

India

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 53 companies in India as of 15 May 2008.

No significant limitations on shareowner rights exist in India. Ordinary shares have one vote per share and are the only voting shares in India. Board members are proposed by the board and elected by shareowners at the annual meeting of shareowners. Shareowners with 10 percent or more of the company's shares may remove a board member by passing an ordinary resolution without cause and may call a shareowners meeting. India's companies have staggered board terms; however, one-third of those board members are required to retire annually by rotation (rotational directors). Permanent board members are usually promoters¹⁰ or executive directors of a company. A large number of Indian companies have controlling shareowners that are the government or a family block.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	47%	Indian companies are required to have at least $\frac{1}{3}$ of their board members independent of the company.
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	17%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	45%	
Is voting by proxy permitted?	Yes	Always allowed; shareowners may vote in person or by proxy.
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	Usually, yes	Indian companies usually have limits on foreign ownership. The limitation ranges, depending on sector/industry, from 26% to 100% (100% meaning no foreign ownership restrictions). The companies may raise or lower foreign shareowner limits (but not beyond government-mandated limits) only after the company obtains shareowner approval at a general meeting. Few listed companies have changed the foreign ownership threshold to 100% or, in other words, removed all foreign ownership restrictions.

¹⁰Promoters are those who brought the company to the public market, typically the family group or corporation that controlled the company prior to listing.

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Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	Mostly, no	Proxy voting is unrestricted. Resolutions are often declared by meeting chairs on a show of hands (i.e., 1 vote per person), which tends to negate the value of proxies unless a poll (1 vote per share) is called.
Do companies adhere to a majority voting standard in the election of board members?	Yes	Decisions involving election and removal of board members require a majority vote.
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is not the practice in India.
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or otherwise?	Yes	Remuneration policies and limits are approved by shareowners and may be altered only by shareowners. Typically, Indian companies provide incentives by way of a commission on profits, not usually through options or other equity-based plans.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	Remuneration policies and limits are approved by shareowners and may be altered only by shareowners. Typically, Indian companies provide incentives by way of a commission on profits, not usually through options or other equity-based plans.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	Shareowners with a minimum of 10% of paid-up voting capital can call an extraordinary general meeting.
What percentage of companies include golden shares in their capital structure?	0%	No companies have golden shares.
Are shareholder rights plans (poison pills) allowed in this market?	No	Poison pills are banned by law.
If shareholder rights plans are in use, do they have to be approved by shareowners?	NA	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is a legal requirement.

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Do companies require a supermajority vote to approve a merger?	Yes	Certain fundamental corporate decisions, such as proposed mergers, require special resolutions that are approved by 75% of the shareowners present and voting.
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Yes	
Are class action suits commonly used in this market?	No	
Are derivative suits commonly used in this market?	No	

Current Engagement Practices and Shareowner Rights Developments

Shareowner activism or engagement, although not completely unknown in India, is rare. Investors of all types have shown little interest in serious engagement. Indian institutional investors have begun exercising their voting rights but are not yet at the level of engagement that large investors in other markets have attained. Traditionally, pension funds have not played a substantial role in corporate governance, and large institutions exert influence through their board member nominations. The most common mechanism through which shareowners express displeasure with companies—usually, in a merger situation—is to threaten a significant unloading of shares. Although India has a number of shareowner groups that are recognized by the Securities and Exchange Board of India (SEBI), those groups play a limited role and are not active.

Institutional investors and pension funds in India rarely attend the annual general meeting (AGM) of shareowners and show little interest in companies' corporate governance. If any issues arise, shareowners usually address them in analysts' meetings or through direct contact of some kind but rarely in a corporate governance context.

In India, a company is required by law to hold an AGM every year and to hold it where the company's registered offices are located. As a result, some companies hold AGMs in remote locations, which has the effect of discouraging shareowner attendance, particularly given transportation difficulties in such a large country. In most cases, board members are proposed by the board and elected by shareowners at the AGM. Shareowners may nominate a candidate, at least 14 days before the AGM, but they seldom exercise this right.

Board members in India are elected to staggered terms, and not all board members stand for reelection. Board members of Indian companies are typically elected to serve for three years; one-third of those board members are required to retire annually by rotation (rotational directors). In the Indian board election system, at least two-thirds of the board is made up of rotational directors and up to one-third of the board members can be non-rotational directors. Usually, non-rotational directors are promoters, executive directors, or nominee directors and may not be subject to election by shareowners.

Under SEBI's listing agreements, companies are required to have at least one-third independent board members if the chair and CEO roles are separated and one-half if such functions are combined. In India, for the positions of chair and CEO to be held by the same person is not common, but this practice is more likely in family-controlled companies.

A major concern in India is overstretched board members. Currently, India's board members may serve on the boards of up to 20 listed companies, and many board members are on at least 10 boards. In such circumstance, it is difficult for an individual to make an effective

contribution and ensure good governance. Part of the problem is a lack of experienced board members, particularly given the recent surge in listings and the growth in the size and international focus of many Indian companies.

