption that increasing a number of “independent” directors automatically improves corporate oversight in jurisdictions with concentrated ownership and strong state participation. Methodologically the research relies on comparative doctrinal analysis of legislation, stock exchange rules and soft law codes, complemented by a critical review of empirical studies and statistics on corporate board composition and liability trends. The argument develops in three main parts. First, the legal framework section maps how independence requirements are formulated and enforced in BRICS, highlighting differences in the level, form and strictness of regulation. Second, the “fundamental issues” section links the independent director to contested corporate governance goals (shareholder value versus stakeholder welfare) and to the agency problem under capital concentration, showing why the classic U.S rationale does not straightforwardly apply here. Third, “contemporary challenges” section examines a gap between formal and real independence, specific tensions of independent directors in state-owned or state-influenced companies, incentive structures shaped by reputation, remuneration and liability insurance, and Russia’s anti-sanctions regime as an experimental suspension of board level independence. The authors conclude formal independence criteria and numerical quotas are neither sufficient nor context neutral. In the field of BRICS members the performance of inde-

pendent directors depends on clarifying whose interests they are meant to protect and on aligning incentives so that genuinely autonomous judgment is possible despite concentrated ownership, state influence and rising personal liability risks.



Keywords

independent director; corporate governance; BRICS countries; concentrated ownership; state; influence; anti-sanction measures.

For citation: Novikova O.V., Kurganova K.A. (2026) Regulating Independent Directors Impact in BRICS States: Fundamental Issues and Contemporary Challenges. *Law. Journal of the Higher School of Economics*, vol. 19, no. 1, pp. 269–296 (in Russ.) DOI: 10.17323/2072-8166.2026.1.269.296

Научная статья

Регулирование института независимых директоров в странах БРИКС: фундаментальные вопросы и современные вызовы



**Ольга Владимировна Новикова¹,
Кира Алексеевна Курганова²**

^{1, 2} Национальный исследовательский университет «Высшая школа экономики», Россия 101000, Москва, ул. Мясницкая, 20,

¹ mailandlaw@gmail.com, <https://orcid.org/0000-0002-0546-6059>

² kakurganova_1@edu.hse.ru, <https://orcid.org/0009-0008-9919-7312>



Аннотация

Авторы исследуют институт независимых директоров в странах БРИКС (Бразилия, Россия, Индия, Китай, ЮАР) как заимствованный элемент англо-американской модели корпоративного управления. Цель — проверить распространённое предположение, что увеличение числа «независимых» директоров автоматически улучшает корпоративный контроль в юрисдикциях с концентрированной собственностью и существенным участием государства. Методология включает сравнительно-доктринальный анализ законодательства, правил фондовых бирж и актов «мягкого права», дополненный критическим обзором эмпирических исследований и статистикой состава советов директоров и трендов ответственности. Аргументация строится в трех частях: 1) картирование подходов к формулированию и обеспечению требований независимости в странах БРИКС и различий в уровне/форме/жесткости регулирования; 2) рассмотрение института независимого директора во взаимосвязи с: дискуссиями о целях корпоративного управления (стоимость для акционеров vs. благополучие стейкхолдеров), с агентской проблемой и с уровнем концентрации капитала, обозначило границы переносимости американского оригинала; 3) анализ современных вызовов: разрыв между формальной и реальной независимостью,

специфика роли независимых директоров в госкомпаниях и компаниях под влиянием государства, вопросы стимулирования (репутация, вознаграждение, страхование ответственности), а также антисанкционный режим в России как экспериментальная «приостановка» независимости на уровне совета. Вывод: формальные критерии независимости и численные квоты не являются ни достаточными, ни контекстно-нейтральными; вклад независимых директоров в БРИКС зависит от прояснения, чьи интересы они должны защищать, и от настройки стимулов, обеспечивающих действительно автономное суждение при концентрированной собственности, государственном влиянии и росте рисков персональной ответственности.



Ключевые слова

независимый директор; корпоративное управление; страны БРИКС; концентрированная собственность; антисанкционные меры.

Для цитирования: Новикова О. В., Курганова К. А. Регулирование института независимых директоров в странах БРИКС: фундаментальные вопросы и современные вызовы // Право. Журнал Высшей школы экономики. 2026. Том 19. № 1. С. 269–296. DOI:10.17323/2072-8166.2026.1.269.296

Introduction

The phenomenon of independent directors (ID), originally emerged in the Anglo-American context, in present time may be viewed as transplantation of a foreign institution into realities of BRICS countries [Clarke D.C., 2006: 125, 129]; [Kuzin D.V., 2024: 5–6]. However, such transplantation requires a thorough analysis of its goals and objectives, implementation experience, and the political and economic differences of the borrowing country. Moreover, the approach to ID continues to evolve in the countries of its origin. The article addresses the conceptual and contemporary challenges facing the institution of independent directors in BRICS countries. First, we examine how the role of the ID has developed in law to address the goals of corporate governance. Second, we analyze the approach of BRICS countries to the agency problem in the context of capital concentration. Third, we discuss current issues related to the functioning of IDs, including: difficulties in establishing independence and its criteria; role of IDs in state capitalism; incentives for active involvement by IDs; and prospects for ID institution in light of anti-sanction measures in the Russian Federation. In view of the recommendation of the Central Bank of Russia to select independent directors from friendly countries, the theme has gained particular importance.

1. Legal Framework

Once the Harvard Law Review has published an article criticizing the concept of directors connected to management (referred to as «shirtsleeve

directors») [Douglas W.O., 1934]. It argued passive and dependent board of directors could not adequately protect the interests of shareholders. The article has sparked a theoretical understanding of the institution of independent directors and prompted initial attempts at legislative regulation.

The earliest legislative attempt to mandate independence was the US Securities Exchange Act of 1934 applied to public companies. The Act required that all members of the audit committee be directors of the company and that they be independent, with no connections to the corporation beyond their membership on the board. A member of the audit committee was considered independent person if they did not receive monetary compensation from the corporation for consulting or other services and were not affiliated with the company or its subsidiaries¹.

Afterwards, legislative acts and listing rules of stock exchanges became the driving force for development of the independent directors institution and firmly rooted it in corporate practice.

Further legislative acts and stock exchange listing rules have played a pivotal role in advancing the institution and embedding it into corporate practice. Currently, the Sarbanes-Oxley Act² is considered a «trendsetter» in this area of regulation. Enacted in 2002 in the United States following a series of high-profile corporate scandals [Giroux G., 2008: 1205]; [Mishra Ch., Drtina R., 2004: 27], the law aims to enhance the transparency and reliability of financial statements of public companies and reduce the potential for management manipulation of financial reporting [Harris R., 2009: 50].

To achieve these goals, the law mandates the following rules regarding director independence: a majority of the board of directors of publicly traded companies must consist of independent directors, and the latter must hold meetings according to their own schedule, without the presence of the corporation's management. Following the passage of the Sarbanes-Oxley Act, 91% of publicly traded companies had only two or fewer «insiders» on their boards [Gordon J.N., 2006: 1465, 1476].

The enhancement of independent directors' roles was initially seen as a solution to the 2008 economic crisis. In 2010 the US Dodd-Frank Act³ has introduced a requirement for a fully independent compensation committee.

The best practices of the Anglo-American legal system with regard to director independence have been adopted in the BRICS countries.

¹ Securities Exchange Act of 1934 USA). Sec 10a.

