

Shareholder Rights in Asia

Are Shareholders Flexing Their
Muscles to Protect Themselves?



©2010 CFA Institute

CFA Institute, with more than 101,000 members worldwide, is the not-for-profit professional organization that awards the Chartered Financial Analyst® (CFA®) and Certificate in Investment Performance Measurement (CIPM®) designations.

The CFA Institute mission is to lead the investment profession globally by setting the highest standards of ethics, education, and professional excellence. In advancing our mission, we strive to be a leading voice on issues of fairness, efficiency, and investor protection in the global capital markets.

ISBN 978-0-938367-34-5 (PDF)

October 2010

**Shareholder Rights in Asia:
Are Shareholders Flexing Their
Muscles to Protect Themselves?**



Contents

Introduction	1
Objective and Scope of Report	2
Basic Rights of Shareholders	3
What Issues Should Be Put Up for Shareholder Approval?	3
Tools to Facilitate Shareholder Engagement	4
Shareholder Activism in Asia: Where Are We Today?	4
Shareholder Groups: A New Wave of Activism	10
Shareholder Activism: The Way Forward	13
Recommendations to Enhance Shareholder Activism	15

Introduction

Shareholder activism is not new to Asia.¹ Although these individuals' activities are rarely highlighted by the media, anecdotal evidence suggests that dedicated individuals in Malaysia and Singapore have made a point of attending the annual general meetings (AGMs) of companies in which they invest to question the board and senior managers and to voice their opinions regarding the company's performance, operations, and resolutions to be passed at the meeting. These lone voices of accountability, however, have more often than not been "silenced" by the majority shareholders.²

The voices of activist shareholders became louder after the Asian financial crisis in the late 1990s, when lapses in governance practices of some listed companies were brought to light. Generally, however, the shareholder activism practised in Asia—on an individual, collective, or institutional basis—is seldom adversarial or confrontational. The modes of shareholder engagement so far mainly involve private discussions with company officials and voting at shareholder meetings. Lawsuits and proxy battles are rare.

In the late 1990s, the standard action taken by shareholders in response to companies not exhibiting good governance practices was to sell their shares—that is, "vote with their feet." Today, shareholders are more prepared to voice their criticisms of companies with poor performance and governance practices. No longer willing to be quiescent shareholders, investors have actively worked to influence the behaviour of company boards and managers to safeguard their investments.

Two factors have created this shift toward engagement:

1. *Limited alternatives.* Value is becoming hard to come by in today's markets. Therefore, investors recognise that investment alternatives are increasingly limited and are willing to stay and fight rather than sell and move on. This situation is especially the case for institutional investors who hold relatively large shareholdings of companies in their portfolios. Selling the shares of a company that has disappointed could mean for such investors taking a loss that is difficult to swallow, particularly if the company potentially has long-term value.
2. *Value of good corporate governance.* Investors have become aware of the value of good corporate governance. A number of studies link well-governed companies with better investment performance and lower investment risk.³ Shareholder activism has become one of the mechanisms for improving corporate governance. The presence of vigilant shareholders may keep the board and managers in check and ensure that the interests of majority shareholders are aligned with those of minority shareholders.

¹Shareholder activism is a way in which shareholders can influence a corporation's behaviour by exercising their rights as owners. Source: Investopedia.

²In the book *Dare to Challenge! The SIAS Story*, the author refers to individuals such as Denis Distant, Narayana Narayana, and Vincent Chen who "... gave the Chairman a hard time at meetings with their sharp and intelligent questions." Source: C.T. Leong, *Dare to Challenge! The SIAS Story*, Straits Times Press, Singapore (2009):43.

³See, for example, P. Gompers, J. Ishii, and A. Metrick, "Corporate Governance and Equity Prices," *Quarterly Journal of Economics*, vol. 118 (2003):107–155; "Investor Responsibility Briefing: Does Good Governance Pay?," Insight Investment (February 2006); "Beyond the Numbers: Materiality of Corporate Governance," Deutsche Bank (November 2005); "Corporate Governance and Investing," Goldman Sachs JB Were (August 2005); "Good Corporate Governance = Good Investment Returns," Goldman Sachs JB Were (June 2006); and G. Kevin Spellman and Robert Watson, "Corporate Governance Ratings and Corporate Performance: An Analysis of Governance Metrics International (GMI) Ratings of US Firms, 2003 to 2008," working paper (2009).

Objective and Scope of Report

The objective of this report is to review the role played in Asia-Pacific by minority shareholders in engaging with publicly listed companies to foster good corporate governance. The report describes the basic rights of shareholders and the tools available for the activist shareholder. Using examples from within the region, it describes instances of shareholder activism in Asia-Pacific economies and draws lessons on sustainable activism gathered from investor protection groups.

The report does not cover the role of activist hedge funds that adopt investment strategies designed to influence the corporate governance and organisational structure of their investee companies. Unlike the typical activist shareholder, the activist hedge fund is focused more on increasing shareholder value than on improving corporate governance. Instead, this report focuses on shareholder activism by individuals, nonprofit organisations, and institutional investors, such as pension funds.

Basic Rights of Shareholders

In its *Principles of Corporate Governance* (2004), the Organisation for Economic Co-operation and Development (OECD) defines the basic rights of a shareholder as follows: the right to

- secure methods of ownership registration and transfer of shares,
- obtain relevant and material information on the company on a timely and regular basis,
- participate and vote in general shareholder meetings,
- elect and remove members of the board, and
- share in the profits of the company

The preferred corporate governance framework, therefore, should protect and facilitate these rights.