Foreign investors are subject to ownership limitations in India. Until September 2001, foreign funds could own no more than 49 percent of any Indian company. At that time, the Reserve Bank of India, the country's central bank, raised the foreign ownership ceiling above 50 percent in most sectors, thus allowing foreign investors to have majority control of Indian companies in certain cases. Currently, the ownership limitation ranges from 26 percent to 100 percent (100 percent meaning no foreign ownership restrictions). The limitation depends on each sector/industry; mining, arms, ammunition, and atomic energy are the key sectors where 0–49 percent is the limit. The higher ceiling is allowed only after the company obtains shareowner approval at an AGM. Although these resolutions have started to appear on meeting agendas, most companies have kept some limitation (typically, 74 percent, which is just below the threshold to alter the articles of association and approve mergers); few listed companies have lifted foreign ownership restrictions completely.

Acquisition of shares or control of a publicly listed Indian company is governed by SEBI under the Substantial Acquisition of Shares and Takeovers Regulations, also known as the Takeover Code, which requires any person or corporate body whose share ownership crosses the 5 percent threshold to disclose it to the stock exchange and to SEBI. If an acquirer crosses the 15 percent threshold, the acquirer must make an offer for at least an extra 20 percent of the shares and deposit 10 percent (25 percent in case of small companies) of the value of its bid in an escrow account. The offer must be in cash or by exchange of shares. Given their substantial share ownership, government-owned financial institutions historically have played a critical role in India's takeovers; they also typically account for government views and policies, which favor the status quo.

Legal and Regulatory Framework

Corporate governance initiatives began in the late 1990s with the publication of a voluntary Code of Corporate Governance by the Confederation of Indian Industries and with SEBI's development of Clause 49 of the Listing Agreement, which was the first formal regulatory framework for listed companies directed specifically to corporate governance. Clause 49 resulted from the findings of the Kumar Mangalam Birla Committee on Corporate Governance established by SEBI. Clause 49, which is still in use, recently underwent a major review, with amendments that went into effect from the beginning of 2006.

All Indian companies are governed by the Companies Act of 1956 as amended, and the act is administered by the Ministry of Company Affairs (formerly, the Department of Company Affairs). The National Company Law Tribunal (formerly, the Company Law Board) is the enforcement arm under the Companies Act. Enforcement and implementation of laws and regulations remain important challenges in India, however, because weak regulation has been a concern. The Securities and Exchange Board of India Act is currently being amended to give SEBI more powers of investigation and prosecution.

In India, ordinary shares are the only voting shares permitted for trading and follow a one share, one vote system. Preference shares (preferred shares) carry no voting rights and are not permitted for trading. Proxy voting is unrestricted in India. Shareowners may vote in person or through proxies who have registered with the company at least 48 hours before the meeting. Shareowners may vote by show of hands or, if they own at least 10 percent of the total voting rights, may demand a poll. Usually, voting is done by a show of hands—that is, one vote per person attending the meeting regardless of the number of shares the shareowner may hold or present. This practice may lead to many votes being approved only on a show of hands, which may not reflect the will of a balance of proxies.

There is no provision for online voting, and proxies for a general meeting are required to be deposited at the company's registered office. There is provision for a postal ballot, which is a ballot or vote held outside of the general meeting. In such a case, ballots can be mailed to the company's registered office. A meeting is not held in these cases.

No cumulative voting is allowed in the election of board members. Shareowners have strong rights when it comes to calling meetings outside of the AGM, where shareowners vote on board members and other major issues. An extraordinary general meeting of shareowners may be called by shareowners with a minimum of 10 percent of paid-up voting capital.

India has two types of company resolutions: ordinary and special. Ordinary resolutions are passed with the approval of more than 50 percent of the shareowners present and voting; special resolutions require approval by 75 percent of those present and voting. Ordinary resolutions are required for appointment of external auditors, remuneration of board members, payment of dividends, approval of annual accounts, and the routine matters of a company. Shareowners can pass an ordinary resolution to appoint board members as well as to remove them, and the resolution does not need to be for cause. Certain fundamental corporate decisions, such as capital increases, the buyback of shares, proposed mergers, changing the name of the company, and altering the memorandum and articles of association, require special resolutions. Management or the board cannot unilaterally undertake the actions that require a special resolution.

Key organizations with information relevant to shareowner rights in India include the following:

Ministry of Finance (www.finmin.nic.in)

Reserve Bank of India (www.rbi.org.in)

Securities and Exchange Board of India (www.sebi.gov.in)

Ministry of Corporate Affairs (www.mca.gov.in)

Bombay Stock Exchange Limited (www.bseindia.com)

National Stock Exchange (www.nseindia.com)

Confederation of Indian Industry (www.cii.in)

Institute of Company Secretaries of India (www.icsi.edu/default.aspx)

Institute of Chartered Accountants of India (www.icaai.org)

National Foundation for Corporate Governance (www.nfcgindia.org)