² Sarbanes-Oxley Act of 2002 (USA). Available at: https://pcaobus.org/About/History/Documents/PDFs/Sarbanes_Oxley_Act_of_2002.pdf. (accessed: 19.11.2024)

³ Dodd-Frank Act of 2010 (USA). Available at: <https://www.congress.gov/111/plaws/publ203/PLAW-111publ203.pdf>. (accessed: 10.09.2025)

In Brazil, the Business Environment Law (Law No. 14.195/2021), that came into force in 2021, has introduced a mandatory requirement for the presence of independent directors on the boards of listed companies. According to a resolution by the Securities Commission⁴, at least twenty percent of the directors must be independent ones. Recommendations regarding the number of independent directors on the board are also outlined in the Code of Best Practices of Corporate Governance⁵. This code proposes a more radical approach, recommending the board of directors consist of a majority—or exclusively independent or external directors⁶:

It is recommended the collective body be composed solely—or with a majority—of external and independent members. The independent members, in turn, should constitute a significant portion of the total number of members and take the lead, especially in situations of potential conflict of interest of internal and/or external board members. Unless legally determined, the appointment of internal directors to the board should be avoided⁷.

According to ISS's 2025 Latin America Board Season Review, the average board independence level across covered Latin American companies is about 37%, roughly unchanged from year of 2024, but significantly above the legal minimum in Brazil—Novo Mercado Rules⁸. The presence of at least a couple of independent voices (and often more) is changing board dynamics: companies report more active discussions on strategy, risk, and minority shareholder concerns led by independent members. From the perspective of this comparative article, Brazil serves as an example of how even a relatively modest quota (20%), when combined with market forces, can shift corporate culture toward viewing independent directors as an indispensable element of good governance.

⁴ Resolution No. 80/22 of the Securities and Exchange Commission of Brazil (CVM) of 2022 (Brazil). Available at <https://www.gov.br/cvm/en/foreign-investors/regulation-files/ResolutionCVM80.pdf>. (accessed: 10.09.2025)

⁵ Code of Best Practices of Corporate Governance of 2023 (Brazil). Available at: <https://nccg.ru/assets/files/corporate-law/legislation-abroad/brazil-code-cg-2023.pdf>. (accessed: 10.09.2025)

⁶ External directors: members with no current employment or managerial relationship with the organization, but who do not fit into the independent classification. For instance: former executive management member and former employees; lawyers and consultants who provide or have provided services to the company; controlling shareholders or shareholders with a significant stake, as well as their relatives; employees of subsidiaries and organizations in the same economic group; and fund managers with a significant stake.

⁷ Code of Best Practices of Corporate Governance 2023 (Brazil). Available at: <https://nccg.ru/assets/files/corporate-law/legislation-abroad/brazil-code-cg-2023.pdf>. (accessed: 10.09.2025)

⁸ ISS. 2025 Latin America Proxy Season Review. ISS Insights Report, 27 Aug. 2025.

In China People's Republic Article 136 of the Company Law requires the presence of independent directors on the boards of listed companies⁹. The detailed regulation is handled by the China Securities Regulatory Commission (CSRC), which has issued the Measures for the Administration of Independent Directors of Listed Companies. This document defines the concept of independent directors, sets the criteria for independence, and requires that independent directors constitute at least one-third of the board.

In Russia federal laws do not specifically mandate the presence of independent directors. This gap is filled by stock exchange requirements, which are mandatory for public companies listed on the exchange. According to the listing rules of the Moscow Stock Exchange¹⁰, for shares to be included in the first-level quotation list, independent directors must constitute at least one-fifth of all board members, with a minimum of three independent directors. Additionally, the head of the audit committee must be an independent director. For inclusion in the second-level quotation list, a minimum of two independent directors is required.

Clause 2.3 of the Russian Corporate Governance Code¹¹ (CGC) recommends the board of directors should be an professional management body, capable of making objective and independent judgments that serve the interests of the company and its shareholders. To this end, independent directors should constitute at least one third of the board.

In India the status of independent directors is regulated by the Companies Act of 2013, which mandates that at least one-third of the board of directors of a listed company must be independent directors (Section 4 of Article 149). Additionally, listed companies are required to establish audit committees, two-thirds of which must be composed of independent directors [Sarangi P., 2021: 3878–3882].

This year Indian regulator extended “board-style” governance norms to high-value debt listed entities (HVDLEs) — companies with listed non-convertible debt above specified thresholds. Under the LODR Amendment Regulations 2025, HVDLEs must ensure that at least half of the board comprises non-executive directors, and further that a certain proportion of the board is independent. Specifically, if the board chairperson is a non-executive and independent, at least one-third of the directors must be in-

⁹ Company Law of the People's Republic of China. 4th revision. 2023. Available at: <https://www.lawinfochina.com/display.aspx?lib=law&id=41689> (accessed: 19.09.2025)

¹⁰ Moscow Exchange. Listing Rules approved by the Supervisory Board on June 26, 2023.

¹¹ Corporate Governance Code Recommended for application by the letter of the Bank of Russia of April 10, 2014 No. 06- 52/2463].

dependent; if the chair is not both non-executive and independent, then at least half of the board must be independent directors.

In South Africa the institution of independent directors is not legislatively regulated. Part F of Chapter 2 of the Companies Act of 2008¹² does not specify the requirement for independent directors on the board. Instead, independence criteria are set only for auditors. However, the King IV Report includes a recommendation that at least 50% of the board of directors should be non-executive directors, and half of those must be independent. While the King reports are not legally binding, companies listed on the Johannesburg Stock Exchange¹³ are required to publish reports on their compliance with conditions outlined in the King reports.

Thus, the following peculiarities of the regulation of independent directors in BRICS countries can be observed:

First, detailed requirements and criteria for independence are rarely enshrined at the legislative level. Such regulation is more commonly found in recommendatory acts and the listing rules of stock exchanges. Among the countries reviewed China is the only one with a separate act dedicated to independent directors.

Second, the requirements for director independence in BRICS countries are generally less stringent compared to the US. The listing rules of the New York Stock Exchange require a majority of independent directors on the board, a standard seen only in Brazil and South Africa. However, empirical data suggests that while this is a *de jure* recommendation, it is not always strictly followed in practice. In Russia, India, and China the recommended threshold is explicitly lower: only one-third of the board of directors is required to be independent. In our view, this is because the large-scale corporate scandals in the US prompted stricter regulation, had less impact on BRICS countries.

Additionally, we hypothesize the differences in regulatory approaches are linked to varying degrees of capital concentration in these countries. It should also be noted the primary focus of the regulatory framework is on the number of independent directors in management bodies and on the criteria for their independence. However, to adopt this institution to reality, it is essential to consider the fundamental principles underlying the concept of independent directors and assess their relevance for the BRICS countries. This is discussed in the second part of the article.

¹² Companies Act of 2008 (South Africa). Available at: https://www.gov.za/sites/default/files/gcis_document/201409/321214210.pdf (accessed: 10.09.2025)

¹³ CDH Inc. King IV. An Overview. Available at: <https://www.cliffedekkerhofmeyr.com/export/sites/cdh/practice-areas/downloads/King-IV-Information-Brochure.pdf> (accessed: 10.09.2025)

2. Fundamental Issues

2.1. Deciding on corporate governance goals and objectives

The classics of corporate governance assert a board of directors actively engaged in overseeing a company's operations, ensuring shareholder interests are fulfilled, and enhancing shareholder returns, mitigates the risk of lost returns due to potential opportunistic actions by management [Kraakman R.H. et al., 2017: 38]; [Love I., 2011: 42, 45]. This seemingly straightforward principle conceals a highly intense and voluminous debate on the goals of a corporation, which has been ongoing for at least the past 30 years.

Traditionally, corporate governance has been understood as solely focused on maximizing shareholder value [Hart O.D., Zingales L., 2022], with no responsibility for providing social welfare or protecting other stakeholders. This view is also supported by contemporary research [Bebchuk L.A., Tallarita R., 2020: 91].

However, the relevance of the ESG (Environmental, Social, and Governance) agenda has become increasingly prominent. In 2019, the American Business Roundtable publicly committed to ESG principles, asserting that the purpose of a corporation is not only to increase shareholder wealth but also to protect employee rights, support communities, and collaborate with suppliers¹⁴. This shift has also gained support in academic literature [Mayer C., 2018]; [Edmans A., 2020]. At the same time, there are studies suggesting the statements of major corporations about embracing social responsibility may be largely declarative, lacking substantive change [Bebchuk L.A., Tallarita R., 2020: 157].