The right to vote and participate in shareholder meetings is a powerful tool, and all shareholders holding the same class of shares should be treated in the same manner. Most companies subscribe to the one-share, one-vote principle. In some cases, however, government-linked publicly listed companies have adopted the concept of “golden shares” in strategically important companies, such as privatised public utilities. Golden shares are issued to a government agency and entitle that agency to have veto power in a vote, even if the agency has only a minority shareholding.⁴

Shareholders should not be deterred from participating in the decision-making process at shareholder meetings. Shareholders who are unable to attend meetings in person should be allowed to appoint proxies or to vote by mail. As described by the OECD, companies need to provide investors with all relevant information in a timely fashion, which gives shareholders sufficient time to register their proxies or to send in their votes. The timing and venue of meetings should be reasonable and accessible, and shareholders should have adequate information about the agenda and all resolutions prior to the meeting. These stipulations allow shareholders to cast an informed vote and conduct an effective question-and-answer session.⁵

What Issues Should Be Put Up for Shareholder Approval?

For the protection of minority shareholders, the following issues should be raised and voted on at shareholder meetings:

- changes to governing documents, such as the memorandum and articles of association,
- whether to issue new share capital,
- related-party transactions,
- potential takeovers and mergers,
- election and removal of board members, and
- CEO and senior executive pay (even though in a nonbinding vote).

⁴Examples are Telecom Corporation of New Zealand, Singapore Telecom (the Singapore government relinquished its golden share in 2001), Malaysia Airlines, Telekom Malaysia, and Inpex Holdings (the golden share is held by Japan’s trade ministry).

⁵A longer shareholder meeting and a greater number of shareholders in attendance may indicate the level of effective shareholder participation.

According to a study conducted by the Asian Development Bank Institute on the practice of corporate governance in Asia, the election of board members is considered probably the most important agenda item at AGMs, which are normally held once a year.⁶ Therefore, it is critical that shareholders be fully informed prior to those meetings as to (1) the board candidates, (2) whether shareholders have the ability to nominate their own candidate, and (3) whether cumulative voting is permitted.⁷

Tools to Facilitate Shareholder Engagement

Shareholders can take various actions if they are not happy with the company and its managers. However, although shareholder activism can take many forms, the most common actions are the following:

- attending and participating in shareholder meetings,
- calling for shareholder meetings, which is the means for putting up shareholder-sponsored resolutions. This action is a legal right set out in countries' companies or corporations acts, which usually require a minimum shareholding representation or number of shareholders to call for a meeting,
- conducting private discussions with the board and senior managers to resolve issues outside shareholder meetings,
- publicising a particular issue via conventional or electronic media,
- talking to other shareholders to garner their support; shareholders have a legal right to view the company's shareholder register, which is a useful way for activist shareholders to identify fellow shareholders, and finally,
- exiting the company by selling the shares.

Shareholder Activism in Asia: Where Are We Today?

The Australian Parliamentary Joint Committee on Corporations and Financial Services noted in its report titled *Better Shareholders—Better Company: Shareholder Engagement and Participation in Australia* (June 2008) that effective engagement between shareholders and the company board is an important means by which shareholders can improve the value of their share ownership and minimise risk. Indeed, since the Asian financial crisis in 1998, much has been said and done by capital market authorities, nongovernmental agencies, and interested stakeholders on the subject of governance and investor protection. The missing link is shareholder action; shareholder or investor apathy and resignation could render all the efforts taken so far ineffective.

Although shareholder participation should not directly relate to ordinary business matters or the day-to-day operations of the company, shareholders should, at the very least, ensure that the decision-making process is efficient and effective. Therefore, shareholders must be willing to speak out and be ready to vote against boards that persistently ignore their concerns and interests.

⁶The study, published in 2004, was based on a survey of 307 listed companies in Indonesia, South Korea, Malaysia, and Thailand and on a review of the relevant regulatory frameworks in these countries.

⁷Cumulative voting is a type of voting process that strengthens the ability of minority shareholders to elect a director. It allows shareholders to cast all their votes for a single candidate when the board has multiple openings. The formula is the number of shares held times the number of directors to be elected.

In the aftermath of the Asian financial crisis in the late 1990s, shareholders in the region flexed their muscles and formed coalitions with like-minded investors to engage company officials inside and outside of shareholder meetings on issues that could potentially infringe on their rights and the value of their investments. The region also experienced the emergence of home-grown champions of retail investors, such as David Webb in Hong Kong, David Gerald in Singapore, and, to a certain extent, Yoshiaki Murakami in Japan.

Murakami was Japan's best-known shareholder/activist fund manager before he was found guilty of insider trading in 2007.⁸ He was widely credited with raising awareness of shareholder rights among Japan's traditionally docile institutional funds, and he pushed for the introduction of more active voting policies. Despite his fall from grace, a mainstream local media outlet, Nikkei, acknowledged that Murakami's actions as an investor had prompted Japan's corporate leaders to improve business efficiency and to adopt management policies that valued shareholders.⁹

The remainder of this section describes specific instances of shareholder activism.

Participation at Shareholder Meetings: Crusading for One-Share, One-Vote. Webb is a retired investment banker who devotes his time to corporate governance advocacy. He provides commentary on corporate and economic governance, finance, investment, and regulatory affairs in Hong Kong on his website (www.webb-site.com), which he set up in 1998 and runs on a not-for-profit basis. His free newsletter distribution list consists of more than 6,000 readers.

