

Regulatory Competition in Corporate Regimes: And Some Observations on Possible Regime Changes in Taiwan

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Abstract

What is the role of competition in the process of law-making? At the age of economic globalization, many countries are making regulatory efforts to compete for talents and foreign direct or indirect investment. In this view, government is little different from another producer in the overall economy, and law is the product. Regulatory competition across jurisdictional lines is therefore inevitable. In addition to the prototype, a “portable” form of regulatory competition can be put in place provided that all conflict of laws rules allow individuals or firms to choose the applicable law among jurisdictions. Under such circumstances, regulatory products can be put under even more competitive pressure.

While regulatory competition is vociferously debated in other parts of the world, theoretical discussions on this topic are rarely seen in Taiwan. This article on corporate-securities regime is an attempt to fill the vacuum. It first explains the theoretical origin of regulatory competition, and examines the prerequisites to an efficient regulatory market. Based on the systematic understanding, it further offers a thorough analysis on “portable” regulatory competition with thorough presentation of arguments for and against the U.S. corporate charter competition and international securities regulations. Such understanding and academic inputs, this article believes, should inspire Taiwan’s regulator to review its regulatory thinking and initiate some changes to reap the competitive benefits.

Keywords: regulatory competition, regulatory externality, race to the top, race to the bottom, internal affairs doctrine, prisoner’s dilemma

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