Instead of reaching any consensus, the focus of corporate goals tends to swing like a pendulum. In the 1950s, stakeholder concerns were central, while by the 2000s, shareholder value maximization had become the dominant objective of corporate governance [Gordon J.N., 2006: 1469]. Now, «social concern» is back in vogue, although the current geopolitical situation is once again influencing these priorities.

Turning to the role of independent directors in corporate governance, Russian regulation, for example, currently emphasizes the protection of shareholder rights as a key task for IDs. Clause 113 of the Russian CGC outlines the role of an ID as involving active participation in the development of the company's strategy, prevention of corporate conflicts, assessment of the actions of executive bodies and the company itself for align-

¹⁴ Business Roundtable 2019 Statement. Available at: <https://yellowhammernews.com/wp-content/uploads/2019/08/Business-Roundtable-Wall-Street-Journal-Ad2-copy.pdf> (accessed: 20.04.2025)

ment with the interests of all shareholders, and disclosure of information regarding the company's activities. Additionally, an independent director is expected to take part in making key decisions, such as those related to reorganization, takeovers, increases in charter capital, and significant amendments to the charter. Prioritizing decisions that may affect shareholders' interests is central to the role of an independent director. The doctrine further highlights independent directors in Russia primarily serve to «provide qualified independent judgment on transactions made by the corporation» [Magdalinskaya Yu.V., 2018: 48].

The researchers examining the role of independent directors in emerging economies highlights tend to align with stakeholders and are sensitive to societal needs. Independent directors are seen as contributing resources to boards that enhance corporate social responsibility (CSR) [Gallego-Álvarez I., Pucheta-Martínez M.C., 2020: 77]. Recently, 31 October 2025 South Africa has unveiled the King V Code on Corporate Governance 2025, marking the latest iteration of its renowned governance framework. In force for financial years beginning on or after 1 January 2026, it provides detailed guidance on how boards should consider stakeholder interests in decision-making and ensure fair, transparent stakeholder communication¹⁵. Thus, beyond the «classical» role of balancing interests within the corporation, independent directors are increasingly viewed as instrumental in advancing CSR objectives.

Therefore, the call for independent judgment does not provide clear criteria on the judgment should be based. The theoretical conflict of priorities remains unresolved, leaving independent directors to balance competing interests or seek compromise in practice. Empirical studies on the importance of independent directors do not offer a definitive answer either.

American studies suggest companies with a greater number of independent directors tend to perform better financially than those with fewer independent directors. For instance, companies with a significant portion of independent directors on the board often exhibit a higher Tobin's ratio [Masulis R.W., Mobbs S., 2013: 2]—a metric comparing a company's market value to its replacement cost. A Tobin's ratio higher than one tends to attract new investors [Lalitha N. et al., 2020: 2593], indicating that independent directors positively influence a firm's competitiveness and profitability for shareholders.

Conversely, studies of Indian corporations present a more nuanced picture. One study has found that companies with a larger number of in-

¹⁵ Boda R., Dullabh R. King V: Data, information and technology — what you need to know. ENSafrica News. Nov. 2025.

dependent directors had lower dividend payouts compared to those with fewer independent directors [Sanan N.K., 2019: 1204]. Another research work focusing on Indian pharmaceutical companies has showed that while independent directors had a positive effect on the Tobin ratio (an indicator of market capitalization), they negatively impacted the return on assets (ROA), a measure of profitability [Farhan N.H. et al., 2020: 180].

We hypothesize these effects stem from the trend of independent directors to avoid risk and make more decisions of conservative sort. While these decisions may reduce the potential for higher returns, they also propose the lower risk of reputational damage from poor outcomes. This hypothesis are explored below in the third part of the article.

2.2. Addressing agency issue in context of capital concentration

Corporate law classics regard active and independent directors as a near-universal solution to a wide range of corporate governance challenges, particularly the agency problem [Kraakman R.H. et al., 2017]. Traditionally, the agency problem in corporations is understood in three key aspects:

- in publicly traded companies, where management and ownership are separated, managers (agents) may act in their own self-interest, disregarding the interests of shareholders (principals);
- majority shareholders (agents) may neglect the interests of minority shareholders, acting in their own favor;
- a corporation (agent) may act in its own self-interest, disregarding the interests of creditors (principals).

The first aspect is especially important in the American doctrine due to the initial deconcentration of corporate ownership. The role of independent directors is framed as essential indeed. A board of directors with a sufficient number of independent directors is expected to oversee and control the actions of management, ensuring alignment between the interests of the managers and those of the shareholders. Consequently, managers become more focused on increasing shareholder wealth.

For example, personal interests or large payments tied to a change in corporate control, known as «golden parachutes» [Gaughan P.A., 2007: 489] may incentivize a CEO to push forward a merger that primarily benefits them rather than the shareholders [Denis D.J. et al., 1997: 135, 136]. If there are enough independent members on the board, the evaluation of such a decision would be based not on the directors' relationships with the CEO or other managers, but on an objective assessment of risk and the alignment with maximizing shareholder returns. A 2021 study analyzing 632 merger and acquisition decisions from 379 companies between 2000

and 2009 has found that having an influential independent director positively affected stock returns [Fogel K. et al., 2021].

BRICS countries, characterized by a high concentration of capital, face distinct corporate governance challenges. For example, in Russia, the first public corporation with fully deconcentrated ownership has emerged in 2020 only [Ankudinov A.B., Bataeva B.S., 2021: 38]. A significant portion of shareholder ownership in Russia is concentrated in the hands of the state, often through integrated structures [Bataeva B.S., Gainullina N.R., 2021: 10]. Similarly, Brazil's ownership structure is dominated by family business groups, the state, and state affiliates. Most companies in India, China, and South Africa are controlled by business groups and the state, often through pyramid structures [Brahma K., 2024].

Given this high concentration of capital, the second aspect of the agency problem, conflict between majority and minority shareholders, is particularly relevant for BRICS countries. A major shareholder, capable of exerting considerable influence over corporate decisions, has an opportunity to cause the board of directors to function as a body that merely approves decisions made by the majority shareholder and management [Kuzin D.V., 2024: 20]. In this context, independent directors play a crucial role in safeguarding the interests of minority shareholders [Kraakman R.H. et al., 2017: 105]. Research suggests independent directors nominated by smaller shareholders can have a positive impact on the effectiveness of the board of directors [Spirin D., 2021].

A similar concern prevails in the literature regarding independent directors in India [Sarkar J., 2009: 576]. Regulation 25(2A) of SEBI's Listing Obligations and Disclosure Requirements. Regulations mandates currently that the appointment, re-appointment, or removal of independent directors be approved by shareholders via a special resolution. The rule, introduced in 2022, was confirmed as a settled requirement through SEBI guidance and market practice commentary in 2024–2025 [Arora R., 2025].

However, the Russian experience shows cumulative voting is not a flawless solution either. According to studies of the Association of Professional Investors, «the number of independent directors elected by minority shareholders has decreased by 80% since February 2022.»¹⁶ Even when minority shareholders succeed in electing independent directors, these directors often remain a minority on the board, and their votes can be outweighed by other directors in key decision-making processes.

¹⁶ The departure of foreigners: how sanctions have affected the quality of corporate governance in Russia. December 2023. Available at: <https://www.forbes.ru/mneniya/501508-uhod-inostrancev-kak-sankcii-povliali-na-kacestvo-korporativnogo-upravlenia-v-rossii> (accessed: 24.05.2025)

The Russian law stipulates shareholders, or a group of shareholders, owning at least 2% of a company's voting shares may nominate candidates for the board of directors. However, under special anti-sanction measures, this threshold has been raised to 5%, further complicating the influence of minority shareholders in nominating independent directors.

There is no specific threshold for the nomination of directors in Brazil, but the Brazilian Corporation Law provides the following: shareholders who, individually or collectively, hold at least 15% of shares with voting rights, or preferred shares representing at least 10% of the share capital, have the right to appoint one director¹⁷. Similarly, in South Africa the Companies Act of 2008 does not establish a threshold for nominating directors to the board.