Among Webb's more successful campaigns is advocating for the practice of voting by poll at shareholder meetings. In 2003, as part of his "Project Poll," he bought 100 shares in each of the Hang Seng Index's component companies in order to call for a full count of votes at shareholder meetings on the basis of *one-share, one-vote* (voting by poll) rather than *one-person, one-vote* (voting by show of hands).¹⁰

Webb maintained that the traditional show of hands voting at shareholder meetings does not always lead to the fairest result. For one thing, it fails to reflect the sentiments of shareholders who are absent from the meeting. As for voting by poll, even though the controlling shareholders always dominate the decisions when this method is used, the public is informed of the extent of votes for and against an issue. This method increases the transparency of the voting process, which is particularly beneficial for contentious issues, and helps hold managers accountable to shareholders.

Webb's efforts were rewarded in January 2009 when amendments to the Hong Kong Stock Exchange listing rules made voting by poll mandatory for all resolutions at all general meetings.

Right to Call for General Meeting: Removing Members of the Board. Petra Perdana Berhad is an offshore marine services provider for the upstream sector of the oil and gas industry, according to the company's website. The company made Malaysian corporate history on 4 February 2010 by convening an unprecedented 14-hour-long extraordinary

⁸Murakami was accused of buying shares in Nippon Broadcasting System after learning that Livedoor was about to make a bid for the broadcaster.

⁹K. Fusa, A. Miller, and C. Milhaupt, "Investors Unleashed: The Rise of Shareholder Activism in Japan," Eighth Annual Mitsui USA Symposium (30 January 2007).

¹⁰"David Webb: Tireless Champion of Shareholder's Rights." *FT.com* (13 October 2009): www.ft.com/cms/s/0/9d7a49c6-b790-11de-9812-00144feab49a.html?nclink_check=1.

general meeting (EGM) to oust the executive chairman cum CEO and three other members of the board.¹¹ About 600 shareholders and proxies were reported to have arrived as early as 8:30 a.m. for the 10 a.m. meeting, which ended close to midnight.

Section 145 of the Companies Act 1965 in Malaysia allows shareholders to convene a meeting of shareholders if the meeting is called by two or more members holding a minimum of 10 percent of the issued share capital. Eleven shareholders, some of whom were also part of the management team, called for the EGM. The group collectively held about 13 percent of the issued share capital.

The events that led to the EGM are as follows:

- In 2009, the board was informed by the head of the finance department that the company needed funds to reduce its borrowings and to meet other financial obligations over the next 12 months. The board, therefore, unanimously approved the sale of 54.62 percent of its shareholding in Petra Energy Berhad on the condition that the shares be disposed of by way of an open tender and *en bloc* at a net price of no less than 1.80 ringgits (RM) per share.¹² Petra was authorised by the board to oversee this transaction.
- The following transactions were concluded in 2009:
 - Disposal of 5.38 percent of shares in Petra Energy at RM1.53 per share, which was a discount to the market price. This block of shares was not part of the earlier board mandate, and the sale was discussed and approved by the board.
 - Disposal of three vessels to Petra Energy, which was approved at the EGM held on 9 November 2009.
 - Disposal of 25.03 percent of shares in Petra Energy at RM1.91 per share, which was a premium to the market price.
- On 23 December 2009, Shamsul Saad, executive director of the company and also a member of the group that requested the EGM, applied to the High Court of Malaysia to stop the sale of the remaining 29.59 percent stake in Petra Energy.
- On 9 January 2010, a local daily, the *Star*, reported that Tengku Ibrahim, Petra's executive chairman and CEO, exercised his executive powers to temporarily suspend some senior managers and key personnel of the company until 3 February 2010. The suspended individuals were part of the group who called for the EGM.

The point of contention was not the share sale but, rather, the manner in which the shares were sold, which differed from the mandate given by the board. The explanation provided by the Petra top executives was that selling 54.62 percent of the shares *en bloc* would have triggered a mandatory general offer for the entire shares of Petra Energy. Petra Energy would also have lost its licence from Petronas, the national oil company of Malaysia, if the takeover party was an entity with less than 51 percent shareholding by Bumiputra.¹³ The placement agent was, therefore, instructed to sell the entire 54.62 percent in partial blocks through tender by invitation.¹⁴

¹¹Because AGMs occur once a year, when an issue arises that is too urgent to wait until the next AGM, companies call EGMs.

¹²Petra Perdana held a 60 percent stake in Petra Energy, a publicly listed company that provides integrated brown field services for the upstream oil and gas industry. (A brown field is an oil or gas accumulation that has matured to a production plateau or even progressed to a stage of declining production.)

¹³Bumiputra is a Malaysian of Malay or other indigenous origin.

¹⁴Source: Petra Perdana press release, "Petra Perdana's Executive Chairman Clarifies" (7 January 2010).

As the saga unfolded, the company received much negative press coverage. Oil and gas analysts came out with differing views on the future prospects for Petra Perdana without Petra Energy. The Minority Shareholder Watchdog Group (MSWG) joined in the fray by holding a discussion with stakeholders on 4 February to devise recommendations for an EGM. In the end, the dissenters won the day and minority shareholders were given the opportunity to vote for change.

