

Indonesia

Summary of Current Shareowner Rights

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

Shareowners in Indonesia have reasonably strong rights—they may elect or remove board members and vote on the board’s remuneration—but because Indonesian companies often are controlled by dominant families or controlling shareowners, public shareowners’ interests can be overridden more than in some other markets.

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)?	81%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	0%	The legal and regulatory framework provides for the disclosure of related-party transactions but only if they exceed 10% of revenue or 20% of equity. This regulation may account for the low number of companies researched for this manual that have disclosed related-party transactions. Related-party transactions amounting to at least 10% of corporate revenue or 20% of equity, and those involving conflicts of interest for a board member, commissioner, or principal shareowner must be approved by the shareowners.
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	80%	The presence of controlling shareowners is a particularly dominant feature of the Indonesian market, which tends to negate the effectiveness of some minority shareowner rights.
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	Sometimes	40% of the companies researched for this manual require shares to be deposited.
Are there share ownership limitations in this market?	Yes	Transportation; local marine shipping; film production, distribution, and exhibition; radio and television broadcasting and newspapers sectors; some trade and retail services; and forestry concessions are closed to all foreign investment. In July 2000, however, the government removed foreign ownership limitations on banks and on companies publicly traded in Indonesian stock markets.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	
Do companies adhere to a majority voting standard in the election of board members?	Yes	There is no regulation by corporate law, but majority voting in the election of board members is an Indonesian practice. Board members do not resign prior to the annual meeting.
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is relatively rare in the Indonesian market.
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 of the board of commissioners (which oversees the board of directors) must be approved by the shareowners.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Sometimes	Companies vary in the approval of remuneration of their boards of directors. Some companies have the remuneration of the board of directors approved by the board of commissioners, whereas other companies require the approval of the shareowners as well as the board of commissioners. Of the companies researched for this manual, 33% provide for shareowner approval.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Sometimes	This right is subject to the articles of association. The articles of association are not always easily obtainable.
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	Holders of a minimum of 10% of the total shareowners' votes may convene an extraordinary meeting.
What percentage of companies include golden shares in their capital structure?	0%	
Are shareholder rights plans (poison pills) allowed in this market?	No	No companies have poison pills.
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	Standard legal right

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies require a supermajority vote to approve a merger?	Yes	Approval of 75% of the shareowners' vote is required.
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	No	
Are class action suits commonly used in this market?	No	Class action suits are allowed but are not common.
Are derivative suits commonly used in this market?	No	Derivative suits are possible for those owning at least 10% of the shares, but they are not common.

Current Engagement Practices and Shareowner Rights Developments

In Indonesia, the shareowner engagement process is not yet as active as it is in some other developing markets, but a growing number of activist and educational organizations are working to improve corporate governance. The Indonesian Society for Transparency, the Indonesian Institute for Corporate Governance, and the Forum for Corporate Governance in Indonesia are among the most prominent organizations supporting corporate engagement.

Indonesian companies have a two-tier board structure consisting of a board of directors (BOD) and a board of commissioners (BOC). The BOD is in charge of the day-to-day management of the company, whereas the BOC oversees and advises the BOD.

Companies listed on the Indonesia Stock Exchange are required to have independent commissioners in proportion to the number of shares held by non-controlling or public shareowners; in any case, the BOC cannot be composed of fewer than 30 percent independent commissioners.

Members of the BOD and BOC are elected annually at the general meeting. Although the process may vary somewhat, common practice is that shareowners have the authority to approve, with a 50 percent vote at the general meeting, the remuneration of the board members. Some companies require that the remuneration of the BOD be approved by the BOC and the shareowners; other companies require the approval of only the BOC. Shareowners may remove members from the BOD in either an annual or an extraordinary shareowner meeting.

In October 2006, the National Committee on Governance released a revised Indonesian Code of Corporate Governance. The revised code described the “needs and relevancy of prerequisite conducive situations for good corporate governance,” including “the role of authorities, business community, and public and society at large” and expectations for the general meeting of shareowners, the BOC, and the BOD. New sections on business ethics and a code of conduct were added. The code is not mandatory, however, so many companies do not clearly report their corporate governance practices to the public. Significantly, the Indonesian government requires that companies incorporate the code’s basic principles when forming their own corporate codes of best practice.

No anti-takeover devices are available for Indonesian companies; poison pills are not used in Indonesia. Companies must have the approval of 75 percent of the total shareowner vote to allow major corporate transactions, such as mergers and acquisitions. Notably, the ownership structure of companies in Indonesia is characterized by concentrated ownership, family-owned businesses, and controlling shareowners. Because of this structure, the voice of the dominant holders quite often takes precedence over that of the public shareowners.

In June 2008, the Capital Market Supervisory Agency released an amendment to the takeover regulations stating that a mandatory offer can be triggered only when a shareowner crosses the 50 percent (previously, 25 percent) threshold. The amendment also removed the opportunity to take a company private or delist a company. An investor can make the mandatory offer for 100 percent of all the shares of the company but must release 20 percent of the shares to the public within two years after the tender offer is completed.

Legal and Regulatory Framework

The Indonesian Company Law of 1995 is the most important framework for current corporate governance legislation. The principal law governing the stock markets is the Capital Market Law, which is intended to ensure that the capital market processes proceed in an orderly and fair manner and that shareowners are protected from harmful and illegal practices. The Capital Market Law is implemented by the Capital Market Supervisory Agency (BAPEPAM), which regulates the Indonesia Stock Exchange. Disclosure and key market regulations are provided in the Listing Rules. BAPEPAM is not a fully independent agency; it is accountable to the Minister of Finance, who appoints the chair (for no fixed term). The takeover provisions of the Company Law are overseen by BAPEPAM.

A number of mechanisms are available for shareowner engagement and activism in Indonesia, where the one share, one vote system is widely used. Although cumulative voting is not prohibited in Indonesia, it is not routinely used. Another significant mechanism is the shareowners' right to call meetings outside the annual general meeting. Shareowners representing 10 percent of the total vote may convene an extraordinary meeting. Such a meeting can be used to put forward a resolution to request a change in the company's articles of association, which the BOD does not have the authority to change without shareowner approval. Shareowners representing 10 percent of the total vote may also submit items for the agenda of the annual meeting.

An extraordinary general meeting can be used to remove a board member, but two-thirds of the total voting shares must be present at the shareowners' meeting to do so, which makes it difficult for shareowners to remove a board member. Changing the company's articles of association also requires two-thirds of the total voting shares to be present at the shareowners' meeting.

Indonesia has no regulations concerning term lengths or the election of board members, and although majority voting during the election of board members is common, companies in Indonesia are free to determine what percentage of approval is required in such a shareowner vote. Some companies require shareowners to deposit their shares before voting. Each company may determine its own maximum term for its board members in the articles of association. Notably, retired or active government officials are commonly appointed to a BOC in the Indonesian market, presumably for the company to gain access to the respective government institution.

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

- Ministry of Finance in Indonesia (www.depkeu.go.id)
- Capital Market Supervisory Agency, BAPEPAM (www.bapepam.go.id)
- Indonesian Society for Transparency (www.transparansi.or.id)
- Indonesia Stock Exchange (www.idx.co.id)
- Forum for Corporate Governance in Indonesia (www.fcgi.or.id)
- National Committee on Governance (www.governance-indonesia.com)
- Asian Development Bank Institute (<http://adbi.adb.org>)
- World Bank Group (www.worldbank.org)
- Asian Corporate Governance Association (www.acga-asia.org)