China's Company Law also lacks a specified shareholding threshold for board nominations. However, Article 9 of the Measures for the Administration of Independent Directors of Listed Companies allows shareholders, individually or jointly holding 1% or more of the issued shares, to nominate candidates for independent directors, with the final election occurring at the shareholders' meeting.

In contrast, the U.S. has no legal threshold for nominating board candidates; this is regulated by individual corporations in their bylaws. Many large U.S. companies like Amazon do not set such thresholds [Spirin D., 2021: 27]. This flexible US. approach, which has been adopted in several BRICS countries except for Russia, helps mitigate the passivity of minority shareholders by giving them more opportunities to influence board nominations and corporate governance.

However, the key issue with the institution of independent directors in countries with high capital concentration, such as those in the BRICS members, is the limited power of independent directors when the board is heavily influenced by majority shareholders. In this context, the independent director's most effective tool may be the «power of publicity,» as they can expose abuses by majority shareholders, thereby influencing corporate practices indirectly [Clarke D.C., 2007: 73, 80].

3. Contemporary Challenges

3.1. The reality of independence and its criteria

The corporate scandals of the early 2000s, notably the Enron case, cast doubt on the purpose of director independence [Giroux G., 2008]. In the

¹⁷ The Brazilian Corporation Law (Law No. 6404 of December 15, 1976), Para 4 of Article 141. Available at: https://conteudo.cvm.gov.br/export/sites/cvm/subportal_ingles/menu/investors/anexos/Law-6.404-ing.pdf (accessed: 10.09.2024)

case of Enron, the majority of board members were formally classified as independent, yet many of it had direct financial ties to the company¹⁸.

In general, an independent director is defined as a directorate member without ties or affiliations with the corporation, its participants, or its management. But the definition raises important questions. For instance, it is crucial to clarify from whom exactly a director should be independent: CEO and their family members, other board members, entire management team, corporation and its subsidiaries, majority shareholders, or other stakeholders like creditors and employees?

Determining criteria for director independence is closely tied to the role that independent directors are expected to play within the corporation. If the primary task of an independent director is to oversee management, the main criterion for independence would be the absence of any ties with the top managers. Alternatively, if the primary role of independent director is to protect interests of minority shareholders, the key criterion would be the absence of affiliation with majority shareholders who control the corporation [Baum H., 2016: 4].

All of the regulatory frameworks analyzed — the NYSE listing rules, the Indian Companies Act, the Russian Corporate Governance Code, the Chinese Measures for the Administration of Independent Directors of Listed Companies, the King IV Report and the Companies Act of 2008 in South Africa, and the Code of Best Practices of Corporate Governance in Brazil contain detailed criteria for defining director independence. Due to space constraints, these criteria cannot be described in full here. However, they generally require a director to be independent of both the company's executive structures and, unlike in the U.S., from its shareholders. For example, under the Moscow Stock Exchange Listing Rules, an independent director must not be related to the company (issuer), a substantial shareholder, a counterparty, a competitor, or the government.

In practice even the largest public companies do not always strictly adhere to the rules governing independent directors, and the institution itself faces numerous challenges. A 2018 study of major Russian public companies, including Gazprom, UAC, RusHydro, and Transneft, has revealed that for to meet listing requirements boards of directors sometimes designate individuals as independent directors despite their clear ties to the company, its shareholders, counterparties, or the state [Kirillina V.N., 2018: 14].

¹⁸ Permanent Subcommittee of Investigations of the Committee on Governmental Affairs US Senate. Role of the Board of Directors in Enron's Collapse. Report July 8, 2002. Available at <https://www.govinfo.gov/content/pkg/CPRT-107SPRT80393/html/CPRT-107SPRT80393.htm>. (accessed: 16.08.2024)

For example, in 2023 the Russian Institute of Directors has examined the board of IK Russ-Invest and found one independent director had served on the board for more than seven years. According to clause 4 of the Russian Corporate Governance Code (CGC), such a tenure creates a connection to the company, disqualifying the individual from being considered independent. Additionally, this director held a very small stake in the company's authorized capital (0.000014%). Despite these connections, the board of IK Russ-Invest recognized the director as independent, asserting the affiliation did not impair the individual's ability to make independent and objective judgments¹⁹.

In another case, N A41-12520/2022, all nominees proposed as independent directors were family members of the shareholder. Based on CGC provisions, the court has refused to accept these nominees as independent directors²⁰.

The issue is exacerbated by the broad interpretation of clause 109 of the CGC, which allows a candidate with signs of connectedness to still be considered independent if they are deemed capable of making independent, objective, and good faith judgments. However, the concept of the «ability to make objective judgments» is itself evaluative and lacks clear parameters, allowing boards of directors to designate individuals with ties to the company or its shareholders as independent, potentially undermining the purpose of having independent directors.

The King IV Report in South Africa, like the Russian CGC, contains a «substance-over-form» approach²¹, indicating that formal compliance with the criteria for independence does not necessarily determine a director's true independence. The report emphasizes that independence should not be assessed solely on the basis of formal criteria but requires a deeper evaluation. It notes that «the governing body should consider the following and other indicators [...] when assessing the independence of a member of the governing body.»

In contrast, the Indian Companies Act does not allow for such flexibility. There is no provision to «ignore» formal criteria of connectedness; any

¹⁹ The number of foreigners on boards of directors has decreased threefold in Russia. *Vedomosti*, 12 February 2024. Available at: <https://www.vedomosti.ru/management/articles/2024/02/12/1019692-v-rossii-vtroe-sokratilos-chislo-inostrantsev-v-sovetah-direktorov> (accessed: 10.09.2024)

²⁰ See: the Ruling of the Moscow District Arbitration Court of 28.10.2022 N F05-26718/2022.

²¹ The Institute of Directors in Southern Africa. *King IV Report on corporate governance for South Africa* 52 (2016). Available at: <https://eimf.eu/wp-content/uploads/2020/06/King-IV-Report.pdf>. (accessed: 20.04.2025)

affiliation with the company specified by law is a strict barrier to recognizing a director as independent, regardless of whether their judgment remains unbiased.

Therefore, finding candidates who are equally distanced not only from management, as in the US, but also from shareholders and the state, as required in many BRICS countries, is a more complex challenge. This is why regulations in both South Africa and Russia provide room for independent directors to be recognized as such even if they do not meet all formal criteria of connectedness, reflecting the difficulty in identifying truly independent candidates in environments with concentrated ownership or strong state influence.

3.2. Specifics of independent directors role under state capitalism

In addition to the degree of capital concentration, the qualitative composition of shareholders is an important factor in corporate governance. According to an OECD report²², corporations in India hold over one-third of listed equity, while in Russia and China, the public sector owns approximately 30% of listed equity. As of early 2024, issuers with state participation account for 40% of the Moscow Exchange index²³. In contrast, institutional investors dominate ownership in countries like the United States, United Kingdom, Ireland, Canada, and the Netherlands. The OECD report highlights that China, Hong Kong, Russia, India, and Brazil rank among the top seven countries in terms of market capitalization of companies with state participation. In Russia and China, state-owned companies represent about 50% of total market capitalization²⁴, while in India, Brazil, and South Africa, this share is less than 15%.