All of the EGM resolutions were passed, which involved removing directors Tengku Ibrahim; Ibrahim's wife, Datin Nariza Hajjar Hashim; and two others. The resolutions appointed four new directors, and voting was carried out by poll.

After the EGM, the company released a statement reassuring shareholders that the new board would chart a direction for the company based on openness and transparency and would focus on building long-term value. The company also appointed advisers to provide guidance on how to deal with the remaining Petra Energy shares.¹⁵

Vote Manipulation at Shareholder Meetings. PCCW Ltd is Hong Kong's premier telecommunications provider and one of Asia's leading integrated communications companies. In November 2008, the controlling shareholders of PCCW announced plans to take the company private. The Singapore-based Pacific Century Regional Developments Ltd (PCRD) and China Netcom offered to buy PCCW for HK\$16 billion, or HK\$4.20 per share. The following month, the controlling shareholders of PCRD and China Netcom increased the offer to HK\$17 billion, or HK\$4.50 per share—a premium to the market price of HK\$4.17—to appease the minority shareholders at PCCW, who were demanding a much higher price. Investors also were upset with a plan by PCRD and China Netcom to pay themselves a total cash dividend in the range of HK\$16.96 billion to HK\$17.56 billion after completion of the deal.¹⁶

Richard Li, the youngest son of Hong Kong tycoon Li Ka-shing, controls PCRD, whereas China Netcom is a subsidiary of the mainland telephone group, China Network Communications Group Corporation. Together, they control about 48 percent of PCCW. Before the buyout bid, Li had repeatedly tried to sell his stake in PCCW but was frustrated by shareholder resistance and tumbling equity markets. The first attempt was in 2006, at which time an offer from Macquarie Bank Ltd of Australia and TPG Newbridge Capital, a U.S. private equity group, was rejected by the PCRD board. The second sell attempt, a follow-up offer from financier Francis Leung, was also rejected by the shareholders of PCRD. In October 2008, PCCW, citing unattractive bids because of the global financial crisis, aborted a proposed sale of a 45 percent stake in HKT, a special holding vehicle for the company's information technology, telecommunications, and media business.

Following is a summary of the events after the announcement of a buyout offer by PCRD and China Netcom:

- On 4 February 2009, the minority shareholders of PCCW approved the buyout plan in a heated shareholder meeting lasting seven and one-half hours. Some shareholders requested a delay of the vote until after investigations by the company into allegations of vote tampering; these requests were rejected. When a vote was called, more than 75 percent of the shareholders in attendance were in favour of the scheme. The privatisation plan, however, required court approval before the company could be delisted.

¹⁵E. Badri and M. Song, "Tengku Ibrahim and Wife Ousted," *Edge Financial Daily* (5 February 2010).

¹⁶"Big PCCW Shareholders Raise Buyout Offer to \$2.2bln." *Reuters* (30 December 2008): www.reuters.com/article/idUSHKG29893120081230.

- The Hong Kong Securities and Futures Commission (SFC), which was present at the time of the vote, took possession of the voting records after the meeting and started investigations into the buyout process. In January, Webb, the shareholder activist, alerted the regulatory commission to the possibility of vote tampering before the 4 February meeting. Webb had received an anonymous e-mail claiming that hundreds of Fortis Insurance agents were given 1,000 PCCW shares, each in exchange for endorsing the privatisation deal. Webb's investigations into the tip revealed that PCCW's share registrar recorded hundreds of transfers on 21 January and that many of the new transferees had names that matched names on the list of the Insurance Agents Registration Board. Some of the transferees gave the Fortis office address for the transfer.¹⁷
- On 24 February 2009, the court approved the SFC's application to intervene in the court hearing to sanction the scheme to delist and privatise PCCW. This was the first time the SFC had exercised its statutory power under the Securities and Futures Ordinance to intervene in proceedings. Thus, the action highlights the seriousness of the allegations in the context of "share splitting" to influence the voting results.
- On 6 April 2009, the Hong Kong High Court gave its initial approval to the scheme. The SFC immediately applied for and was granted leave to appeal the decision. The appeal was heard on 16 April 2009. The presiding High Court judge ruled that share splitting is not illegal in Hong Kong and that a shareholder is entitled to transfer some of his shares to nominees to increase his voting power at a meeting. Furthermore, the allegations of vote rigging were merely based on suspicion and were unsubstantiated.

The SFC's investigations revealed that Francis Yuen, the deputy chairman of PCRD and the former chairman of Pacific Century Insurance before it was acquired by the Fortis Group in 2007, called Lam Hau Wah, a regional executive director of Fortis Insurance Asia, hours before Lam purchased 2.4 million shares of PCCW in the first two weeks of January 2009.¹⁸ Lam subsequently withdrew 500,000 shares in board lots of 1,000 shares each and distributed them among the Fortis Insurance agents as a "bonus."

Minority shareholders were reported to have cried foul after the judgement caused a commotion during the recess and were asked to leave the courtroom.¹⁹

- On 22 April 2009, the Court of Appeal overturned the decision to approve the scheme. The court ruled that there was clear manipulation of the vote, so the court could not be sure that the result was fair. The written judgement noted that vote manipulation is nothing less than a form of dishonesty and that the court cannot sanction dishonesty.

