Shareowner Rights across the Markets

A Manual for Investors

CFA Institute
Centre for Financial Market Integrity

Glossary of common terms in this manual

BLOCKED SHARES (DEPOSITED SHARES)
: Shares that must be deposited for a certain period of time or blocked from trading for that period of time in order to be voted at the annual meeting.

CLASS ACTION LAWSUIT
: A lawsuit filed on behalf of a group of shareowners who share the same complaint. Shareowners in such a case are usually represented by one lawyer or group of lawyers.

CONTROLLING SHAREOWNER
: A shareowner who owns enough voting rights of a company's shares (usually but not necessarily a simple majority) to control any votes taken at that company.

CUMULATIVE VOTING
: Allows shareowners to cast all of their votes for one board candidate. For example, if a shareowner owns one million shares, each share is allowed one vote, so if ten board members are up for election, that shareowner is able to cast ten million votes for one director instead of one million votes for each individual director. Cumulative voting improves the chances of a minority shareowner naming a representative to the board.

DERIVATIVE LAWSUIT
: A lawsuit brought by shareowners on behalf of a corporation against a third party. Shareowners may initiate such a suit against a third party if they believe that they have been wronged and that company managers have failed to act. For example, such a lawsuit may be initiated by shareowners against a manager or director of the company itself.

EXTRAORDINARY GENERAL MEETING (SPECIAL MEETING)
: A meeting of shareholders outside the annual general meeting; usually, the meeting is called to address a special event or circumstance.

FAIR PRICE PROVISION
: A takeover defense that requires approval of a merger proposal in the event of a two-tiered tender offer (different prices offered to different shareowners) for the company's shares. Such a provision ensures that all shareowners receive the same "fair" price in the event of a takeover. Such a provision is usually written into a company's bylaws or articles of incorporation (charter).

GOLDEN SHARE
: A special type of share that gives the holder of that share veto power over certain corporate actions. Such a share is most common in industries considered strategic in certain markets.

MAJORITY VOTING
: A voting standard whereby a director must receive a majority of votes (depending on the market, majority of votes cast, or majority of votes available) to win election as a director. In contrast, a plurality voting system, still used in some Canadian and U.S. companies, allows directors to win election to the board if they receive at least one vote—as long as they are running unopposed for that board seat.

POISON PILL (SHAREHOLDER RIGHTS PLAN)
: A takeover defense intended to discourage a hostile takeover by making the stock of the target company less attractive. For example, an unwanted takeover offer may trigger a poison pill that offers only existing shareowners other than the unwelcome acquirer the ability to buy new shares in the company. The effect is to dilute current shares and raise the cost of acquisition. Poison pills can be used to drive up the price to an acquirer or to entrench management, so approving such plans by shareowner vote is best practice.

PROXY
: A person or entity authorized to vote on behalf of a shareowner of a corporation. Shareowners who do not attend an annual meeting may vote their shares by proxy by allowing an agent to cast those votes on their behalf, by submitting a written ballot in advance, or by completing a telephone- or internet-based ballot.

RELATED-PARTY TRANSACTION
: A transaction entered into by at least two entities in which one has control over the other or in which the parties come under the same control of another. The International Accounting Standards Board defines a related-party transaction as a transfer of resources, services, or obligations between related parties regardless of whether a price is charged. The Financial Accounting Standards Board defines it as a transaction between related parties even though it may not be given accounting recognition; for example, one entity may receive services from a second, related entity without charge and without recording a receipt of services.

SUPERMAJORITY VOTE
: A substantial shareowner majority above 50 percent—usually 67 percent or greater—required to approve certain transactions, such as a merger or acquisition.

The mission of the CFA Institute Centre for Financial Market Integrity is to be a leading voice on issues of fairness, efficiency, and investor protection in global capital markets and to promote high standards of ethics, integrity, and professional excellence within the investment community.

CFA Institute, with more than 100,000 members worldwide, is the not-for-profit professional organization that awards the Chartered Financial Analyst® (CFA) and Certificate in Investment Performance Measurement® (CIPM) designations.

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Shareowner Rights across the Markets:
A Manual for Investors

CFA Institute Centre for Financial Market Integrity

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Introduction

Savvy investors understand the benefits of diversification—that investing across industries, asset classes, and markets will help them meet investment goals. Ideally, to reap the greatest rewards of a diversified portfolio, an investor will incorporate shares in companies around the globe. This strategy is complicated, however, because standards and practices may differ dramatically among international markets. As a result, shareowners must know their rights in the markets where they invest.

In the pages that follow, we provide details of the current state of shareowner rights in 10 developed markets and 12 emerging markets in a format that allows direct comparisons of similar standards among markets. Each individual market report contains a brief tabular list of basic rights for shareowners in that market followed by a detailed explanation of the key features and rights unique to that market. Each report also contains a brief summary of the current practices, recent developments, and legal and regulatory frameworks in each jurisdiction.

Shareowner Rights across the Markets: A Manual for Investors is intended to serve as a reference tool that will give investors the information they need to be informed, responsible shareowners. Our research is designed to provide shareowners a clear understanding of their rights and a means to compare those rights with the rights of shareowners in other—in some cases, competing—jurisdictions.

Because we believe no single set of corporate governance standards will suit every market, this manual does not provide a list of best practices. For those who do seek corporate governance codes for a specific market, we have included references to local codes wherever possible.

This manual is an extension of our earlier investor education pieces, such as *The Corporate Governance of Listed Companies: A Manual for Investors*. We recommend a review of those resources for investment professionals seeking further information about the corporate governance and shareowner rights standards governing the companies in which they invest. (Visit our website for further resources: www.cfainstitute.org/centre.)

The CFA Institute Centre for Financial Market Integrity uses the term "shareowner" throughout this manual rather than the term "shareholder." We do so deliberately because share *holding* connotes a limited or passive engagement, comparable to the role of a custodian, whereas share *owning* connotes more active participation in exercising one's rights and active participation is the framework in which we present the information in this manual. In ownership, those invested in the shares must understand the rights afforded to them in order to understand the assets they own and to maximize the value in those assets.

The Importance of Shareowner Rights to Companies and to Shareowners

Shareowners and those who manage shares for others need reasonable, timely access to information about the events and issues that may affect their investments. Among investor considerations are their rights to adequately participate in share voting, their ability to engage the board and management about their concerns, and transparency concerning board actions that will affect a shareowner's wealth. Shareowners should know their rights in order to make the most informed investment decisions, but in some jurisdictions, it is difficult for shareowners to know what rights they have, let alone to find specific reports and information.

As demonstrated by the unique rights described for each market profiled in this manual, companies that are similar but whose shares are sold in different markets may have very different risk-and-return profiles because of the rights a shareowner may or may not hold in each market.

Having a thorough understanding of their rights in various jurisdictions also allows a shareowner to address and mitigate agency conflicts inherent in the global environment in which corporations now operate. In this world, where capital flows instantaneously across borders at the stroke of a key, investors will benefit from education about the rights they enjoy in the diverse markets in which they invest.

Moreover, companies are increasingly aware that a link exists between strong shareowner rights and lower costs of equity capital.[1] Those who go to the public markets to raise capital understand that the capital is likely to cost less if investors believe they are adequately protected. Investors have historically responded well where strong shareowner rights protect their investments and ensure that their interests are represented and their voices heard.

About the Creation of This Manual

The Centre contracted with GovernanceMetrics International (GMI), a firm that rates corporate governance, to provide data on shareowner rights in the markets profiled in this manual. GMI generally rates companies only if they are included in a major market index, such as the MSCI Europe/Australasia/Far East Index, Russell 1000 Index, or S&P 500 Index; companies that are not included in such an index are generally not covered by GMI. Therefore, only companies found in major indexes in each market are represented in areas of this manual that deal with quantitative measures, such as the average percentage of independent board members on public company boards or the percentage of companies that report significant related-party transactions.

The Centre will periodically review and provide updates about shareowner rights standards throughout the global marketplace. (Visit our website for details.)

Another note of importance is the meaning of "independent board members" as defined by GMI. Investors should note that the definition of director independence will vary from market to market, and investors should be prepared to define such independence and determine its importance for themselves. GMI's rather rigorous definition follows.

A board member will generally *not* be classified as independent by GMI if any of the following apply:

1. Company employee within the last five years. However, unless other criteria apply, we exclude interim CEOs (e.g., someone who stepped in as a result of a crisis) who were independent board members prior to becoming CEO and whose tenure was less than one year.
2. Ten percent (or greater) shareowners or shareowner groups or employees or other affiliates of such ten percent shareowners or shareowner groups who have business relationships with the company, are engaged in related-party transactions, or are represented within senior management will be considered non-independent. Ten percent (or greater) shareowners or shareowner groups whose only interest in the company is as a financial investment will be considered independent, unless other criteria apply.
3. An employee or board member of a subsidiary or an affiliated business in which the company controls at least 10 percent of the voting power. However, we exclude board members of holding companies who also serve as non-executive board members of wholly owned subsidiaries. Unless other criteria apply, these individuals will be classified as independent.
4. Within the last five years has been an employee of a predecessor company that represented more than 50 percent of the company's sales or assets when it became part of the company or an employee of a business acquired by the company.
5. Anyone providing personal/professional services to the company or to a member of the company's senior management for a fee of at least USD120,000 per year.
6. Within the last three years has been an owner, partner, employee or paid adviser to a professional services firm (e.g., law firm, accounting firm, insurer, underwriting firm, commercial bank, information technology consultant, management consultant) that has provided services of at least USD120,000 per year to the company or to a member of the company's senior management.