The Russian CGC provides detailed criteria for determining a person's affiliation with the state. A person is considered affiliated if they are or were a state employee, a state representative, or someone required to vote on certain issues based on state directives. State affiliation is also indicated by current or previous employment in a state-controlled company. However,

²² OECD. Corporate Ownership and Concentration (2022). Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/09/corporate-ownership-and-concentration_071a223d/bc3adca3-en.pdf (accessed: 10.04.2025)

²³ Companies with State Participation on the Moscow Exchange (2024). Gazprombank Investments, 8 January 2024. Available at: <https://gazprombank.investments/blog/reviews/state-participation-companies/>. (accessed: 11.12.2024)

²⁴ Ibid.; see also: National Council on Corporate Government. 2024. Independent Director in Companies with State Participation. Available at: <https://nccg.ru/assets/files/kanu/8/1.pdf> (accessed: 30.07.2025)

an employee of a state-owned educational or research organization without managerial responsibilities may still be considered independent from the state. In contrast, regulatory frameworks in Brazil, India, China, and South Africa do not give special attention to state affiliation. Interestingly, 70% of Chinese firms have at least one academic independent director [Pang J. et al., 2020], reflecting the overlap between academia and the corporate world. In these cases, the state acts as a shareholder, so the criteria of independence from shareholders apply.

State capitalism also affects the balance of interests within corporations. The question arises: Do the interests of the state as a major shareholder always align with those of minority shareholders? This raises uncertainty about the objectives assigned to independent directors in state-controlled companies. It is not always clear whether independent directors are expected to serve the state's interests, protect minority shareholders, or balance both. This ambiguity complicates the role of independent directors in state-influenced corporations.

3.3. Stimulating involvement of independent directors

The value of independent directors in fulfilling their roles is crucial to the success of the institution in achieving corporate goals and addressing the agency problem. In the case of Enron, independent directors failed to detect misconduct despite formal independence. In contrast, in the World Com case, directors were unaware of management's manipulation of accounting records, yet were still found to have breached their duty to supervise, failing to maintain the company's operations were aligned with shareholder interests²⁵.

The question of how actively independent directors engage in corporate governance remains unresolved. The mere absence of affiliation with the company, management, or shareholders does not guarantee that independent directors will provide maximum benefit to the corporation. This challenge is compounded by the ambiguity regarding whose interests they should prioritize (as discussed earlier). Both theory and practice suggest activity of independent directors can be stimulated through a well-designed system of remuneration, liability insurance, and reputation management.

Further discussion will explore empirical studies that examine the impact of factors like reputation and liability insurance on the activism of independent directors.

²⁵ Special Investigative Committee of the Board of Directors of Worldcom INC. Report of Investigation 283 (2003). Available at: https://www.sec.gov/Archives/edgar/data/723527/000093176303001862/dex991.htm#ex991902_69 (accessed: 20.04.2025)

Reputation plays a significant role in an independent director's career. A director with a high level of expertise has a better chance of being elected to the boards of larger and more prestigious companies. Conversely, the size and reputation of the company also enhance the standing of the independent director. Research indicates that the activity of independent directors is positively correlated with the size and success of the firm; independent directors tend to attend board meetings more frequently in larger, more prestigious companies [Masulis R.W., Mobbs S., 2013: 2].

However, reputation can also influence the number of companies in which an independent director holds board seats [Yermak D., 2003: 1–2]. Studies show that when directors hold too many board memberships, their attention becomes divided, it reduces surely their impact in overseeing management and fulfilling their governance duties.

Additionally, an independent director's concern for their reputation may prevent them from supporting unprofitable corporate or business decisions, as such choices could harm their professional image. Therefore ID are more likely to leave a company if they anticipate a decline in its market position, as remaining with a struggling firm could negatively impact their reputation [Masulis R.W., Mobbs S., 2013: 2]. The mass resignation of foreign directors from Russian companies under sanctions of present times is a recent example of this phenomenon, demonstrating how reputational concerns drive directors to distance themselves from companies in crisis.

Liability insurance is another mechanism that promotes impartial and active decision-making by independent directors. A study of Chinese corporations demonstrated that liability insurance incentivizes independent directors to monitor the company's activities more closely and to express disagreement more frequently when they believe decisions are wrong. This proactive stance, enabled by the protection offered by liability insurance, improves the company's financial performance and strengthens internal controls [Li T. et al., 2022]. However, observers also note that the combination of stricter company law and a more security-oriented regulatory environment (including an expanded State Secrets Law) has made it harder to persuade capable individuals to accept board appointments in China [Hale T., 2024].

Conversely, the absence of liability insurance discourages participation on corporate boards, as independent directors face increased personal liability risks. Serving on the board of a company with high litigation and regulatory risks may become unattractive for an independent director due to the potential for financial liability and reputational damage [Naaraayan S.L., Nielsen K.M., 2021: 621].

Additionally, the availability of liability insurance encourages independent directors to adopt less conservative asset management strategies. In

China, independent directors are held to the same level of responsibility as insiders, but their remuneration is significantly lower. Such imbalance between risks and potential benefits may lead independent directors to be overly cautious, as they bear considerable risk without commensurate reward [Shi Ch. et al., 2023].

In Russia the growing trend in risks is particularly evident in court applications seeking to hold directors and controlling persons liable. The ratio of successful outcomes for claimants has increased from 4% in 2015 to 38% in 2018, and reached 51% in 2023. However, the courts have not yet provided a clear method for determining how liability should be apportioned among multiple defendants based on their roles and responsibilities. The situation can be particularly challenging for independent directors, who may face significant liability despite having minimal influence over key decisions. For instance, one director might simply sign the minutes of approval without their vote affecting the outcome, while another might actively manipulate documents to misrepresent a contract's terms. Different roles, varying levels of influence and involvement, and unequal benefits complicate how liability should be assigned [Zhukova Yu.D., Podmarkova A.S., 2025: 85–113].

The Russian Federation Supreme Court has stated several times liability for such individuals should be differentiated. However, in the absence of a clear methodology for disproportionate distribution of liability, courts tend to opt for the simpler approach—holding all defendants jointly and severally liable. This one-size-fits-all approach can be especially harsh on independent directors, who may have had little influence on decisions that led to corporate failure or legal violations [Michalchuk Yu., 2023: 98–107]. Furthermore, it remains uncertain whether this pro-creditor approach to director liability will extend to ESG stakeholders. Questions arise about whether directors should be held liable if a decision benefits shareholders but is not socially responsible, or conversely, whether liability for a socially responsible, but financially detrimental decision can be mitigated.

Last year in India SEBI's Chair has called for a broader re-definition of the independent director's role. Citing repeated corporate governance controversies, he announced a forthcoming comprehensive consultation on reforming the LODR framework to focus “less on box-ticking headcount and more on the quality of oversight, conflict management, and information flow” for independent directors²⁶.

Recent empirical evidence casts doubt on whether simply having independent directors (and other formal governance structures) correlates with

²⁶ Press Trust of India (2025) Sebi chief calls for redefining role of independent directors as stewards of accountability. ETCFO. The Economic Times, 9 Aug. 2025.

better firm performance in Russia. A 2025 academic analysis of Russian public companies showed that mere compliance with the CGC — including having the recommended number of independent directors and formal committees — has a limited or statistically insignificant impact on firm. It recommends shifting focus to how independence is exercised — for instance, whether independent directors can freely dissent, demand information, and influence outcomes, rather than just counting how many independents sit on the board value [Bataeva B. S., 2025: 18–32].

In such environment of uncertainty, directors may be inclined to approve overly cautious strategies or refrain from making decisions altogether, which could negatively affect corporate profitability, tax contributions, and, indirectly, societal welfare. As was demonstrated, these scenarios are far from optimal, and thus another wave of corporate scandals, followed by attempts at balanced regulation, cannot be ruled out. There is also a belief that corporate law often evolves in response to such crises, with significant changes occurring only after conflicts have reached a tipping point [Lustig D., 2020].

Therefore, even if we are witnessing the early stages of significant conflicts, it is challenging to propose ready-made solutions in advance, as these solutions are unlikely to satisfy either party until the outcome of the «battle» is clear. The dynamics of corporate governance and liability often evolve in response to specific crises, and balanced regulatory measures tend to emerge only after the resolution of these conflicts. Given these ongoing challenges, the experience of anti-sanctions regulation of corporate relations in the Russian Federation could offer valuable insights into how governance and liability issues are addressed under complex and evolving legal frameworks.