The SFC had argued that the share splitting and other artificial arrangements had resulted in more than 800 of the 1,404 shareholders, either in person or by proxy, voting in favour of the privatisation scheme and that these votes should not qualify as "disinterested shares" under the Hong Kong Code on Takeovers and Mergers. If these votes had not been cast, the SFC argued, the required voting majority would not have been met.²⁰

¹⁷"PCCW Shareholders Approve Privatisation Plan for Hong Kong Firm," *Agence France-Presse* (3 February 2009): www.google.com/hostednews/afp/article/ALeqM5iIldrI5j5j7AIZRQsKQadCS_kdxw.

¹⁸V. Kwok, "Hong Kong Judge Scathing on PCCW Vote," *Forbes.com* (11 May 2009): www.forbes.com/2009/05/11/pccw-vote-manipulation-markets-equity-hongkong.html.

¹⁹K. Ng and M. Lo, "Showdown," *Standard* (7 April 2009).

²⁰"Disinterested shares" are shares of the company other than those owned by the offeror or its concert parties.

In this situation, minority shareholders scored a major victory against the controlling shareholders engaged in a corporate manoeuvre that might otherwise have moved ahead without much scrutiny. And the regulators were lauded for their tenacity in protecting investors in a case that was legal in form but not in spirit. Under the voting rules, nominees who represent many shareholders get to cast only one vote. Small shareholders who attend the meeting in large numbers can unduly influence the outcome, which may not serve the best interests of all stakeholders. Therefore, the time may be right for authorities to review the voting rules.²¹

Board Resolutions: Shareholder Rights to Unbundle Resolutions. NatSteel Ltd was incorporated in the early 1960s to manufacture, export, and trade in iron and steel products in support of Singapore's infrastructure and residential development. The group expanded into steel fabrication, construction-related products and services, and electronics. Now known as NSL Ltd, after selling off its steel business in 2004, the group has three main businesses: chemicals, engineering, and construction products.

On 16 March 2003, the board of NatSteel recommended a total dividend payment of S\$1.00 per share, representing an interim dividend of S\$0.45 for 2003 and a special dividend of S\$0.55. This recommendation was welcome news for the shareholders because of the bleak economic environment resulting from the SARS (Severe Acute Respiratory Syndrome) outbreak.

The positive reception of this news, however, was short lived. The proposed special dividend payout was conditional on a vote by the shareholders to approve certain amendments to the memorandum and articles of association (M&A) of the company that were designed to make it easier for the company to raise capital via convertible instruments. Although the type of convertible instrument was not specified, the market took it to mean convertible bonds or warrants.²² Thus, the approval would essentially allow the majority shareholders greater freedom to dilute the holdings of minority shareholders.

The Securities Investors Association Singapore (SIAS) launched a campaign against this issue after repeated attempts by SIAS President and CEO David Gerald to meet with the president of NatSteel were ignored. The position of the SIAS was that NatSteel must decouple the special dividend payout from the contentious amendments to the M&A. The SIAS questioned the necessity for the tie-up, as the proposed resolutions to amend the M&A could be voted on independently. In a posting on its website (www.sias.org.sg) on 19 May 2003, the SIAS noted that in NatSteel statements, the company admitted that the proposed amendments were not applicable to the proposed special dividend payment but, rather, to payments of future dividends. The SIAS raised its concerns with the Singapore Exchange, resulting in a fair amount of press coverage.

²¹In Hong Kong, privatisation by "scheme of arrangement" of a company listed on the stock exchange of Hong Kong is largely governed by the Companies Ordinance and the Hong Kong Code on Takeovers and Mergers. Under section 166 of the ordinance, privatisation by scheme of arrangement requires the approval of a majority in number of shareholders present and voting either in person or by proxy at the meeting (also called the "headcount" rule) and representing not less than three-fourths in value of the shares. In addition to the shareholders' approval, the scheme must be sanctioned by the court. Under the Code on Takeovers and Mergers, first, a scheme of arrangement for privatisation must be approved by at least 75 percent of the votes attaching to the disinterested shares at a duly convened meeting and, second, the number of votes cast against the approval of the scheme must not be greater than 10 percent of the votes attaching to all disinterested shares.

²²"NatSteel Ltd: Holders Scuttle Bid to Link Dividend with Capital Needs," *Wall Street Journal* (5 June 2003).

At the shareholder meeting on 28 May 2003, 36.99 percent of the shareholders rejected the linked resolutions. The board bent to the wishes of the shareholders in the end and on 9 June 2003, announced a final dividend of S\$0.55 for the year ended 31 December 2002.²³

The SIAS played a key role in getting minority shareholders to engage with the company and exercise their rights by highlighting the “irrational link” between the dividend and the changes to the M&A. Minority shareholder inaction often results from the lack of financial knowledge to analyze the impact of corporate proposals. In general, most retail investors are not able to analyze the financial statements in depth and are unaware of the issues about which to question management and directors at shareholder meetings.

Shareholder Groups: A New Wave of Activism

Investor protection groups played an important role in the growth of shareholder activism in Asia-Pacific. The voices of the small shareholders were better heard and their votes carried greater weight when they were well organised and prepared to participate at shareholder meetings. In this section, we describe some shareholder groups in the region, including an institutional shareholder representing its participants, a member-initiated organisation, and the SIAS.