[1] Cheng, C.S. Agnes, Denton Collins, and Henry He Huang, "Shareholder Rights, Financial Disclosure and the Cost of Equity Capital," *Review of Quantitative Finance and Accounting*, vol. 27, no. 2 (September 2007):175–204.

7. Owner, partner, employee, paid adviser, or board member of a firm that within the preceding or current fiscal year has sold goods or services to the corporation for a fee representing more than one percent of the sales of the supplier or the corporation. GMI will also look carefully at board members who are owners, partners, employees, board members, or paid advisers to firms that purchase goods or services from the corporation, but these relationships are generally less of a concern than the former category.
8. Within the last three years has been an employee of a company at which an employee of the company in question also serves as a board member ("interlocked board members").
9. Company founder(s), regardless of their current employment status with the company, current share ownership, and/or current economic interest in the company.
10. Within the last five years has been an employee or other representative of a former parent company following a spin-off or divestment, regardless of the parent's current interest.
11. A board member who is nominated by an entity whose voting interest in the company exceeds 5 percent or is represented within management. Board members nominated by 5 percent (or greater) shareowners or shareowner groups whose only interest in the company is as a financial investment will be considered independent unless other criteria apply. Board members nominated or elected by a separate class of stock are considered non-independent when a majority of that class of stock is controlled by a person, entity, or group.
12. A non-executive chairman whose annual cash compensation is equal to or greater than 50 percent of the total cash compensation (salary plus bonus) of any of the named executive officers or is more than five times that of other non-executive board members (whichever is greater).
13. A board member who is an employee of a company owned or run by a non-independent board member or a member of management.
14. A relative of any individual described above.

GMI also looks carefully at board members who are employees, board members, or trustees (as opposed to general members) of a nonprofit organization to which the company made charitable contributions of USD100,000 or more in the last fiscal or calendar year.

Australia

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 103 companies in Australia as of 15 May 2008.

Although shareowners in the Australian market generally have strong shareowner rights, terms for members of boards of directors are staggered, and the appointment of a managing director is usually not subject to shareowner approval. Board members may be removed only by shareowners, not by the board; the board also may not alter the company's constituent documents without shareowner approval.

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)?	71%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	20%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	2%	Relatively rare in the Australian market
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations are not common but do apply in sensitive industries, such as media, telecommunications, and aviation.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Yes	This practice is standard in Australia.
Do companies allow for cumulative voting in the election of board members?	No	This type of voting is not the practice in Australia.
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	This ability is a (nonbinding) requirement in Australia.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes, sometimes	Approval by shareowners of non-board member executives' incentive plans is not required in Australia. Share plans for board members (including executive board members) are subject to shareowner approval, although a company can acquire shares for a board member in a non-dilutive purchase without shareowner approval. Of the companies researched for this manual, 45% have sought shareowner approval for equity-based incentive plans.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right is standard.
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 holding a minimum of 10% of shares (or 100 shareowners) may call an extraordinary general meeting.
What percentage of companies include golden shares in their capital structure?	0%	No Australian companies have golden shares. One of the companies listed in Australia that was researched for this manual has a golden share. The company is Telecom Corporation of New Zealand, which is a New Zealand–based company, and the government of New Zealand holds a golden share.
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	This right is a legal requirement.
Do companies require a supermajority vote to approve a merger?	In many cases	Acquisition bids can be successful at the 50% level to gain control, and the bidders are generally able to continue on to full acquisition by compulsion once the bidder reaches 90%. Mergers by schemes of arrangement are also possible and are more common for listed trusts. These mergers require approval by 75% of shareowners in a general meeting.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
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	This is a legal requirement.
Are class action suits commonly used in this market?	No	Although not unheard of, they are not common.
Are derivative suits commonly used in this market?	No	Although not unheard of, they are not common.

Current Engagement Practices and Shareowner Rights Developments

In Australia, the shareowner engagement process is reasonably mature. The most prominent body in corporate engagement is the Australian Council of Superannuation Investors, which represents many major superannuation (pension) funds when it approaches listed companies seeking governance changes. In addition, engagement consultants are increasingly prominent in Australia. Increased engagement in recent years is the product of reasonably strong shareowner rights, pressure on investment managers to vote their shares, and the introduction of a shareowner vote on compensation.

All boards are staggered over a three-year rotation process in Australia. This approach has been standard practice in Australia for decades and is unlikely to change. Although this process may entrench boards, the ability of shareowners to remove board members without cause by calling an extraordinary general meeting (EGM) does mitigate the effect of staggered board terms. New board members may be appointed to fill vacancies between annual general meetings, but their names must be submitted for approval by shareowner election at the next available general meeting (annual or extraordinary). Managing directors (CEOs) are appointed by the board usually to a contract of several years, and the appointments are not subject to shareowner approval.

Takeover rules are not a major deterrent to a bidder in Australia and serve as added pressure on companies to perform. Poison pills are not used in Australia. The Takeovers Panel (a quasi-adjudicatory body established as the arbiter of disputes relating to takeovers under the Corporations Law), which is charged with overseeing mergers and acquisitions, is largely composed of market-based practitioners. Although the Takeovers Panel is empowered to take action to ensure fairness in bids, it generally favors minimal intrusion, allowing the market to determine the success or failure of a bid. The result is a bid process in Australia that is fairly open in comparison with the processes in most other markets.

Australian companies are subject to continuous disclosure rules and cannot make selective briefings to certain shareowners. This requirement has been seen as a deterrent to shareowner communication by some but not as a reason to avoid engaging with companies.

Takeover legislation is pending that might address those situations when shareowners gather to discuss collective action against a company. The Australian market regulator, the Australian Securities and Investments Commission (ASIC), has issued a class order to protect against an inadvertent breach of the takeover legislation when investors are discussing voting intentions for a shareowner meeting. How this class order relates to discussions outside the context of an upcoming vote is unclear. Until this aspect is clarified, such discussions remain a potential source of liability for those involved in corporate engagement, as the class order has not been fully tested in any legal action.

In June 2008, the Parliamentary Joint Committee on Corporations and Financial Services published *Better Shareholders—Better Company: Shareholder Engagement and Participation in Australia*. This manual offers suggestions for enhancements to the engagement process in Australia. Recommendations include the following: abolish the 100-member rule for calling an EGM, clarify shareowners' ability to meet and discuss their intentions outside the context of an upcoming vote, improve disclosure of derivative positions, prevent proxy holders with different vote recommendations from vote "cherry picking," and prohibit vote renting.[2]

Legal and Regulatory Framework

Key shareowner rights are contained in the Corporations Law, which embodies all corporate laws and takeover provisions affecting Australian companies. The Corporations Law is administered by ASIC, which has wide-reaching enforcement powers. Disclosure and key market regulation is also found in the Listing Rules of the Australian Securities Exchange, which has legislative backing. ASIC can get involved in listing issues if criminal enforcement is indicated. The takeover provisions of the Corporations Law are also overseen by the Takeovers Panel, which is largely composed of industry practitioners and takes a market-based approach to the provisions with the aim of ensuring fairness in the takeover process.

A number of mechanisms are available in Australia for shareowner engagement and activism. The one share, one vote system is fully entrenched in Australia, and despite the rare attempts by some companies to work around it, it is still the standard requirement. Shareowners also have strong rights when it comes to calling meetings outside the annual general meeting. An EGM of shareowners may be called by shareowners representing 10 percent of shares or totaling 100 shareowners. This meeting may be used to put forward a resolution to change the memorandum of association (equivalent to the certificate of incorporation in some markets) or articles of association (equivalent to bylaws), neither of which can be changed by the board or management and can be changed only by a resolution of the shareowners.

An EGM also can be used to remove a board member from office. Board members may be removed without cause in Australia but only by shareowners in a general meeting; they cannot be removed by the board, which gives shareowners serious clout because it reinforces the sense that the board is subject to the will of shareowners. Furthermore, all board members are subject to election on a periodic basis by majority vote and must resign before submitting themselves for reelection at an annual general meeting.

Shareowners can issue proxies for general meetings without restriction and are not required to block shares in order to vote. Recently, market participants have raised concerns that renting shares and other activities could separate economic interests from voting interests. These issues are included in the report by the Parliamentary Joint Committee on Corporations and Financial Services and are expected to be the subject of legal or regulatory reform in the near future.

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

Australian Securities and Investments Commission (www.asic.gov.au)

Australian Securities Exchange (www.asx.com.au)

Australian Council of Superannuation Investors (www.acsi.org.au)

Australian Institute of Company Directors (www.companydirectors.com.au)

Chartered Secretaries Australia (www.csaust.com)

Centre for Corporate Law and Securities Regulation (http://cclsr.law.unimelb.edu.au/)

Australasian Investor Relations Association (www.aira.org.au)

Australian Institute of Superannuation Trustees (www.aist.asn.au)

Takeovers Panel (www.takeovers.gov.au)

Corporations and Markets Advisory Committee (www.camac.gov.au)

Australian Treasury (www.treasury.gov.au)

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[2]Vote renting refers to the borrowing of shares in order to vote on a transaction to secure a desired outcome.

Brazil

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 58 companies in Brazil as of 15 May 2008.

Leaders in the Brazilian securities market have made great efforts in recent years to distinguish Brazil from other prominent emerging markets in order to attract investment; as a result, the market has evolved rapidly and undergone significant change. A newly created set of voluntary listing levels focused on corporate governance has clearly improved accountability and thereby enhanced Brazil's image as an investor-friendly market. Nevertheless, the high percentage of publicly held companies with controlling shareowners continues to deter some foreign investors.