3.4. Anti-sanctions measures as an experimental legal regime of corporate regulation in the Russian Federation

The global political context has led to departure of many foreign directors from Russia, including numerous independent directors with significant experience and expertise²⁷. This process is particularly concerning as the number of Russian companies expected to conduct initial public offerings on the stock exchange is set to increase²⁸, heightening the relevance of this issue.

²⁷ The number of foreigners on boards of directors has decreased threefold in Russia. *Vedomosti*, 12 February 2024. Available at: <https://www.vedomosti.ru/management/articles/2024/02/12/1019692-v-rossii-vtroe-sokratilos-chislo-inostrantsev-v-sovetah-direktorov> (accessed: 9.09.2024)

²⁸ The Number of Foreign Directors in Russian Companies has Decreased Threefold over two Years. *TASS*, 16 January 2024. Available at: <https://tass.ru/ekonomika/19735777>

Despite the challenges, the quantitative presence of independent directors on major Russian boards has not collapsed in the past two years. A joint study in 2025 by the Higher School of Economics and the National Corporate Governance Association (NCSA) has found the share of independent directors on boards of large Russian companies actually grew for the second consecutive year (comparing 2024 to 2023), even as the number of foreign (international) directors continued to fall²⁹. As Western professionals resigned or were compelled to leave boards due to sanctions regime, Russian companies have turned to domestic experts to fill independent roles, leading to an increased reliance on local talent for board oversight.

Another measure introduced was a temporary allowance for sub-sanctioned companies to forgo electing a board of directors if shareholders decide to do so³⁰. In such cases, the powers of the board are transferred to the company's CEO or management board, while certain decisions, like increasing the authorized capital or approving the annual report, remain under the purview of the general meeting of shareholders. However, this temporary regulation poses the risk of opportunistic actions by majority shareholders, managers, and executive bodies, as the absence of a board of directors eliminates a key layer of oversight and independent judgment.

In 2023 the Russian Federation government has introduced a special legal regime for so-called “economically significant organisations” (ESO)³¹. This law allows the government to suspend the corporate rights of certain foreign shareholders deemed “unfriendly ones” and to reallocate control of these strategically important companies to state-approved or domestic actors. Independent directors in such firms might find that decisions are strongly directed by government nominees or trustees who exercise the suspended votes of foreign owners. These measures fundamentally alter traditional corporate governance by prioritizing state control and domestic policy interests over minority shareholder rights or independent oversight.

(accessed: 15.09.2025)

²⁹ HSE/NCSA (2024) Portrait of the Board of Directors — 2024: A Study by the School of Finance and NCSA. Higher School of Economics University News, 19 Febr. (Key findings on board composition in Russia).

³⁰ Clause 4 of Article 7 of the Federal Law of 14 Jul. 2022 N 292-FZ On Amendments to Certain Legislative Acts of the Russian Federation, the invalidation of the sixth paragraph of the first part of Article 7 of the Law of the Russian Federation «On State Secrets», the suspension of certain provisions of legislative acts of the Russian Federation and the establishment of the specifics of the regulation of corporate relations in 2022 and 2023. Legislation Bulletin of the Russian Federation, 2022, No. 29, Art. 5259.

³¹ Via Federal Law No. 470-FZ (enacted: 4 Aug. 2023)

It will be interesting to assess in the future what was lost with the temporary suspension of independent directors and how their absence affected corporate governance, financial performance, and other related parameters. This may provide an opportunity to review once more the traditional governance structures and evaluate the long-term impacts of functioning without independent oversight.

4. Towards a BRICS-sensitive model of board independence

The comparative analysis above suggests that the key weakness of the independent director institution in the BRICS countries lies not in the absence of formal rules, but in the limited capacity of those rules to secure genuinely autonomous judgment. The practical difficulties examined in this article demonstrate that formal criteria alone do not answer the central governance question: under what conditions is a director actually able to act independently?

This distinction may be expressed as the difference between formal independence and functional independence. Formal independence refers to the legal status of a board member who satisfies the prescribed eligibility criteria. Functional independence, by contrast, refers to the director's real ability to obtain information, form an autonomous view, resist pressure from management or controlling shareholders, record dissent, and influence the decision-making process in a meaningful way. The first is a matter of legal classification; the second, of institutional design and incentives.

In the BRICS countries, the independent director often operates not between anonymous shareholders and powerful managers, but within a structure marked by concentrated ownership, family or group control, state participation, and relatively weak positions of minority investors. In such settings, the independent director cannot be understood simply as a monitor of management. He or she also becomes a potential procedural counterweight to the controlling shareholder, a mediator in related-party situations, and, in state-influenced firms, a rare source of board-level distance from political or administrative priorities.

This is why numerical quotas, although not irrelevant, should be treated as only a preliminary mechanism. A board may formally include one-third or even a majority of independent directors and still remain non-independent in practice if those directors depend on controlling shareholders for nomination, lack access to reliable information, face reputational or legal risks for dissent, or understand that their influence on outcomes is merely symbolic. Conversely, even a smaller number of truly active and profes-

sionally credible independent directors may improve governance where they possess real committee powers, information rights, and the practical possibility of objecting to conflicted decisions.

The BRICS experience therefore supports a broader proposition: independent directors should be evaluated not only by who they are, but also by what they can do. This is meant to include, at minimum, access to information, procedural leverage inside the board, a realistic ability to challenge self-dealing or opaque transactions, and protection against excessive personal downside for good-faith conduct. Without these elements, the institution risks becoming largely symbolic: a visible sign of compliance without corresponding governance capacity.

Such an approach also helps reconcile the unresolved debate over the goals of corporate governance. As shown above, independent directors are often expected simultaneously to protect shareholders, to take stakeholder concerns into account, to monitor management, and to balance public and private interests in state-influenced companies. This set of expectations is too broad if conceived in substantive terms. It becomes more coherent if the role of the independent director is reformulated in procedural terms. The independent director should not be viewed as a universal bearer of the “correct” corporate interest. Rather, his or her primary function is to improve the quality, fairness, and credibility of the decision-making process, especially where conflicts of interest are acute.

Conclusion

The BRICS experience demonstrates that the institution of the independent director cannot be meaningfully assessed through numerical quotas or formal eligibility criteria alone. In jurisdictions marked by concentrated ownership, business-group control, strong state participation, and rising liability exposure, the decisive issue is whether independent directors possess the practical capacity to exercise autonomous judgment. For this reason, the central analytical distinction is not between the presence and absence of independent directors, but between formal and functional independence.

From a comparative perspective, independent directors in BRICS countries should be understood primarily as procedural safeguards within corporate governance. Their core contribution is not that they invariably maximise shareholder value or consistently advance stakeholder welfare, but that they may improve the fairness, transparency, and credibility of board deliberations in situations of conflict of interest. This procedural role becomes especially significant in controlled firms, where the main gover-

nance risk lies in the dominance of management, controlling shareholders, or state actors over corporate decision-making.

Accordingly, the future development of this institution in BRICS should focus less on abstract borrowing from Anglo-American models and more on context-sensitive design: stronger rights in conflicted transactions, better access to information, more credible nomination mechanisms, and an incentive structure that does not punish good-faith dissent. The Russian anti-sanctions regime, in turn, shows that the temporary weakening of board-level independence may serve as a revealing stress test of what independent directors actually contribute to corporate governance. Their value lies not in symbolism, but in preserving a space for autonomous judgment where concentrated power would otherwise leave little room for it.