Pension Fund Association of Japan. The Pension Fund Association (PFA) is a public pension fund in Japan established in 1967 under the Employees’ Pension Insurance Act. Its functions are to be (1) an umbrella organisation for corporate pension funds in Japan (members) and (2) a fund manager for the retirement savings of individuals (beneficiaries/participants) who have left corporate employment in mid-career or whose company pension plans have dissolved. Under the leadership of Tomomi Yano, who joined the organisation in 2001, the PFA has slowly gained the reputation as the “Japanese CalPERS”—that is, a strong voice for savers.²⁴ In the past, shareholder activism in Japan was viewed negatively, because the so-called activists who challenged the boards at shareholder meetings were usually *sokaiya* racketeers.²⁵ Yano reversed this perception. Within months of joining the organisation, Yano announced that the fund would no longer support the management of portfolio companies that failed to meet investment standards, such as paying annual dividends to shareholders. Yano announced that the fund’s main objective would be to defend the interest of the average workers in Japan.

The primary agenda of the PFA is not to act as an adversary but to improve the financial performance of and emphasise good governance practices at the companies in its portfolio. PFA policies focus on objective standards for proxy voting and guidelines for corporate governance. If companies fail to meet PFA proxy voting and corporate governance guidelines, the PFA will vote against the management at shareholder meetings. In 2006, the PFA opposed 40 percent of the motions that introduced unfair antitakeover measures and all of the motions that called for directors to be dismissed by special resolution instead of majority voting.²⁶

²³“NatSteel Proposes Cash Payout after Shareholders Resist Plan,” *Asian Wall Street Journal* (12 June 2003).

²⁴CalPERS, the California Public Employees’ Retirement System, is known for its shareholder activism role on corporate governance and has been described as a leader among activist institutions.

²⁵*Sokaiya* are professional provocateurs who specialise in digging up dirt on major corporations to blackmail these corporations to either pay them off or be embarrassed at shareholder meetings. They have also been known to, for a fee from the company, physically silence legitimate shareholders who wish to question management at shareholder meetings.

²⁶“The Growth of Shareholder Activism,” *FinanceAsia.com* (7 September 2006): www.financeasia.com/News/59296,the-growth-of-shareholder-activism.aspx.

So far, Yano's efforts have resulted in companies downsizing bloated boards, raising dividends, and reaching out more than previously to shareholders. One of Yano's first victories was in 2002, when he convinced Fanuc, a maker of industrial robots, to shrink the size of its board from 30 to 10.²⁷ Portfolio companies have been persuaded to reduce the barriers for proxy voting (such as staggering the annual shareholder meeting dates), providing more than the legal minimum of two weeks' notice for shareholder meetings, and providing greater information disclosure than legally required.

PFA guidelines on the exercise of shareholder voting rights have had some effect on improving the governance practices of its portfolio companies. At shareholder meetings, the overall ratio of votes against company proposals has dropped to the low teens (i.e., 12.4 percent for the period July 2008 to June 2009, down from 16.6 percent for the previous corresponding period).²⁸

Yano's work at the PFA has influenced a growing number of smaller pension funds to come up with their own investment guidelines and pressure their portfolio companies to increase returns. This development could slowly change the irreverent behaviour of corporate Japan toward small investors. Yano left the PFA in June 2008, but the work continues with his successor, Yuki Kimura, director of corporate governance at the association.

Current PFA policies set a target return on equity (ROE) of 8 percent for companies it monitors. The PFA will vote against the reappointment of a director if the company's ROE for the previous three years is below 8 percent unless convincing explanations are provided at AGMs and the company has business plans and measures to improve company performance.

Australian Shareholders' Association. The Australian Shareholders' Association (ASA) is a not-for-profit organisation that aims to represent the interests of all Australian investors—shareholders, unit holders, bondholders, note holders, and investors in property syndicates, insurance products, and superannuation (retirement) products. Most of its activities have involved retail shareholders.

The ASA is unique in its ability to mobilise more than 100 members nationwide to monitor companies, on a voluntary basis, listed on the Australian Stock Exchange. Company monitors review financial statements and reports, meet company officials, assess resolutions for shareholder meetings, post company analyses and recommendations on the ASA website (www.asa.asn.au) to provide members this information, and attend shareholder meetings to vote on behalf of shareholders and raise concerns with company boards. Such information sharing gives ASA members the confidence at shareholder meetings to stand up and query the board and, in the process, highlight controversial issues for other shareholders in attendance.

The ASA 2008 annual report stated that company monitoring is consistently regarded as the most valued activity undertaken by the association. Company monitoring during that year focused mostly on the issue of executive remuneration, with 60 percent of the companies monitored notified of the association's intent to vote against the remuneration report.

Although shareholder votes against a remuneration report are nonbinding, such votes work to keep companies accountable and are good for corporate governance. Such action has resulted in the Commonwealth Bank, Westpac Banking Corporation, and the Australia and

²⁷M. Fackler, "For Japanese Pension Chief, Shareholders—Not Firms—Are the Stars," *New York Times* (29 August 2007).

²⁸Source: PFA's website, www.pfa.or.jp/english/english05/05_04.html.

New Zealand Banking Group (ANZ) introducing conditions that link remuneration benefits with company performance in their pay packages for directors and executives. Shareholder disapproval at meetings also has resulted in many companies putting a stop to “liquidated damages” clauses, which allow massive termination packages to be paid in executive contracts.²⁹

The other issue widely followed by the ASA in 2008 was shareholder opposition to the election or re-election of members to the board, often in relation to incidences involving these board members at other companies. The collapse of Allco Finance haunted a number of its former board members: Barbara Ward faced a 42 percent vote against her election to the Qantas board; the re-election of corporate stalwart Sir Rod Eddington to the Rio Tinto board was rejected by about 40 percent of the shareholders; and David Clarke quit the AMP Ltd board rather than face defeat. The Allco fallout also curtailed Sir Eddington’s ambitions of becoming chairman of ANZ, which he turned down after feedback from shareholders.³⁰

Any shareholder, not only an ASA member, can appoint the ASA as a proxy. In 2008, the ASA was appointed as a proxy for more than A\$2.9 billion worth of shares, a testimony to the trust shareholders have that the association will stand up for them.