Although listed companies are required to disclose their bylaws, these documents do not always explicitly address shareowner rights (e.g., majority or plurality voting in election of board members and the right to act in concert through written communication). Many companies do not post other key governance documents (e.g., corporate governance guidelines and committee charters) on their corporate websites. Moreover, only some companies make their key governance documents, such as bylaws or articles of association, easily accessible to the public, which prevents analysts and investors from fully understanding shareowners' rights.

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)?	34%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	NA	The *Comissão de Valores Mobiliários* (CVM or Securities and Exchange Commission) and the *Instituto Brasileiro de Governanca Corporativa* (Brazilian Institute of Corporate Governance or IBGC) recommend that related-party transactions be disclosed, that they be on market terms, and that companies not make loans to related parties. IBGC recommends that the fairness of a related-party transaction should be based on an independent assessment; CVM recommends also that minority shareowners be given the opportunity to request that an independent entity assess the fairness of a related-party transaction. The stock exchange, Bovespa, has different rules for special corporate governance levels (Levels 1 and 2 and the Novo Mercado). Of the 37 companies researched for this manual that do disclose related-party transactions, 16% reported such transactions of 1% or more within the last 3 years.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	74%	
Is voting by proxy permitted?	Yes	This practice is common in Brazil.
Must shares be deposited or blocked from trading in order to vote?	Mostly, no	Few companies specify that shares must be deposited.
Are there share ownership limitations in this market?	Mostly, no	Only a few companies in "sensitive" industries, such as aerospace and defense, have such limitations.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Shareowners in Brazilian companies can appoint proxies. The proxy may be a shareowner, a corporation officer (e.g., the company secretary), a lawyer, or a financial institution.
Do companies adhere to a majority voting standard in the election of board members?	Mostly, yes	
Do companies allow for cumulative voting in the election of board members?	Yes	Any shareowner holding at least 5% of shares may request that cumulative voting be adopted.
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?	No	Shareowners do not affect company remuneration in this way.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	Under Brazilian corporate law, shareowner approval is required for the adoption of equity compensation plans.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Usually, no	Although a general right to propose a dissident resolution at an annual general meeting is not provided for under relevant laws, dissident resolutions can be put on the agenda of an extraordinary general meeting (EGM) by the person requesting that meeting. To be put on the agenda, the proposal requires the support of 10% of company shares. Therefore, although a dissident resolution is technically possible, this right is difficult to exercise in practice.
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 representing at least 5% of shares have the right to convene an EGM or special meeting.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What percentage of companies include golden shares in their capital structure?	3%	
Are shareholder rights plans (poison pills) allowed in this market?	No	Because of the high concentration of voting power in Brazilian companies, takeovers have been relatively uncommon. More companies without a single controlling shareowner are emerging, however, particularly in the Novo Mercado listing segment (see below). In these companies, usually a controlling shareowner group will form through a shareowners' agreement. Some companies are also beginning to adopt provisions in their bylaws that require a shareowner to make a mandatory tender offer if the shareowner acquires a number of shares beyond a threshold percentage—usually 20%. These "porcupine provisions," which are sometimes mistakenly referred to as poison pills, afford minority shareowners an opportunity to tender their shares at a fair price. The threshold for the mandatory bid is lower than usual in the Brazilian market but not out of line with some thresholds in other markets.
If shareholder rights plans are in use, do they have to be approved by shareowners?	No	As stated above, shareholder rights plans are not currently used in Brazil. But other takeover defenses used in this market require shareowner approval.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	
Do companies require a supermajority vote to approve a merger?	Sometimes	This right must be determined on a company-by-company basis. It is usually contained in the bylaws. Although not commonly found, some companies may require a supermajority without disclosing it.
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	Only companies listed in the Novo Mercado section are (voluntarily) subject to a fair price provision.
Are class action suits commonly used in this market?	No	Such lawsuits are uncommon in Brazil.
Are derivative suits commonly used in this market?	No	These lawsuits are uncommon in Brazil.

Current Engagement Practices and Shareowner Rights Developments

In December 2000, Brazil's primary stock exchange, Bovespa, launched a separate listing segment, *Novo Mercado* (New Market), providing publicly held companies an opportunity to voluntarily comply with more stringent corporate governance rules than are required by Brazilian corporate law and the CVM. The Bovespa has four levels of listing requirements—Bovespa's original listing requirements, Level 1, Level 2, and the Novo Mercado level—with increasing degrees of rigor (the key requirements are listed below). Between its inception in 2000 and June 2008, nearly 100 listed companies had joined the Novo Mercado.

Given the highly concentrated voting power found in the vast majority of publicly held companies in Brazil, shareowner engagement practices are severely limited. It is common in Brazil for the founding family of a company to enjoy a majority shareholding position; usually, this ownership structure is maintained by issuing both voting common shares and nonvoting preferred shares. Often, the controlling shareowner group owns the majority of the common shares and elects a majority of the board members.

Brazil does not require companies to maintain a certain number of independent board members, although the law stipulates that no more than one-third of board members may be executives of the company. (At least 20 percent of the board members of companies listed on Level 2 or the Novo Mercado must be independent.) Minority common shareowners holding at least 15 percent of a company's outstanding common shares have the right to elect one representative by a majority vote.

Preferred shareowners are also entitled to elect a board member when at least 10 percent of shareowners are present at the meeting or 10 percent of preferred shares are under free float[3] (regardless of whether 10 percent of shareowners are present or represented at the meeting). If minority shareowners do not meet the 15 percent threshold for common shares or the 10 percent threshold for preferred shares, they may still elect a board member as a group if they can muster 10 percent of the *total* shares.

Cumulative voting in the election of board members is another method minority shareowners of common stock can use to gain representation on the board. Under Brazilian corporate law, any shareowner holding at least 5 percent of a company's outstanding common shares may request that cumulative voting be adopted. A recent study of Brazilian corporate governance[4] found that, in practice, however, cumulative voting is seldom used; only 12 percent of the companies surveyed reported that cumulative voting had been used in the past five years.

The power and influence wielded by controlling shareowners has diminished somewhat over the past several years. For example, companies listed on the Novo Mercado must maintain a free float of at least 25 percent of the shares representing their capital stock. In July 2008, in an effort to make company managers more accountable to minority shareowners, legislation was enacted that requires mutual funds to vote their shares at company meetings. Opinion is divided, however, over the impact this regulation will have on companies; if mutual funds are required to vote, some corporate governance analysts argue, they may simply vote in favor of management, thereby muffling the dissident voices of more informed and active shareowners.

"Tag-along" rights—sometimes referred to as "takeout" rights—are an aspect of shareowner rights unique to Brazil. Pursuant to Brazilian corporate law, a new controlling shareowner who acquires 50 percent of the common shares is required to offer to buy all remaining common shares at 80 percent of the per-share price paid for the controlling shares. Preferred shareowners are not necessarily entitled, however, to any tag-along rights; that is, minority owners of common shares and owners of preferred shares are subject to inequitable treatment when a change of control occurs. A company listed on Level 2 of the special corporate governance levels is required to grant the same rights to majority and minority owners of common shares, and owners of preferred shares are entitled to 80 percent of the value of any

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[3]Free float is the proportion of shares that are not held by large owners or insiders or shares with sales restrictions.
[4]Black, Bernard S., Antonio Gledson De Carvalho, and Erica Gorga, "An Overview of Brazilian Corporate Governance" (July 2008). University of Texas Law and Econ Research Paper No. 109; Cornell Legal Studies Research Paper No. 08-014; ECGI Finance Working Paper No. 206/2008. (http://ssrn.com/abstract=1003059)

proceeds from a sale. Companies listed in the top tier, the Novo Mercado, are not permitted to issue more than one class of stock and are also required to extend the same rights to all shareowners in such circumstances (100 percent tag-along rights).

Legal and Regulatory Framework

The CVM, the *Conselho Monetário Nacional* (National Monetary Council), and the *Banco Central Do Brasil* (Central Bank) govern the Brazilian securities markets. The Central Bank has the sole authority to grant licenses to brokerage firms and is responsible for regulating foreign investments and foreign exchange transactions. Enacted in 1976, the *Lei das Sociedades Anonimas* (Corporations Law) established distinct rules for privately held companies and publicly held corporations (Law 6.404/76), which fostered the emergence of stock exchanges.

All publicly held companies are registered with the CVM and are subject to reporting requirements. A company registered with the CVM may have its securities traded either on the Brazilian stock exchanges or in the Brazilian over-the-counter market. Under Brazilian law, a company may request that trading be suspended in anticipation of a material announcement. The stock exchange or the CVM may also suspend trading if they believe that a company has provided inadequate information with respect to a material event or has provided inadequate responses to inquiries by the CVM or the stock exchange.

The 1976 Corporations Law provides the majority of legal and procedural restrictions on public companies in Brazil. Board members are allowed to serve for terms of up to three years and may be removed at any time, with or without cause. Usually, board terms are not staggered in Brazil. Pursuant to Brazilian corporate law, the adoption of equity compensation plans requires shareowner approval. Shareowners representing at least 5 percent of shares have the right to convene an extraordinary general meeting.

Brazilian securities regulations require publicly held companies to disclose to the CVM and Bovespa any material development related to their business. Those companies listed on the special corporate governance levels (Levels 1 and 2 and the Novo Mercado) have greater transparency requirements. Companies listed on Level 1 must disclose an annual corporate agenda and consolidated financial statements, but these can be based on local standards. Level 2 and Novo Mercado companies must prepare quarterly and annual financial statements in English and according to international standards, such as U.S. generally accepted accounting principles (GAAP) or International Financial Reporting Standards (IFRS).