Список источников

1. Анкудинов А.Б., Батаева Б.С. Структура собственности и рыночная стоимость: эмпирический анализ российских публичных компаний // *Управленец*. 2021. Том 12. № 2. С. 35–38.
2. Батаева Б.С., Гайнуллина Н.Р. Растет ли доля государственного участия в экономике России? // *Имущественные отношения в РФ*. 2021. № 7 (238). С. 7–10.
3. Батаева Б.С., Кашапов И.Н. Взаимосвязь между соблюдением рекомендаций Кодекса корпоративного управления и стоимостью российских публичных компаний // *Управленец*. 2025. Том 16. № 5. С. 18–32.
4. Жукова Ю.Д., Подмаркова А.С. Ответственность членов совета директоров за причинение корпорации убытков: современная практика и перспективы регулирования // *Право. Журнал Высшей школы экономики*. 2025. Том 18. № 4. С. 85–113. DOI: 10.17323/2072-8166.2025.4.85.113.
5. Кузин Д.В. Концепции российского корпоративного управления: эволюция и сравнительный анализ // *Вестник Московского университета. Серия 6. Экономика*. 2024. Том 59. № 1. С. 3–6.
6. Магдалинская Ю.В. Особенности правового статуса института независимого директора в законодательных системах США и России // *Вопросы российского и международного права*. 2018. Том 7. № 1А. С. 42–48.
7. Михальчук Ю. В делах о субсидиарной ответственности управляющий и кредитор просто короли банкротной вечеринки // *Арбитражная практика для юристов*. 2023. № 3. С. 98–107.
8. Arora R. Complete guide to appointment of independent directors under the Companies Act // *Skill Arbitrage Blog*. 2025. 30 Oct.
9. Baum H. The Rise of the Independent Director: A Historical and Comparative Perspective // *Max Planck Private Law Research Paper Series*. 2016. No. 16/20. P. 4.
10. Bebchuk L.A., Tallarita R. The Illusory Promise of Stakeholder Governance // *Cornell Law Review*. 2020. Vol. 106. No. 1, pp. 91–178.
11. Brahma K. Legal Analysis of Related Party Transactions in the BRICS Countries // *BRICS Law Journal*. 2024. Vol. 11. No. 1, pp. 4–31.

12. Clarke D.C. The Independent Director in Chinese Corporate Governance // *Delaware Journal of Corporate Law*. 2006. Vol. 31. No. 1, pp. 125–228.
13. Clarke D.C. Three Concepts of the Independent Director // *Delaware Journal of Corporate Law*. 2007. Vol. 32. No. 1, pp. 73–111.
14. Denis D.J., Denis D.K. et al. Agency Problems, Equity Ownership, and Corporate Diversification // *Journal of Finance*. 1997. Vol. 52. No. 1, pp. 135–160.
15. Douglas W.O. Directors Who Do Not Direct // *Harvard Law Review*. 1934. Vol. 47. No. 8, pp. 1305–1334.
16. Edmans A. *Grow The Pie: How Great Companies Deliver Both Purpose and Profit*. Cambridge: University Press, 2020. 382 p.
17. Farhan N., Tabash M.I. et al. Board Composition and Firms' Profitability: Empirical Evidence from Pharmaceutical Industry in India // *Journal of International Studies*. 2020. Vol. 13. No. 3, pp. 180–194.
18. Fogel K., Ma L., Morck R. Powerful Independent Directors // *Financial Management*. 2021. Vol. 50. No. 4, pp. 935–983.
19. Gallego-Álvarez I., Pucheta-Martínez M.C. Corporate Social Responsibility Reporting and Corporate Governance Mechanisms: An International Outlook from Emerging Countries // *Business Strategy and Development*. 2020. Vol. 3. No. 1, pp. 77–97.
20. Gaughan P.A. *Mergers, Acquisitions, and Corporate Restructurings*. Hoboken (N.Y.): Wiley, 2007. 648 p.
21. Giroux G. What Went Wrong? Accounting Fraud and Lessons from the Recent Scandals // *Social Research*. 2008. Vol. 75. No. 4, pp. 1205–1238.
22. Gordon J.N. The Rise of Independent Directors in the United States, 1950–2005: of Shareholder Value and Stock Market Prices // *Stanford Law Review*. 2006. Vol. 59. No. 6, pp. 1465–1568.
23. Hale T. Being a director in China has just become much tougher // *Financial Times*. 2024. 2 July.
24. Harris R. Sarbanes-Oxley and the Independent Director: Smoke and Mirrors? // *The Journal of Management and Engineering Integration*. 2009. Vol. 1. No. 1, pp. 50–59.
25. Hart O., Zingales L. The New Corporate Governance // NBER Working Paper. 2022. No. 29975.
26. Kraakman R.H., Armour J. et al. *The Anatomy of Corporate Law: A Comparative and Functional Approach*. Oxford: University Press, 2017. 304 p.
27. Lalitha N., Sandhyavani K.V. et al. Relevance of MVA and Tobin's Q Model as an Investment Decision Tool // *Journal of Critical Reviews*. 2020. Vol. 7. No. 19, pp. 2593–2602.
28. Leite A., Tello E. At a glance: responsibilities of company boards in Brazil // *Lexology (Loeser e Hadad Advogados)*. 2023. Aug.
29. Li T., Yang T. et al. Directors' and Officers' Liability Insurance: Evidence from Independent Directors' Voting // *Journal of Banking & Finance*. 2022. Vol. 138. Art. 106425.
30. Love I. Corporate Governance and Performance around the World: What We Know and What We Don't // *World Bank Research Observer*. 2011. Vol. 26. No. 1, pp. 42–70.
31. Lustig D. *Veiled Power: International Law and the Private Corporation 1886–1981*. Oxford: University Press, 2020. 256 p.

32. Masulis R.W., Mobbs S. Independent Director Incentives: Where do Talented Directors Spend their Limited Time and Energy? // AFA 2013 San Diego Meetings Paper, ECGI Finance Working Paper No. 355/2013.)
33. Mayer C. Prosperity: Better Business Makes the Greater Good. Oxford: University Press, 2018. 288 p.
34. Mishra C., Drtina R. Accounting Manipulations and Business Failures: The Case for Effective Financial Disclosure and Corporate Governance // The Journal of Private Equity. 2004. Vol. 7. No. 4, pp. 27–35.
35. Naaraayanan S.L., Nielsen K.M. Does Personal Liability Deter Individuals from Serving as Independent Directors? // Journal of Financial Economics. 2021. Vol. 140. No. 2, pp. 621–649.
36. Pang J., Wu J. et al. From Classroom to Boardroom: The Value of Academic Independent Directors in China // Pacific-Basin Finance Journal. 2020. Vol. 62. Art. 101319.
37. Prudêncio P., Forte D. et al. Effect of Diversity in the Board of Directors and Top Management Team on Corporate Social Responsibility // Brazilian Business Review. 2021. Vol. 18. No. 2, pp. 1–26.
38. Sanan N.K. Impact of Board Characteristics on Firm Dividends: Evidence from India // Corporate Governance: The International Journal of Business in Society. 2019. Vol. 19. No. 6, pp. 1204–1224.
39. Sarangi P. Role of Independent Directors in the Changing Business Scenario in India // International Journal of Scientific Research and Management. 2021. Vol. 9. No. 4, pp. 3878–3882.
40. Sarkar J. Board Independence and Corporate Governance in India: Recent Trends and Challenges Ahead // Indian Journal of Industrial Relations. 2009. Vol. 44. No. 4, pp. 576–592.
41. Shi C., Sun Y. et al. D&O Insurance, Technology Independent Directors, and R&D Investment // International Review of Financial Analysis. 2023. Vol. 89. Art. 102868.
42. Vikramaditya K., Mathew S.J. The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidence. National Law School of India Review. 2010. Vol. 22. No. 1, pp. 35–66.
43. Yermack D. Remuneration, Retention, and Reputation Incentives for Outside Directors. SSRN Working Paper. 2003. No. 329544.



References

1. Ankudinov A.B., Bataeva B.S. (2021) Ownership structure and market value: an empirical analysis of Russian public companies. *Upravlenets=Manager*, vol. 12, no. 2, pp. 35–38 (in Russ.)
2. Arora R. (2025) Complete guide to appointment of independent directors under the Companies Act. *Skill Arbitrage Blog*, 30 October.
3. Bataeva B.S., Gainullina N.R. (2021) Is the share of state participation in the Russian economy growing? *Imushchestvennyye otnosheniya v RF=Property Relations in the Russian Federation*, no. 7 (238), pp. 7–10 (in Russ.)
4. Bataeva B.S., Kashapov I.N. (2025) The compliance of the Corporate Governance Code with firm value: evidence from Russian public companies. *Upravlenets=Manager*, vol. 16, no. 5, pp. 18–32 (in Russ.)
5. Baum H. (2016) The rise of the independent director: a historical and comparative perspective. *Max Planck Private Law Research Paper Series*, no. 16/20, p. 4.