Securities Investors Association Singapore. The initiative to set up the SIAS was spearheaded by Gerald in 1999 to seek a resolution for 172,000 Singapore investors who had invested in shares of Malaysian companies that were traded on CLOB (the OTC market) and found their accounts frozen.³¹ The move to freeze the CLOB accounts by the Malaysian government was a direct result of the Asian financial crisis and was aimed at curbing speculation and stabilising trading on the Kuala Lumpur Stock Exchange. Led by SIAS, a solution to the CLOB dilemma was found within a few months, which highlights the collective power of retail investors in pursuing their rights.

Under the leadership of Gerald, SIAS had grown to a membership of about 70,000 by 2009. It has become the official voice of retail investors and minority shareholders in Singapore. The organisation has expanded its initial objective of protecting investors’ interests to include promoting corporate governance and undertaking efforts to educate the general public on financial matters.

Aside from CLOB, the SIAS has had many other success stories in championing the rights of minority shareholders in the island republic. It adopts a strategy of resolving shareholder issues through engagement with the company’s officials outside of scheduled shareholder meetings—that is, “in the boardroom, not in the courtroom.” The SIAS resorts to mounting media campaigns and canvassing public opinion only when companies close their doors to SIAS conversation.

²⁹K. Askew, “Shareholder Activism on the Rise,” *TheAge.com.au* (23 May 2008): <http://thebigchair.com.au/news/radar/shareholder-activism-on-the-rise>.

³⁰“Shareholders to Flex Their Muscles,” *Sydney Morning Herald* (11 October 2009).

³¹CLOB (the Central Limit Order Book) was an arrangement in which Malaysian company shares could be quoted and traded through the Singapore Stock Exchange without an official listing on the exchange.

The effectiveness of SIAS activism has not gone unnoticed. The *Business Times* on 17 September 2002 wrote:

First, companies are now beginning to realise they need to answer to small investors. Secondly, that Mr Gerald is now such a power in the stock market that he is often given the royal treatment companies normally reserved for major fund managers such as Templeton's Mark Mobius.³²

Shareholder Activism: The Way Forward

The rightful role of responsible shareholder activism in corporate governance is no longer in question. For shareholders to effectively carry out the monitoring task, however, they need the capabilities and resources to gather and update information on company managers and business activities, and they need to identify and understand the issues. The costs to undertake such monitoring activities have to be borne by the shareholder, which is an arduous responsibility for any one investor. Hence, the way forward for shareholder activism in the region is to bring together the collective voices of individual investors and unite their rights to vote.

Role of Shareholder Groups. Investors themselves must accept responsibility for protecting their own rights and not leave it to others to battle for them. Shareholder groups provide support by informing investors of the issues surrounding their investments. Investors, whether retail or institutional, must then exercise their rights at shareholder meetings.

Shareholder groups such as the ASA, MSWG, and SIAS have emerged as effective shareholder voices. The challenge is to sustain their collective momentum. Gerald of SIAS has said that, although CLOB was the initial *raison d'être* of SIAS, in order for the organisation to remain relevant, it must expand its activities to include (1) investor education and research, (2) protection of investor rights, and (3) corporate governance and transparency.

Exhibit 1 is a profile of the three shareholder groups in the region that we have mentioned in this report, the ASA, MSWG, and SIAS. These shareholder groups all have programmes and activities that focus on investor education, investor protection, and promotion of good corporate governance practices. All three are not-for-profit organisations. The operations of the ASA and SIAS are financed by members/investors, whereas MSWG is mainly financed by a statutory fund (the Capital Market Development Fund) as part of the Malaysian government's efforts to improve corporate governance in the country.

Role of Institutional Investors and Proxy Advice Services. For effective shareholder activism in Asia to flourish, institutional investors have to be the driving force. Institutional investors, in the form of public and private funds, are the predominant players in financial markets. The power of their pooled ownership can be a tangible force to effect changes in the companies in which they invest. Efforts to improve governance practices by these shareholder groups include issuing codes of conduct and voting guidelines for shareholders at meetings. They can also forge close links with regulatory agencies to influence changes in the rules that ensure fair treatment for minority shareholders. In fact, institutional investors are becoming more active in Asia in monitoring company managers and voting the shares they control as part of their fiduciary responsibilities to participants in the fund.

³²Leong, *Dare to Challenge! The SIAS Story*, (p. 45).