An overview of the key requirements for companies listed at each tier of the special corporate governance levels of the Bovespa exchange follows.

Companies listed at Level 1 must

- issue both common and (nonvoting) preferred shares,
- disclose an annual calendar of corporate events,
- disclose quarterly statements with cash flow demonstration (statement of cash flows),
- report related-party transactions exceeding BRL200,000 or 1 percent of the company's net worth, and
- maintain a free float of at least 25 percent of the shares representing their capital stock.

Companies listed at Level 2 must

- issue both common and (nonvoting) preferred shares,
- grant tag-along rights at the minimum of 80 percent to preferred shareowners,
- prepare financial statements in an internationally recognized standard (IFRS or U.S. GAAP) and include full disclosure of material related-party transactions,
- maintain a minimum of 20 percent independent board members, and
- maintain a free float of at least 25 percent of the shares representing their capital stock.

Companies listed at the Novo Mercado Level must

- issue only common shares with voting rights,
- prepare financial statements in an internationally recognized standard (IFRS or U.S. GAAP), which includes full disclosure of material related-party transactions,
- grant 100 percent tag-along rights to all shareowners,
- maintain a minimum of 20 percent independent board members,
- maintain a free float of at least 25 percent of the shares representing their capital stock, and
- disclose related-party transactions involving the greater of BRL200,000 (a bit more than USD100,000) or 1 percent of the company's net worth.

Under Brazilian corporate law, companies are not required to have an audit committee, nominating committee, or corporate governance committee, nor are they required to adopt and disclose a code of ethics. Few Brazilian companies establish standing board committees, but when they do, the committees usually have few decision-making powers and are often composed of inside board members.

A publicly held Brazilian company must provide in its bylaws for an audit board (or fiscal council). The purpose of this separate body, which may not be composed of board members or members of senior management, is to review and express an opinion on the company's financial statements. According to Instruction 381 of the CVM, a company must declare whether its independent auditors supplied any non-auditing services in the past year.

The IBGC, which was created in 1995, has published a "Code on Best Practices of Corporate Governance." The CVM released a similar set of recommendations. Neither of these codes is binding, however, and the "comply or explain" principle is not observed.

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

Comissão de Valores Mobiliários (Securities and Exchange Commission of Brazil) (www.cvm.gov.br)

Sao Paulo Stock Exchange (www.bovespa.com.br/indexi.asp)

Banco Central Do Brasil (Central Bank of Brazil) (www.bcb.gov.br)

Instituto Brasileiro de Governança Corporativa (Brazilian Institute of Corporate Governance) (www.ibgc.org.br)

Conselho Monetário Nacional (National Monetary Council) (www.bcb.gov.br/?CMN)

Canada

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 137 companies in Canada (or 43 Ontario companies, as the case may be) as of 15 May 2008.

Shareowners in the Canadian market have strong shareowner rights. Most boards are elected annually. Although shareowner rights plans are not uncommon, they must be approved by shareowners and generally, because of the shareowner-friendly Canadian legal environment, do not offer companies a strong defense against a takeover. Shareowners representing 5 percent of a company's voting power can convene a special meeting at any time for any purpose, including the removal of board members. Ordinary corporate transactions require majority shareowner approval, although extraordinary corporate transactions require a supermajority vote. Because the largest Canadian public companies are listed on the Toronto Stock Exchange, the Ontario Securities Commission is generally regarded as the lead securities regulatory authority in Canada although each province or territory also has its own regulatory authority.

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)?	71%	69% for companies incorporated in Ontario
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	7%	9% for companies incorporated in Ontario
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	24%	35% for companies incorporated in Ontario
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations are not common, but the federal government limits the level of foreign ownership of companies in various regulated sectors, including telecommunications, broadcasting, media and entertainment, and airlines. No person or institution is allowed to own more than 10% of a Schedule I bank's shares. Schedule I banks are Canadian domestic banks and are authorized under the Bank Act to accept deposits, which may be eligible for deposit insurance provided by the Canada Deposit Insurance Corporation.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies adhere to a majority voting standard in the election of board members?	Yes, but company specific	Majority voting is becoming more common in Canada; 46% of companies in Canada have adopted majority voting. In Ontario, 53% of companies have done so.
Do companies allow for cumulative voting in the election of board members?	Mostly, no	2% of companies in Canada; 5% of companies in Ontario
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?	No	Canadian shareowners do not have this right, but a shareowner proposal on say-on-pay appeared on the ballot at several Canadian companies for their 2008 annual meetings. Although none of the proposals passed, the vote was encouraging enough that similar proposals are being submitted for 2009 annual meetings.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	This right is standard in Canada.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Binding and nonbinding proposals are provided for under most of the corporate law statutes of the provinces and territories.
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	This right is standard in Canada. Shareowners holding a minimum of 5% of the shares can call an extraordinary general meeting.
What percentage of companies include golden shares in their capital structure?	0%	Canadian companies do not have golden shares.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	30% of Canadian companies have a shareholder rights plan; 16% of companies in Ontario have a shareholder rights plan.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	Corporations are required to submit shareowner rights plans to shareowners no later than the annual meeting following the adoption of the plan.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This is a standard right in Canada.
Do companies require a supermajority vote to approve a merger?	Yes	Approving a merger with another company requires a supermajority shareowner approval (66 2/3% of the votes cast).

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
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	Most corporate statutes give shareowners the right to dissent with respect to extraordinary corporate transactions and demand fair value for the shares held by them.
Are class action suits commonly used in this market?	Yes	
Are derivative suits commonly used in this market?	Yes	

Current Engagement Practices and Shareowner Rights Developments

Shareowners in Canada engage through active board participation, proxy voting, direct communication with management, and in some cases, even lawsuits. Canadian investors traditionally have been more restrained in their activism than their U.S. counterparts, but this characteristic is changing.

Ownership in Canadian corporations is highly concentrated; a small number of shareowners control a large proportion of traded equities. For many years, Canadian institutional investors quietly exerted influence over the activities of Canadian public issuers, but shareowner activism has changed as the financial clout of multi-billion-dollar equity, hedge, and pension funds has increased. Encouraged by the success of activist U.S. funds, investors in securities of Canadian public issuers are now willing to express their views publicly and to take direct action against boards that they believe are unresponsive to shareowners. Legislative changes, the increasing use of third-party proxy advisory organizations, and rising participation rates in investment fund associations have led to higher levels of coordinated voting among institutional investors in Canada.

Shareowners in Canada were not very active until 1997. For example, from 1982 to 1995, only 18 shareowner proposals were included in the proxy circulars of Canadian corporations. The relative lack of shareowner activism in Canada can be attributed to the legal constraints imposed after the 1987 court case of Varity Corporation versus Jesuit Fathers of Upper Canada et al. In this case, the court sided with Varity Corporation's decision to not circulate a shareowner's proposal on disinvestment from South Africa.

Things changed in 1997, when the Quebec Superior Court and the Quebec Court of Appeals forced three banks (Laurentian Bank of Canada, National Bank of Canada, and the Royal Bank of Canada) to include activist Yves Michaud's proposals in their proxy circulars and to allow for voting on the proposals at their annual general meetings. This court victory has eased the process of shareowner activism in Canada, especially in cases involving shareowner proposals. Subsequently, in 1998, activists followed Michaud's example by sending proposals to other banks. The first nonbank companies to be targeted by activists were Bell Canada Enterprises and Dofasco. Since then, activists have routinely filed shareowner proposals with banks and the practice has gradually spread to other types of companies.

Unsolicited takeover bids in Canada are fairly commonplace, and they are considerably easier to accomplish and less time-consuming than in the United States because fewer structural and other takeover defenses exist in Canada. Most board members are elected annually; staggered board terms would offer no real defense against takeover bids because shareowners may call meetings to replace board members at any time. An unsolicited takeover bid in the United States can take as long as 18 months to complete, but in Canada, takeover bids typically take only 60–90 days.

In Canada, corporations are required to submit shareholder rights plans (poison pills) to shareowners no later than the annual meeting following the adoption of the plan. The rights plan must be confirmed at every third annual meeting thereafter. In addition, almost all shareholder rights plans are "chewable," meaning they contain a provision that a bidder who is willing to conform to the requirements of a permitted bid can acquire the company by takeover bid without triggering the plan.

Shareholder rights plans tend to be a weaker defensive tool in Canada than they are in the United States partly because Canada does not support many of the most prevalent defensive measures. Rights plans are challenged in Canada before provincial securities commissions, which have shown a preference for giving the target corporation's shareowners the decision to accept or reject the acquirer's offer, leaving Canadian corporate boards little power. The provincial commissions allow a rights plan to remain in place for only a limited period to allow the target corporation's board time to solicit a superior offer. Therefore, if a Canadian target company is put into play by an unsolicited takeover bid, a change-of-control transaction generally occurs because opposition to an unsolicited takeover bid in Canada usually amounts to the target company seeking a superior alternative transaction. In contrast, shareholder rights plans in the United States are challenged before the courts, where judges have been inclined to allow such plans to remain in place. This significant difference suggests that the environment in Canada is much more receptive than the environment in the United States to hostile bidders.

"Crown jewel" defenses involve the selling of assets to a friendly third party to frustrate an attempted takeover and may result in the sale of assets at less than their fair value. Both poison pills and crown jewel defenses are potentially detrimental to the interest of shareowners and may undermine shareowners' rights to determine the company's future plans. In Canada, however, such sales usually require the approval of a majority of the shareowners. In addition, if a transaction comprises "substantially all the assets of a corporation" or if the transaction "would change the essential nature of a corporation's business," dissent rights are granted to shareowners. Dissenting shareowners may seek a court-supervised appraisal of the fair value of their shares and may demand a cash payment of that amount from the acquirer.