6. Bebchuk L.A., Tallarita R. (2020) The illusory promise of stakeholder governance. *Cornell Law Review*, vol. 106, no. 1, pp. 91–178.
7. Brahma K. (2024) Legal analysis of related party transactions in the BRICS countries. *BRICS Law Journal*, vol. 11, no. 1, pp. 4–31.
8. Clarke D.C. (2006) The independent director in Chinese corporate governance. *Delaware Journal of Corporate Law*, vol. 31, no. 1, pp. 125–228.
9. Clarke D.C. (2007) Three concepts of the independent director. *Delaware Journal of Corporate Law*, vol. 32, no. 1, pp. 73–111.
10. Denis D.J., Denis D.K., Sarin A. (1997) Agency problems, equity ownership, and corporate diversification. *Journal of Finance*, vol. 52, no. 1, pp. 135–160.
11. Douglas W.O. (1934) Directors who do not direct. *Harvard Law Review*, vol. 47, no. 8, pp. 1305–1334.
12. Edmans A. (2020) *Grow the pie: how great companies deliver both purpose and profit*. Cambridge: University Press, 382 p.
13. Farhan N., Tabash M.I. et al. (2020) Board composition and firms' profitability: empirical evidence from pharmaceutical industry in India. *Journal of International Studies*, vol. 13, no. 3, pp. 180–194.
14. Fogel K., Ma L., Morck R. (2021) Powerful independent directors. *Financial Management*, vol. 50, no. 4, pp. 935–983.
15. Gallego-Álvarez I., Pucheta-Martínez M.C. (2020) Corporate social responsibility reporting and corporate governance mechanisms: an international outlook from emerging countries. *Business Strategy and Development*, vol. 3, no. 1, pp. 77–97.
16. Gaughan P.A. (2007) *Mergers, acquisitions, and corporate restructurings*. Hoboken (N.Y.): Wiley, 648 p.
17. Giroux G. (2008) What went wrong? Accounting fraud and lessons from the recent scandals. *Social Research*, vol. 75, no. 4, pp. 1205–1238.
18. Gordon J.N. (2006) The rise of independent directors in the United States, 1950–2005: of shareholder value and stock market prices. *Stanford Law Review*, vol. 59, no. 6, pp. 1465–1568.
19. Hale T. (2024) Being a director in China has just become much tougher. *Financial Times*, 2 July.
20. Harris R. (2009) Sarbanes-Oxley and the independent director: smoke and mirrors? *The Journal of Management and Engineering Integration*, vol. 1, no. 1, pp. 50–59.
21. Hart O., Zingales L. (2022) The new corporate governance. *NBER Working Paper Series*, no. 29975.
22. Kraakman R.H., Armour J. et al. (2017) *The anatomy of corporate law: a comparative and functional approach*. Oxford: University Press, 304 p.
23. Kuzin D.V. (2024) Concepts of Russian corporate governance: evolution and comparative analysis. *Vestnik Moskovskogo universiteta. Seriya 6. Ekonomika=Bulletin of Moscow University. Series 6. Economics*, vol. 59, no. 1, pp. 3–6 (in Russ.)
24. Lalitha N. et al. (2020) Relevance of MVA and Tobin's Q model as an investment decision tool. *Journal of Critical Reviews*, vol. 7, no. 19, pp. 2593–2602.
25. Leite A., Tello E. (2023) At a glance: responsibilities of company boards in Brazil. *Lexology. (Loeser e Hadad Advogados)*, August.
26. Li T., Yang T. et al. (2022) Directors' and officers' liability insurance: evidence from independent directors' voting. *Journal of Banking and Finance*, vol. 138, art. 106425.

27. Love I. (2011) Corporate governance and performance around the world: what we know and what we don't. *World Bank Research Observer*, vol. 26, no. 1, pp. 42–70.
28. Lustig D. (2020) *Veiled power: international law and the private corporation 1886–1981*. Oxford: University Press, 256 p.
29. Magdalinskaya Y.V. (2018) Peculiarities of the legal status of the institute of the independent director in the legislative systems of the United States and Russia. *Vo-prosy rossiiskogo i mezhdunarodnogo prava=Issues of Russian and International Law*, vol. 7, no. 1A, pp. 42–48 (in Russ.)
30. Masulis R., Mobbs S. (2013) Independent director incentives: where do talented directors spend their limited time and energy? ECGI Finance Working Paper No. 355/2013. AFA 2013 of San Diego Meetings Paper.
31. Mayer C. (2018) *Prosperity: better business makes the greater good*. Oxford: University Press, 288 p.
32. Mikhalechuk Yu. (2023) In cases of subsidiary liability the manager and the creditor are just kings of the bankruptcy party. *Arbitrazhnaya praktika dlya yuristov=Arbitration Practice for Lawyers*, no. 3, pp. 98–107 (in Russ.).
33. Mishra C., Drtina R. (2004) Accounting manipulations and business failures: the case for effective financial disclosure and corporate governance. *The Journal of Private Equity*, vol. 7, no. 4, pp. 27–35.
34. Naaraayanan S.L., Nielsen K.M. (2021) Does personal liability deter individuals from serving as independent directors? *Journal of Financial Economics*, vol. 140, no. 2, pp. 621–649.
35. Pang J., Wu J. et al. (2020) From classroom to boardroom: the value of academic independent directors in China. *Pacific-Basin Finance Journal*, vol. 62, art. 101319.
36. Prudêncio P., Forte D. et al. (2021) Effect of diversity in the board of directors and top management team on corporate social responsibility. *Brazilian Business Review*, vol. 18, no. 2, pp. 1–26.
37. Sanan N.K. (2019) Impact of board characteristics on firm dividends: evidence from India. *Corporate Governance: The International Journal of Business in Society*, vol. 19, no. 6, pp. 1204–1224.
38. Sarangi P. (2021) Role of independent directors in the changing business scenario in India. *International Journal of Scientific Research and Management*, vol. 9, no. 4, pp. 3878–3882.
39. Sarkar J. (2009) Board independence and corporate governance in India: recent trends and challenges ahead. *Indian Journal of Industrial Relations*, vol. 44, no. 4, pp. 576–592.
40. Shi C., Sun Y. et al. (2023) D&O insurance, technology independent directors, and R&D investment. *International Review of Financial Analysis*, vol. 89, art. 102868.
41. Vikramaditya K., Mathew S.J. (2010) The role of independent directors in controlled firms in India: preliminary interview evidence. *National Law School of India Review*, vol. 22, no. 1, pp. 35–66.
42. Yermack D. (2003) Remuneration, retention, and reputation incentives for outside directors. SSRN Working Paper No. 329544, pp. 1–2.
43. Zhukova Yu.D., Podmarkova A.S. (2025) Liability of board members for causing losses to the corporation: current practice and prospects for regulation. *Pravo. Zhurnal Vysshey shkoly ekonomiki=Law. Journal of the Higher School of Economics*, vol. 18, no. 4, pp. 85–113. doi:10.17323/2072-8166.2025.4.85.113 (in Russ.)

Information about the authors:

O.V. Novikova — Candidate of Sciences (Law), Associate Professor.

K.A. Kurganova — Graduate.

Информация об авторах:

О.В. Новикова — кандидат юридических наук, доцент.

К.А. Курганова — аспирантка.

The article was submitted to editorial office 17.12. 2025; approved after reviewing 10.02.2026; accepted for publication 23.02.2026.

Статья поступила в редакцию 17.12.2025; одобрена после рецензирования 10.02.2026; принята к публикации 23.02. 2026.