

AGENT INCENTIVES STRATEGIES

- Reward strategies = pro rata rule for benefit of all shareholders
- undervalue transactions can be seen as hidden/unlawful distributions

- TRUSTEESHIP strategies: board (disinterested or independent directors) to review some conflicted transaction
 - a) cheap
 - b) fair (approved only when value-increasing transactions)
 - c) functional (independent directors to raise questions on suspicious transaction)

Independent directors are really independent? Way of their appointment?

“Limits of the board approval strategy”

- Independent directors may lack incentives or information to oppose unfair deals.
- They are often selected with the consent of executives or controlling shareholders, which can weaken their monitoring role.
- Board approval—when vested in independent directors—may constitute only a limited form of authorization unless reinforced by more robust oversight mechanisms

Different shapes of board involvement:

- Board to be informed of any conflicted transaction
- Board to approve conflicted transactions
- Interested directors to abstain from voting
- Independent directors to have veto or approval rights

“Hierarchy of Board Involvement Across Jurisdictions”

- 1. Information requirement** – board must be informed of all RPTs.
- 2. Encouraged approval** – board approval recommended for selected transactions.
- 3. Mandatory approval** – board must authorize certain conflicted transactions.
- 4. Exclusive approval or veto** – independent directors or dedicated committees hold final decision-making authority.

UK= board approval for all related party transactions to be submitted to shareholders vote

Disinterested board approval of major shareholders self dealing = France - Japan

Italy requires board approval for any conflicted transaction, when the company is listed a committee of independent directors must provide its own advice, which is binding in case of large transactions

“Italy: Binding vs Non-binding Independent Committee Advice”

- For *small* RPTs: the independent committee’s advice is **non-binding**, but must still be obtained.
- For *large* RPTs: the committee’s recommendations become **binding**, and the board cannot approve the transaction if the advice is negative.

US encourage board approval. Only transactions approved/ratified by the board can offer directors the protection of the business judgment rule

“Delaware Law and the Role of Independent Directors”

- Delaware shifts the burden of proof to the challenger when a well-functioning independent committee negotiates the transaction.
- Independent director approval + majority-of-the-minority vote may secure business judgment review.
- Courts still scrutinize RPTs involving controlling shareholders under the stringent **entire fairness** standard.

- Listed companies= nowadays jurisdictions require board approval for compensation of top executive officers:



- specialised committees for compensation decisions used with independent directors and proper advisors

Disinterested board members must be informed and approve in advance the exploitation of business opportunities for the benefit of directors

DECISION RIGHTS = SHAREHOLDERS VOTING

Why Shareholder Approval Is Not the Default Rule?

- General shareholder approval contradicts the delegated management model.
 - Frequent approval would slow down corporate decision-making.
 - Minority shareholders may lack incentives or information to assess routine transactions.
 - Approval is therefore limited to *selected* RPTs categories.
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- No jurisdictions mandates general shareholder approval, as it contradicts delegate management feature
 - only for selected related party transactions

Minority shareholders approval in US and UK

- Shareholders approval mainly used for executive compensation (equity or stock option plans) “Say on pay”

- Shareholders approval for large non-routine transactions with directors or major shareholders

France
↙
ex post

UK
↘
ex ante

“The Majority-of-the-Minority (MoM) Rule”

- Used mainly in US and UK for RPTs involving controlling shareholders.
- Requires approval by shareholders **excluding** the controlling shareholders.
- Provides protection by ensuring that only disinterested shareholders decide.
- Emerging in Japan for freeze-out and M&A transactions.

Ex post timing for shareholders approval (under French law) is not very effective as it cannot prevent abusive related party transactions

The Elon Musk's case  discuss

<https://www.investors.com/news/tesla-vote-elon-musk-pay-package-tesla-stock/>

<https://news.bloomberglaw.com/us-law-week/musk-record-tesla-pay-package-rejected-again-by-delaware-judge>

Why the Elon Musk Case Matters for RPT Law?

- Shows interaction between **executive compensation** and **conflict of interest safeguards**.
- Highlights Delaware's scrutiny under entire fairness when compensation is negotiated with a powerful CEO-controlling shareholder.
- Demonstrates the importance of independent committees and informed shareholder voting.

PROHIBITING CONFLICTED TRANSACTIONS: RULES STRATEGY

Why Modern Systems Use Selective Rather than General Prohibitions?

- Broad prohibitions are inefficient and block value-creating transactions.
- Selective bans focus on areas with high risks of self-dealing and low monitoring feasibility (e.g., loans to directors, non-compete violations, insider trading).
- Jurisdictional differences reflect varying historical scandals and regulatory philosophies.

- Selective prohibitions were common in the past

- Today bans are only for:

- a) loans to directors
- b) non competing
- c) insider trading

- US and France ban loans to executive (post Enron scandal)

NON-COMPETE RULE

pros and cons

Economic Rationale for Non-compete Restrictions

- Prevent managers from exploiting firm-specific knowledge for competitors.
- Protect investments in managerial human capital.
- Still, excessive restrictions may hinder executive mobility and innovation.

Insider trading constitutes a core pathology of securities markets, and its analysis typically centers on two related phenomena: short-term trading abuses and transactions executed on the basis of material non-public information.

Insider trading is the trading of a company's securities by individuals with access to confidential or material non-public information about the company. Taking advantage of this privileged access is considered a breach of the individual's fiduciary duty.

“Two Pillars of Insider Trading Regulation”

1. Short-swing trading bans

- *Apply to insiders trading within 6 months.*
- *Profits/losses are disgorged to the corporation (US & Japan).*

2. Prohibition on trading on non-public information

- *Broader, market-integrity based rationale.*
- *Covers insiders, tippees, and outsiders who misappropriate information.*

- US bans insider trading in any security (public and closed corporations)
- the rationale underlying the prohibition of short-term sale: likely to derive from non public price sensitive information which belongs to the corporation
- Many differences in insider trading (market abuse): in US traditionally very stiff enforcement
- In US and Japan the positive results (profits gained or losses avoided) of short term trading (i.e. sell/purchase and vice versa within 6 months) by corporate insiders are for the benefit of the corporate treasury

COMPARATIVE OVERVIEW OF RPTs REGULATION:

- **US (Delaware):** hybrid, case-law driven model; strong judicial entire-fairness review; independent committees + majority-of-the-minority vote operating as key safe harbors.
- **UK:** rule-based regime under the Listing Rules; extensive shareholder approval requirements for significant RPTs and a strong focus on ex ante disclosure and transparency.
- **France / Japan:** mandatory approval by a disinterested board (or disinterested directors) for conflicted transactions; in France, certain regulated agreements also require ex post shareholder ratification.
- **Italy:** independent committee with binding or veto-like advice for large RPTs; regime increasingly aligned with EU minority-protection and transparency reforms.
- **Germany:** mandatory prior approval by the supervisory board (or a designated committee) for material transactions, and compulsory public disclosure of major RPTs to protect minority shareholders.
- **Brazil:** no single codified RPT statute, but a mixed regime: fiduciary duties under the Corporations Law, with abusive related-party deals framed as loyalty-duty breaches; enhanced disclosure of RPTs; issuer-level RPT policies typically require arm's-length terms, independent review and detailed market disclosure.