In 2008, Meritas Mutual Funds petitioned Canada's "big five" banks at their annual meetings to adopt an advisory shareowner vote on executive compensation, better known as a "say-on-pay" resolution. Support ranged from 35 percent to 45 percent. The relatively high levels of support indicate that some large institutional investors in addition to Meritas supported the proposals. There was also significant opposition to the proposals, however, as voiced by the Canadian Coalition for Good Governance (CCGG), which advised its members to vote against say-on-pay proposals in 2008. In a position paper released in December 2007, the CCGG argued that Canadian companies were making progress on compensation issues and that say-on-pay resolutions were not necessary at that time. In a report released in February 2008 on its proxy-voting guidelines, the Canada Pension Plan Investment Board took a position similar to that of the CCGG. The CPP Investment Board said it would oppose say-on-pay proposals in Canada in 2008 but would assess such proposals in the United States on a case-by-case basis.

Montréal-based investor group MEDAC (*Mouvement d'Education et de Défense des Actionnaires*, or the Shareholder Education and Defense Movement), led by Yves Michaud, incorporated compensation resolutions in proxy submissions to 11 major Canadian companies in 2008, including seven large banks. Those resolutions called for compensation payments to be "previously adopted" by shareowners, suggesting an advance vote on pay that would be binding on the company.

The CCGG is one of the significant drivers for change in the Canadian landscape. The CCGG not only monitors corporate governance and reports on best practices but also actively engages with boards and regulatory bodies in an attempt to initiate and influence changes in the Canadian environment.

Legal and Regulatory Framework

The corporate governance of Canadian public companies is regulated by corporate laws and securities laws. Canadian companies may be incorporated under the federal Canada Business Corporations Act (CBCA) or one of the similar provincial or territorial corporate statutes. Securities regulation is the responsibility of the ten provincial and three territorial governments, each of which has its own legislation and securities regulatory authority. Those authorities, in turn, coordinate their activities through the Canadian Securities Administrators (CSA), a forum for developing a unified approach to securities regulation across the country.

The CSA also maintains two electronic databases accessible to the public: the System for Electronic Document Analysis and Retrieval contains public records of all companies publicly traded on the Canadian markets; the System for Electronic Disclosure by Insiders contains reports on securities holdings and trading for insiders of Canadian public companies.

The CSA has developed a system of mutual reliance that designates one securities regulator as the lead agency when it comes to reviewing applications or disclosure documents from Canadian public companies. Because the largest Canadian public companies are listed on the Toronto Stock Exchange, the Ontario Securities Commission is generally regarded as the lead securities regulatory authority in Canada. Many Canadian public companies are also incorporated under the Ontario Business Corporations Act (OBCA). The CSA has introduced a series of national instruments and policies (CSA rules) that affect the corporate governance of Canadian public companies. The CSA rules closely follow the U.S. Sarbanes–Oxley legislation and the rules and guidelines established by the U.S. Securities and Exchange Commission and U.S. stock exchanges.

The OBCA, as with other corporate statutes, provides that a corporation must prepare and maintain in a designated place certain types of records, including the articles and bylaws of the corporation and all related amendments; copies of any unanimous shareowners' agreements known to the board members; minutes of meetings and resolutions of shareowners; a register of board members and specified information about them; and a securities register. The articles of incorporation and bylaws of the corporation may overrule the statutory provisions in certain situations. Under the OBCA, however, a corporation is required to have at least 25 percent of the board members of the corporation be resident Canadians. According to the Bank Act, no person or institution is allowed to own more than 10 percent of a Schedule I bank's shares. Schedule I banks are Canadian domestic banks and are authorized under the Bank Act to accept deposits that may be eligible for deposit insurance provided by the Canada Deposit Insurance Corporation.

An annual meeting of shareowners may be called not later than 15 months following the last annual meeting held, and special meetings may be called at any time. Business requiring shareowner approval can be transacted between annual meetings by calling a special meeting of shareowners. Shareowners who hold not less than 5 percent of the voting shares of a corporation may request that the board members call a meeting for any purpose stated in the requisition.

In Canada, shareowners may make both binding and nonbinding proposals. Binding and nonbinding proposals are provided for under most of the corporate law statutes of the provinces and territories and under the CBCA and the Bank Act.

If shareowners adopt a proposal to make, amend, or repeal a bylaw, Canadian corporate law requires the corporation to enact the proposal, which allows the shareowners to effect corporate change. In addition, shareowners who represent 5 percent of voting equity may initiate proposals, including nominations for the election of board members. Unlike U.S. companies, Canadian corporations do not typically use advance notice bylaws to limit shareowners' rights to make proposals and board member nominations. Because corporate management controls the solicitation of proxies for meetings of shareowners and because of the concentration of share ownership in Canada, management's nominees are usually elected. Proxy contests in Canada are rare. Shareowners are entitled to obtain lists of shareowners for the purpose of soliciting proxies at meetings of shareowners. Typically, a board member is elected for a one-year term. Staggered, multiple-year terms of up to three years are permitted but are not common in Canada.

Generally, shareowners are entitled to one vote per share. Some Canadian public companies have a dual-class share structure, with one class having multiple voting rights that give the holders of those shares voting control. In most cases, shareowners holding the other class of shares have "coat-tail" rights (permitted to participate on identical terms) in the event of a takeover bid or similar transaction.

Past restrictions on foreign investment encouraged the use of dual-class share structures. For example, the 1967 revision to the Bank Act placed a 10 percent voting cap on all chartered banks (no one voting shareowner could have more than 10 percent of the voting rights, no matter the number of shares owned) and capped aggregate foreign ownership at 25 percent. Although some of these restrictions have been lifted, the federal government continues to limit the level of foreign ownership of companies in various regulated sectors, including telecommunications, broadcasting, media and entertainment, and airlines. Companies that use dual-class shares tend to be largely concentrated in these sectors and often justify the continued use of such structures by stating that they need to avoid violating foreign-ownership restrictions while attracting adequate equity investment from foreigners.

Ordinary corporate transactions require majority shareowner approval (greater than 50 percent of the votes cast). Extraordinary corporate transactions (such as amending the corporate charter or bylaws or approving a merger with another company) require a supermajority shareowner approval (66 ⅔ percent of the votes cast). Most corporate statutes give shareowners the right to dissent with respect to extraordinary corporate transactions and to demand fair value for the shares they hold. The provinces of Ontario and Quebec have additional rules that apply in certain circumstances and are designed to ensure fair treatment of minority shareowners in connection with certain types of transactions involving related parties (which include shareowners holding 10 percent or more of the voting securities of the company).

A number of groups within Canada, including the CCGG, have argued for stronger regulatory and legal enforcement in Canada because those engaged in "white collar" crimes in Canada appear to go largely unpunished. Indeed, many institutional investors in Canada prefer to buy the shares of companies listed on both Canada and U.S. exchanges in order to have the option of legal redress in the United States.

Key organizations with information relevant to shareowner rights in Canada and/or Ontario include the following:

Canadian Securities Administrators (www.csa-acvm.ca)

Ontario Securities Commission (www.osc.gov.on.ca)

Toronto Stock Exchange (www.tsx.com)

Canadian Coalition for Good Governance (www.ccgg.ca)

Social Investment Organization (www.socialinvestment.ca)

Canadian Pension Plan Investment Board (www.cppib.ca)

System for Electronic Document Analysis and Retrieval (www.sedar.com)

System for Electronic Disclosure by Insiders (www.sedi.ca)

China

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 75 companies in China as of 15 May 2008.

Shareowners in China have adequate shareowner rights protections, even though many companies have controlling shareowners. Board members may be removed without cause and supermajority votes are required to approve mergers and to amend the articles of association. Cumulative voting is permitted and shareowners have the right to request special meetings and submit proposals at the annual general meeting.

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)?	36%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	53%[5]	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	69%	
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	Yes	No change may be made in the register of shareowners as a result of transfer of shares 30 days prior to the date of the shareowners' annual meeting.
Are there share ownership limitations in this market?	Yes	A foreign ownership limitation exists for all Chinese companies, although foreign ownership is usually quite small anyway. Institutional investors are prohibited from owning more than 10% of companies. Some companies have state-owned controlling shareowners that hold non-tradable shares.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Note: Tradable and non-tradable shares have the same voting rights.
Do companies adhere to a majority voting standard in the election of board members?	Sometimes	Majority voting is provided in 41% of the companies researched for this manual.
Do companies allow for cumulative voting in the election of board members?	Yes	The Company Law of the Peoples Republic of China as revised in 2005 permits cumulative voting.

[5]For more on related-party transactions in China, see *Related-Party Transactions: Cautionary Tales for Investors in Asia* (www.cfainstitute.org/centre/topics/governance/relatedparty.html).

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
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?	Rarely	Shareowners are not usually given any vote (binding or nonbinding) on general remuneration issues or on a remuneration report. In some cases, however (e.g., Bank of China Ltd.), shareowners have been asked to approve specific remuneration, such as bonuses, in which case the vote has been of a binding nature.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Shareowners of 3% or more of a company's shares may submit resolutions.
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 holding a minimum of 10% of the voting rights may submit requests for special meetings.
What percentage of companies include golden shares in their capital structure?	0%	
Are shareholder rights plans (poison pills) allowed in this market?	No	Shareholder rights plans (poison pills) would effectively violate the Company Law because companies are prohibited from issuing shares at a discount in order to dilute the capital of a bidder.
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.
Do companies require a supermajority vote to approve a merger?	Yes	The Company Law states that mergers require approval by shareowners holding $2/3$ of the voting rights.
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	Chinese law does not currently permit securities class action lawsuits.
Are derivative suits commonly used in this market?	No	Derivative suits are permitted under Chinese law but are not common.