Exhibit 1. Profiles of Three Investor Protection Groups in Asia

	Australian Shareholder Association (ASA) (www.asa.asn.au)	Minority Shareholder Watchdog Group (MSWG) (www.mswg.org.my)	Securities Investors Association Singapore (SIAS) (www.sias.org.sg)
About the organisation	Established in 1960 as a company limited by guarantee. Income from membership fees and education receipts. About 8,000 members.	Established in 2000 as a public company limited by guarantee, initiated by the government. Income from Capital Market Development Fund, subscriber service, and the sale of publications and events.	Established in 1999 as a not-for-profit organisation. Income from membership fees and education receipts. About 66,000 members.
Governance structure	Board of directors elected by members.	Board of directors appointed.	Management committee members elected by members.
Objectives	To protect and advance the interests of investors in shares, managed investments, and other financial products.	To lead in the development of knowledgeable and active minority shareholders and to deliver services effectively, efficiently, and economically, thus contributing to the development of the capital market.	<ul style="list-style-type: none"> • To empower investors through education and information. • To protect, safeguard, and champion the rights of investors. • To lead and advocate fair, open, and transparent industry regulations, governance, policies, and practices.
Strategy	<ul style="list-style-type: none"> • Recruiting more than 150 dedicated retired or semi-retired members to be company monitors. • Encouraging investors (not just members) to give ASA their proxies in order to act as a collective voice at shareholder meetings. 	<ul style="list-style-type: none"> • Informing investors on issues of concern regarding activities of publicly listed companies (PLCs). • Using the power of public opinion via media channels to assert pressure on PLCs. 	<ul style="list-style-type: none"> • Resolving issues through engagement with the board or senior managers of PLCs outside of scheduled shareholder meetings—in the boardroom, not in the courtroom. • Mounting media campaigns to canvass public opinion when a company refuses to engage with SIAS.

Organisations such as Governance for Owners (GO) and the RiskMetrics Group offer services to assist institutional investors in the region in their role as activists. GO is an independent partnership of a group of institutional shareowners. With offices in the United Kingdom, United States, and Japan and a representative presence in Singapore, GO's stewardship service offers advice on independent voting, corporate engagement, and environmental, social, and corporate governance. The RiskMetrics Group provides analyses of corporate governance and research and analytic services to assist institutional investors with their proxy voting responsibilities.

Recommendations to Enhance Shareholder Activism

Regulators in Asia-Pacific have made great strides in regulatory reform since the Asian financial crisis of 1998. Further reform and improved practices by listed companies can help motivate investors to exercise their shareholder rights.

First, regulators can support the cornerstone of shareholder rights—namely, the principle of one-share, one-vote. This principle is not always observed in practice. Voting for resolutions at shareholder meetings must be conducted in a manner that is fair and equitable to all shareholders. As share ownership becomes widespread, the voting mechanisms must cater to foreign investors and those not able to physically attend AGMs and EGMs. Traditionally, voting in Asia has been done by a show of hands, and this system is still a common practice in Asia today. The system can be abused by controlling shareholders who can gather enough “hands” at the meeting to vote in favour of resolutions the controlling shareholders want. Voting by show of hands is an area in which reform is urgently needed. The ability of shareholders to call for a poll (one-share, one-vote) at AGMs and EGMs varies from country to country. In Hong Kong, five persons holding 100 shares each were able to call for a poll at a shareholder meeting before the rule was changed to require voting by poll in January 2009. In Singapore, two persons present can call for a poll.

Although regulators recognise the problem, reform in this area may be outside the purview of the securities regulators in some jurisdictions; in some places, voting at shareholder meetings is regulated by the company’s articles of association and the Registrar of Companies. Hong Kong is the only jurisdiction in Asia that has successfully implemented voting by poll, which is included in its revised listing rule, effective January 2009. CFA Institute supports the principle of one-share, one-vote and believes that voting for all resolutions at shareholder meetings should be done by poll.

Second, shareholders must have the right to appoint and remove directors. This right can be exercised at AGMs when directors are up for re-election, or as in the case of Petra Perdana, shareholders can have the right to call for an EGM to remove directors. A group of shareholders holding at least 10 percent of the voting shares should have the right to call for a general meeting of shareholders.

Third, companies can improve practices at shareholder meetings by unbundling resolutions, establishing a transparent system for the counting of votes and publication of vote results, and introducing nonbinding votes in relation to CEO, senior executive, and director compensation. The NatSteel case highlighted the importance of voting for resolutions in an unbundled manner. The publication of vote results is usually vague and not investor friendly. Companies should publish detailed voting results, such as the number of votes for and against a resolution. Investors can then gauge the true level of support for resolutions passed at meetings. The lack of disclosure of CEO and senior executive pay in Asia remains an area of concern, and shareholders should increase their affirmative action to encourage companies to add to the agenda a vote on executive compensation, even if it is a nonbinding vote.

CFA Institute

For more information contact:

Lee Kha Loon, CFA

Head

Standards and Financial Market Integrity

Asia-Pacific Office

khaloon.lee@cfainstitute.org

www.cfainstitute.org

THE AMERICAS

560 Ray C. Hunt Drive
P.O. Box 3668
Charlottesville, VA, USA 22903-0668

(800) 247-8132 PHONE (USA and Canada)
+1 (434) 951-5499 PHONE
+1 (434) 951-5262 FAX

21st Floor
477 Madison Avenue
New York, NY, USA 10022-5802

ASIA-PACIFIC

Suite 4905-08
One Exchange Square
8 Connaught Place, Central
Hong Kong SAR

+852 2868-2700 PHONE
+852 8228-8820 INFO HOTLINE
+852 2868-9912 FAX

EUROPE

10th Floor
One Canada Square
Canary Wharf
London, UK E14 5AB

+44 (0) 20-7531-0751 PHONE
+44 (0) 20-7531-0767 FAX

Square de Meeûs 38/40
1000 Brussels, Belgium

info@cfainstitute.org E-MAIL

www.cfainstitute.org