Current Engagement Practices and Shareowner Rights Developments

Shareowner activism in the People's Republic of China (PRC) has a short history and currently is characterized by a low level of engagement, not least because share ownership of publicly traded companies in the PRC is a recent development. The Shanghai and Shenzhen stock exchanges began operations in the early 1990s, and the China Securities Regulatory Commission (CSRC) was established in 1992. Securities investment funds began operating in 1991, but other institutional investors, such as insurance companies, pension funds, and commercial banks, have only recently become active stock market participants. China's securities laws and regulations do not impose any unusual restrictions on shareowner rights, but shareowner engagement is not common. Shareowners in the PRC are mainly passive, but there have been some instances of shareowner activism.

The ownership structure of many listed companies in China is a major obstacle inhibiting minority shareowner rights. Majority controlling shareowners dominate corporate boards, and tradable shares constitute only one-third of all the outstanding shares of listed companies. Under PRC law, those who hold shares in companies with controlling shareowners may submit proposals, but they have little incentive to do so because they stand little chance of succeeding. Institutional investors are also prohibited by Chinese law from owning more than 10 percent of a listed company's shares.

The market for corporate control in China has been limited by both the large number of controlling shareowners and the existence of non-tradable, state-owned shares. The implementation of the 2005 share reform plan, however, increased the number of tradable shares and the number of shares owned by minority shareowners. Under this plan, non-tradable, state-owned shares must be sold and then become tradable; many of the lock-up periods for non-tradable shares have expired, which has facilitated this process. Few listed companies in China had any non-tradable shares remaining by the end of 2007, but all companies must finish converting from non-tradable to tradable shares by 2010.

China's takeover rules do not impose significant restrictions on takeover bids. Shareholder rights plans (poison pills) have not been adopted by Chinese companies primarily because the Company Law prohibits companies from issuing shares at a discount for the purpose of diluting the capital of a bidder.

China has recently implemented measures to strengthen shareowner rights. The 2004 Minority Shareholder Protection Provisions addressed the issue of controlling shareowners. It required holders of tradable shares to approve major corporate transactions, such as cash offers, rights offers, convertible bond issues, substantial asset reorganizations, equity-for-debt swaps, and foreign listing of subsidiaries. Shareowners of a majority of the tradable shares must approve cash offers if the new shares issued exceed 20 percent of the outstanding shares.

In 2002, listed companies in China were required to have at least two independent board members on the board; in 2003, this number was increased to one-third of the board. The 2005 revision to the Company Law codified the one-third independent board member requirement into law. The law states that the maximum allowable proportion of inside board members serving on the board is 50 percent.

In the past, fund manager conflicts of interest have contributed to the low level of shareowner engagement. The CSRC addressed this issue by implementing the 2004 Measures for the Administration of Securities Investment Fund Management Companies. The CSRC measures seek to minimize such conflicts by requiring fund management companies to establish systems for corporate governance and for development that (1) ensure the fund management business is not subject to interference by any particular shareowners, and (2) protect against any particular shareowner seeking assistance with their own securities underwriting or investment business. These measures are designed to avoid interference in the fund management company's business by investment banks and securities firms that own stakes in the fund management company. In addition, at least one-third of the boards of fund management companies also now must be independent.

Shareowner engagement in China is largely limited to domestic investors. Foreign investors may purchase A-shares through the Qualified Foreign Institutional Investors (QFII) scheme, but the amount of capital that foreigners are allowed to invest is so small that, at present, these investors have little opportunity to influence Chinese companies. The total amount of foreign investment in A-shares permitted by Chinese law is USD30 billion, and investment by QFII investors in 2008 amounted to only 4 percent of China's stock market capitalization.

Legal and Regulatory Framework

The CSRC is China's securities market regulator and operates under the supervision of the State Council of the PRC. The State Council implements policies and laws that are established and passed by the National People's Congress, which is the highest legislative body in China and is controlled by the Chinese Communist Party.

Shareowner rights are included in the Company Law and the Securities Law, both of which were revised in October 2005. Other sources of securities rules and regulations are as follows: the rules and guidelines issued by the CSRC, the Securities Investment Fund Law, the Special Regulations of the State Council, the Ministry Rules, and the self-regulation rules of the China Securities Association and the Shanghai and Shenzhen stock exchanges. The overall legal and regulatory framework for shareowner rights in China remains underdeveloped, but the basic laws, regulations, and enforcement mechanisms are in place.

The Company Law and Securities Law in China contain provisions for shareowner engagement of listed companies. Shareowners of Chinese companies may engage the board of directors and influence the direction of the company by voting at shareowner meetings and by submitting shareowner proposals. Shareowners owning 3 percent or more of a company's shares may submit shareowner proposals, and owners of 10 percent or more of shares may request special meetings. All holders of common shares of listed companies may vote in person or by proxy, and some companies provide internet proxy voting.

Board members of China's listed companies may be removed without cause, and a supermajority two-thirds shareowner vote is required to amend the articles of association. Substantial corporate transactions, such as mergers, must be approved by a two-thirds shareowner vote. Share-based compensation schemes must also be approved by a two-thirds shareowner vote. Cumulative voting is allowed and may be used at the discretion of each company.

Shareowners of 1 percent or more of the shares of listed companies held for 180 or more consecutive days may request the supervisors to initiate a derivative lawsuit in a people's court when a board member, manager, or supervisor violates a law, administrative regulation, or the company's articles of association. Securities class action lawsuits are not currently permitted, but lawsuits with a fixed number of litigants are allowed.

CSRC enforcement activity has increased in recent years, and in 2008, the government announced reforms to the Chinese securities law enforcement system. The reform measures established an Administrative Punishment Committee of the CSRC, merged the First and Second Inspection Bureaus into one Inspection Bureau, established an Inspection Division with a staff of 170, and increased the inspection staff of local CSRC agencies.

Of note is that the CSRC and other law enforcement authorities in China have taken action to address the problem of insider trading. In February 2008, a PRC court convicted and sentenced to prison three persons for insider trading of Zhejiang Hangxiao Steel Structure shares. This was the first time an official of a listed company in China was imprisoned for insider trading.

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

China Securities Regulatory Commission (www.csrc.gov.cn)

Shanghai Stock Exchange (www.sse.com.cn)

Shenzhen Stock Exchange (www.szse.cn)

Ministry of Commerce of the People's Republic of China (www.mofcom.gov.cn)

LawInfoChina (www.lawinfochina.com)

France

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 104 companies in France as of 15 May 2008.

Shareowner rights in France have lagged behind those of other developed markets but are beginning to improve. Traditionally, shareowner interests have been subordinate to those of the company and society; French-style capitalism has involved state intervention, cross-shareholdings, and protectionism practices that are generally against the interests of minority shareowners. In France, shareowner engagement has been looked upon unfavorably; activists are suspected of being short-term investors solely interested in a quick return. Recently, however, shareowner activists have won significant victories against senior managers who have previously gone unchallenged.

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)?	52%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	15%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	32%	
Is voting by proxy permitted?	Yes	
Must shares be deposited or blocked from trading in order to vote?	No	This practice is no longer required under French law.
Are there share ownership limitations in this market?	No	Rare in this market
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	This practice is common in France.
Do companies allow for cumulative voting in the election of board members?	No	
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	Under French law (binding in 2009), companies are required to submit compensation packages to a shareowner vote.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	Under French law, companies are required to submit compensation packages to a shareowner vote.
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 usually have this right, although many companies neglect to disclose information regarding this right. Shareowners representing a minimum of 5% of shares may call a general meeting, but the meeting can be convened only by a representative appointed by the president of the *Tribunal de Commerce* (Tribunal of Commerce), who must verify that the proposed agenda is in the "objectif l'intérêt social de la société" (objective interest of society).
What percentage of companies include golden shares in their capital structure?	1%	Thales S.A. was the only one of the companies researched for this manual that had a golden share. Since the research was completed, the merger of Gaz De France and Suez into GDF-Suez S.A. created another company with a golden share. The European Union is pushing all European countries to abolish golden shares.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Recently legalized, these plans are becoming increasingly common.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	Approval by a simple majority of shareowners is required.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	
Do companies require a supermajority vote to approve a merger?	Yes	A $2/3$ majority vote is required to approve resolutions at special meetings or extraordinary general meetings, which includes approval of a merger.
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	A "fair price" is required by French law.
Are class action suits commonly used in this market?	No	Class action lawsuits are not allowed in France.
Are derivative suits commonly used in this market?	No	These suits are allowed but are uncommon.

Current Engagement Practices and Shareowner Rights Developments

Despite the resistance of some French companies, shareowner activism is gaining momentum in France. In particular, hedge funds and other activist investors have been winning seats on the boards of some of France's most prized companies with the aim of influencing the direction of these companies and holding managers more accountable than in the past.

A few of the most noteworthy proxy battles took place between shareowners and big companies in 2007–2008. One such contest involved Pardus Capital and Centaurus Capital, activist hedge funds based in, respectively, New York and London. One of their targets, Atos Origin, yielded to the pressure by ousting its chairman, Didier Cherpitel, and allowing the hedge funds two seats on its supervisory board. Pardus also has been locked in a protracted proxy battle with Valeo, an auto parts manufacturer. Behdad Alizadeh, Pardus's representative on the board of Atos Origin, won a seat on Valeo's board in May 2008. With his company's stake at nearly 20 percent, Alizadeh hopes to convince other board members of the need for restructuring. Other big French companies that have had to surrender board seats to outside shareowners include Carrefour Group and Saint-Gobain.

Recent changes to European Union and French laws regarding takeovers have had an impact on the rights of minority shareowners. In May 2004, the European Parliament adopted the European Commission (EC) Takeovers Directive (Directive 2004/25/EC) which was intended to establish a communitywide set of rules governing the conduct of takeovers across Europe. The ultimate agreement was a legislative compromise resulting in a diluted set of principles that fell short of creating a uniform code for the regulation of takeovers. For example, under the directive, member states are given the freedom to choose between implementing either of two takeover rules—namely, Article 9 or Article 11. Moreover, the directive contains a reciprocity provision (Article 12) that allows target companies to take defensive actions against bidders that do not abide by the same restrictions.

In April 2006, the French Parliament approved the implementation of the Takeovers Directive. Accordingly, legislators passed the *Loi sur les Offres Publiques* (Takeover Act), and the *Autorité des Marchés Financiers* (Financial Markets Authority) amended its general regulations to comply with the new directive. France adopted Article 9, which stipulates that the board of a company that is the target of a takeover bid must get shareowner approval to take any action intended to deter or thwart the takeover bid.

As part of the implementation package, however, the French government legalized the use of poison pill warrants. These anti-takeover devices, which require the approval of a simple majority of shareowners, have been adopted by several French companies eager to limit their vulnerability to hostile bidders. Not unlike their U.S. counterparts carrying the name "poison pills," these devices, known as "*bons Breton*," enable boards to issue warrants convertible into shares at a discounted price in the event of an unsolicited or unwanted takeover attempt. The effect is to inflate the purchase price for any potential bidder.

France also adopted Article 12 of the Takeovers Directive, thus giving target companies an added advantage. Under Article 12, if a company is targeted by more than one bidder, that company may take defensive action against all of the bidders if only one of them does not apply the same restrictions the target has (i.e., Article 9). Among the French companies whose shareowners have approved poison pills are Bouygues, Saint-Gobain, Pernod Ricard, and Hermès International.

Although stock ownership limitations are rarely found in listed companies in France, a few companies still impose restrictions on voting rights. Such restrictions are regarded as anti-takeover mechanisms; consequently, some of these companies have been targeted by shareowner activists. For example, at Alcatel-Lucent's annual meeting in 2007, shareowners voted 71 percent in favor of a resolution to eliminate provisions in the company bylaws that limited shareowners to 8 percent of the simple voting rights and 16 percent of the double voting rights represented at a shareowner meeting. Although originally opposed by the board of Alcatel-Lucent, the resolution was ultimately adopted by the company. Shareowners of Lafarge, the construction materials company, faced a similar situation in 2007. In this case, the number of voting rights was normal when more than two-thirds of all outstanding shares were present in person or by proxy. Voting was restricted, however, when fewer than two-thirds of all outstanding shares were present in person or by proxy. In the latter case, up until the 2007 annual meeting, the voting rights for any shareholder were restricted to 1 percent of all outstanding shares. Lafarge shareowners, however, passed a resolution at the 2007 annual meeting to increase this limit on voting rights from 1 percent to 5 percent.

Executive pay is another area in which shareowner pressure is beginning to show results. Specifically, shareowner activists apparently have successfully conveyed their intolerance of exorbitant severance pay packages for executives. Many companies have now reduced severance to two times an executive's total annual compensation. Although none of the employment agreements that were submitted to a shareowner vote in 2008 were rejected, a sizable group of investors did vote against severance packages with a salary multiple greater than two.

Legal and Regulatory Framework

French securities market laws are contained in the *Code de Commerce* (Commercial Code) and the *Code Monétaire et Financier* (Monetary and Financial Code). *Le Loi de Sécurité Financière* (the Financial Security Act) of August 2003 amended both of these codes and spawned a new stock market regulator, the *Autorité des Marchés Financiers* (Financial Markets Authority). Corporate governance standards in France are derived from the recommendations of this body and the standards issued by the AFEP-MEDEF Report (a consolidated version of reports on corporate governance issued over a number of years and published in 2003). Most French companies observe the "comply or explain" principle with respect to the AFEP-MEDEF Report.

Listed companies in France do not have to meet any requirements in terms of board independence. Under French law, boards are required neither to establish standing committees nor to adopt formal written charters. A listed company in France is not required by law to adopt or disclose an ethics/business conduct code for board members, officers, or employees.

The AFEP-MEDEF Report, however, addresses most, if not all, of these issues. For example, the report recommends that no fewer than half of the board members be independent for companies that do not have a controlling shareowner. According to the AFEP-MEDEF Report, the board should conduct a self-evaluation on an annual basis and should hire an independent consultant to perform such evaluations once every three years. The report recommends that boards set up an audit committee, a nominating committee, and a compensation committee and recommends that at least a majority of these committees be independent board members.

Pursuant to the Financial Security Act, outside auditors are prohibited from rendering certain non-audit services. The law also lays out specific independence criteria that outside auditors must meet. The *Haut Conseil du Commissariat aux Comptes* (High Council for Statutory Auditors), an independent public body, also oversees the independence of outside auditors.

The Law for the Promotion of Employment, Labor, and Buying Power, which went into effect in 2008, specifies that all executive compensation be performance based and that performance targets be verified by the board of directors. Under French law, the terms of any new employment agreements with company presidents, CEOs, managing directors, and deputy managing directors must be put before shareowners for approval.

Common French practice is for shares to acquire double voting rights after they have been fully paid and registered continuously in the name of the same shareowner for specified periods of time, usually two years. When the share is either converted into a bearer share[6] or transferred (except through an inheritance, division of property between spouses, or a donation by the shareowner to the benefit of a spouse or another eligible relative), the double voting right is automatically canceled.

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[6]Bearer shares are equity securities not registered on the books of the issuing corporation. Such shares are transferred by physical delivery. The issuer disperses dividends to the bearer when a physical coupon is presented to the issuer.

Shareowners in France are typically allowed to vote in person or via proxy, and a few companies have begun to provide for internet proxy voting. According to changes in French regulations during 2007, shares are no longer required to be deposited or blocked from trading in order to vote. This practice had previously been a significant deterrent to shareowner participation, particularly for institutional investors that did not want to tie up shares from trading for any significant period of time. Board members are generally elected by a majority of votes cast, and votes in abstention are counted as votes against the board member.

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

Autorité des Marchés Financiers (Financial Markets Authority) (www.amf-france.org)

European Stock Exchange (www.euronext.com)

Bulletin des Annonces Légales et Obligatoires (www.journal-officiel.gouv.fr)

French Association of Corporate Governance (www.afge-asso.org)

Ministère de l'Économie, de l'Industrie et de l'Emploi (Ministry of the Economy, Industry and Employment) (www.minefe.gouv.fr)

Association de Défense des Actionnaires Minoritaires (Minority Shareholder Defense Association)

Germany

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 95 companies in Germany as of 15 May 2008.

Legally, shareowner rights in the German market are considered strong. Those rights are affected by the dual-board structure, however, which consists of both a supervisory board and a management board. Shareowners have no direct influence on the management board, which oversees the operational activities of a company. Supervisory boards are charged with oversight of the management board. At least half of the members of the board of any German company with more than 2,000 employees must be employee representatives. This makes employees of German companies more powerful stakeholders than are employees in most 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)?	46%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	7%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	30%	For companies to have a controlling shareowner is relatively common.
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	Often, yes	The bylaws of companies that issue bearer shares[7] contain provisions that shares must be deposited. As more companies issue registered shares, however, this requirement has become less frequent in Germany.
Are there share ownership limitations in this market?	Usually, no	Share ownership limitations usually do not exist. Only Lufthansa AG limits ownership of its shares by non–European Union entities.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Yes	Ordinary annual general meeting resolutions, including election of board members, can be passed only with a majority of votes cast.
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is not allowed.

[7]Bearer shares are equity securities not registered on the books of the issuing corporation. Such shares are transferred by physical delivery. The issuer disperses dividends to the bearer when a physical coupon is presented to the issuer.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
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?	Sometimes	51% of the companies researched for this manual allow this ability.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Mostly	84% of the companies researched for this manual allow this.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right is standard.
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	This right is standard; 5% of voting stock is required.
What percentage of companies include golden shares in their capital structure?	0%	Volkswagen AG's Golden Share Law was overturned by the European Court of Justice in October 2007.
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	This right is a legal requirement.
Do companies require a supermajority vote to approve a merger?	Yes	A 75% vote is required to approve a merger or to amend the articles of association.
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	Suitors must offer minimum prices based on the weighted average market price over the previous 3 months and any price paid to possible prior purchasers.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are class action suits commonly used in this market?	No	Class action suits have not been allowed. On 1 November 2005, however, Germany enacted the *Kapitalanleger-Musterverfahrensgesetz* (Act on Model Case Proceedings in Disputes under Capital Markets Law), which allows sample proceedings to be brought before the courts in litigation arising from mass capital market transactions. It does not apply to any other civil law proceeding. The allowed suits are not like class actions in other markets: The law applies only to parties who have already filed suit, and it does not allow a claim to be brought in the name of an unknown group of claimants. The effects of the new law will be monitored over the next 5 years. It contains a sunset clause, so it will automatically cease to be in effect on 1 November 2010 unless the legislature prolongs it or extends it to other mass civil case proceedings.
Are derivative suits commonly used in this market?	No	In Germany, a single shareowner cannot file suit in the name of the company. Paragraph 147 of the *Aktiengesetz* (Stock Corporation Act or AktG), however, allows minorities representing more than 10% of share capital to pursue a claim for damages for the corporation in their right. In certain conditions, a shareowner can directly sue managing and supervisory board members. The shareowners can appeal against resolutions passed at the general meeting in case of some breaches. Such an action can be brought by each shareowner at any time.

Current Engagement Practices and Shareowner Rights Developments

In Germany, the shareowner engagement process has somewhat improved in recent years. At times, in conjunction with associations such as the *Deutsche Schutzvereinigung für Wertpapierbesitz e.V.* (DSW), shareowners have been able to exert some influence at shareowner meetings of German companies. The DSW is Germany's oldest and largest association for private investors. It has more than 28,000 members and heads 7,000 investment clubs, which have recently enjoyed growing popularity with private German investors.

A key limitation on shareowner rights arises from the dual-board structure in Germany. Each company has a supervisory board (*Aufsichtsrat*) and a management board (*Vorstand*). The supervisory board's main task is to supervise the management board, including appointment and dismissal of management board members. Only the management board can make executive decisions. Additionally, shareowners have no direct means of influencing management board membership. Recently, however, German companies have been able to reorganize as a *Societas Europaea* (European Company or SE), which eliminates the dual-board structure and allows companies to form a single board of directors. Because the formation of an SE must be approved by both management and employees, ordinary shareowners have little influence in such cases.

Another issue is the large number of supervisory board members who are employee representatives. The *Mitbestimmungsgesetz* (German Co-Determination Act) requires that if a listed company has between 500 and 2,000 employees, one-third of its supervisory board members must be employee representatives, who can be elected only by employees of the company; companies with more than 2,000 employees must have half of their supervisory board members elected by employees of the company. This requirement can be a particular problem for shareowner rights when shareowner interests conflict with the interests of employees. In case of a tie vote, however, the supervisory board chair, who is elected by shareowners, casts the tie-breaking vote, which gives an effective majority representation for shareowners in a disputed situation.

Corporate takeovers are primarily governed by the *Wertpapiererwerbs und Übernahmegesetz* (Securities Acquisition and Takeover Act). Takeovers are both much less common and more difficult to accomplish in Germany than in some other developed markets. Also, mergers between German and other European companies must be approved by the European Commission. The dual-board structure and the Co-Determination Act serve as effective structural devices for fending off hostile bidders, and suitors may be further deterred by the 75 percent supermajority requirement for approving mergers and amending a company's articles of association. Not only are more than 30 percent of the German companies researched for this manual majority owned, but studies suggest that up to 80 percent of German companies have at least one shareowner controlling more than 25 percent (a blocking minority) of the company. The Securities Acquisition and Takeover Act requires that a group of shareowners own at least 95 percent of the company before they can "squeeze out" the remaining minority shareowners.

The *Deutscher Corporate Governance Kodex* (German Corporate Governance Code, or GCGC), published by the Cromme Commission, was last amended in June 2007. Although companies are not required to adhere to the GCGC, the number of German companies reporting voluntary compliance with the code has increased substantially in the past few years. The GCGC consists of recommendations and suggestions, and companies usually report only on compliance with recommendations of the code. Key recent amendments to the GCGC address mainly severance pay for management board members and the establishment of a supervisory board nomination committee.

Legal and Regulatory Framework

The AktG is the primary law governing German publicly traded companies. The AktG is administered by the *Bundesministerium der Justiz* (German Federal Ministry of Justice) and contains a majority of the rules and regulations governing shareowner rights. In addition to the Securities Acquisition and Takeover Act and the Co-Determination Act, the *Wertpapierhandelsgesetz* (Securities Trading Act), the *Börsenzulassungsverordnung* (Stock Exchange Admission Regulation), the *Handelsgesetzbuch* (Commercial Code), and the *Bürgerliches Gesetzbuch* (Civil Code) contain important provisions related to shareowner rights. Criminal enforcement is conducted by the Federal Ministry of Justice. In most cases, listing rules do not require specific corporate governance structures or practices in Germany.

Shareowner engagement or activism in Germany is facilitated through a variety of mechanisms. The *Gesetz zur Kontrolle und Transparenz im Unternehmensbereich* (Control and Transparency in Business Act) was amended to prohibit multiple and maximum voting rights, and the act requires companies to abide by the one vote per share standard. Nonvoting preferred stock may be issued, but it must not make up more than 50 percent of a company's share capital. Special meetings of shareowners may be called if shareowners owning an aggregate of at least 5 percent ask for one. Those shareowners may also ask for items to be included in the published meeting agenda. Changes to the corporate charter or articles of association require the consent of at least 75 percent (in some cases, up to 100 percent) of the company's registered share capital represented at a shareowner meeting. The supervisory board is not permitted to amend either document without shareowner approval.

Shareowners generally may exercise their voting rights by proxy without any restrictions. The articles of association for most German companies contain a provision requiring shareowners to deposit their shares before a meeting of shareowners in order to vote. Although this provision is technically not a legal requirement, because companies have the ability to issue registered shares, most German companies have issued bearer shares, which must be deposited in order to vote.

As is happening elsewhere, shareowners in the German market recently have raised concerns about executive compensation levels. The GCGC was amended to recommend that both company managers' severance pay and board members' severance pay be capped to two years' compensation in case of termination without cause. The amended GCGC also states that in the case of a change in control, executives should not receive termination benefits exceeding 150 percent of their annual income.

In Germany, supervisory board members can be removed without cause and are required to gain a majority vote at the annual meeting to continue serving on the board. Board members are elected to serve terms of varying lengths, however, that may even exceed three years in certain cases. Furthermore, sometimes half of the supervisory board members are employee representatives who were voted in by the company employees. As a result, shareowners are relatively limited in their ability to influence board membership.

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

Bundesministerium der Justiz (Federal Ministry of Justice)
(http://bundesrecht.juris.de/index.html)

Bundesministerium der Finanzen (Federal Ministry of Finance)
(www.bundesfinanzministerium.de)

Bundesanstalt für Finanzdienstleistungsaufsicht (Federal Financial Supervisory Authority)
(www.bafin.de)

Deutscher Corporate Governance Kodex (German Corporate Governance Code)
(www.corporate-governance-code.de)

Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (www.dsw-info.de)

European Commission—Competition
(http://ec.europa.eu/comm/competition/index_en.html)

European Commission—Company Law and Corporate Governance
(http://ec.europa.eu/internal_market/company/index_en.htm)

Hong Kong

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 79 companies in Hong Kong as of 15 May 2008.

Shareowners in the Hong Kong market generally have strong rights that allow engagement and activism. Such engagement is limited and unusual, however, because the market is relatively passive; institutional investors are generally not active and often do not vote their shares. Shareowner rights are also somewhat weakened by the fact that boards often have a majority of non-independent board members and that many companies are controlled by founding families. Shareowner proposals are allowed at annual general meetings but are rare.

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)?	36%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	38%[8]	Related-party transactions are prevalent in the Hong Kong market, but shareowners have some rights in this regard because they must approve significant related-party transactions by a resolution; and interested parties are not entitled to vote on the approval of these transactions. These resolutions almost invariably pass, however, because shareowners have traditionally supported management with little dissent.
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	56%	
Is voting by proxy permitted?	Yes	
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations are not common but may apply to a specific company, such as Hong Kong Exchanges and Clearing Limited, the operator of the Hong Kong Stock Exchange, which has a 5% ownership restriction unless approved by the Securities and Futures Commission.

[8]For more on related-party transactions in Hong Kong, please see *Related-Party Transactions: Cautionary Tales for Investors in Asia* (www.cfainstitute.org/centre/topics/governance/relatedparty.html).

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?	Mostly, no	Resolutions are often declared by meeting chairs by a show of hands (i.e., one vote per person), which tends to negate the value of proxies unless a poll (one vote per share) is called. This approach by meeting chairs is common. Certain votes are required by law to be by poll, including votes on related-party transactions, transactions that are subject to independent shareowners' approval, and transactions in which an interested shareowner will be required to abstain from voting.
Do companies adhere to a majority voting standard in the election of board members?	Yes	
Do companies allow for cumulative voting in the election of board members?	No	
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?	No	At each annual general meeting, shareowners vote on a proposal to authorize the board of directors to fix the board members' remuneration (but not the remuneration of executives).
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	Equity-based incentive plans require shareowner approval.
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	
What percentage of companies include golden shares in their capital structure?	0%	Golden shares do not exist in Hong Kong.
Are shareholder rights plans (poison pills) allowed in this market?	No	The Takeovers Code expressly prohibits actions by the board designed to frustrate an offer; such acts may be implemented only through a shareowners resolution in a general meeting.
If shareholder rights plans are in use, do they have to be approved by shareowners?	NA	

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	
Do companies require a supermajority vote to approve a merger?	No	Majority 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)?	Yes	
Are class action suits commonly used in this market?	No	
Are derivative suits commonly used in this market?	Yes	

Current Engagement Practices and Shareowner Rights Developments

In Hong Kong, shareowner engagement and activism is limited. The most prominent body in corporate engagement is the Asian Corporate Governance Association (ACGA), which collaborates with leading pension and investment funds, financial institutions, listed companies, multinational corporations, and educational institutions seeking implementation of effective corporate governance practices throughout Asia. The ACGA has identified a number of concerns with Hong Kong–listed companies. Of particular note are the following: Companies are not required to report annual results within two months of fiscal year-end, quarterly reporting is not mandatory, and class action is not permitted. The ACGA has also raised concerns about institutional shareowners, in that they typically do not attend shareowner meetings, often do not exercise their votes, and rarely nominate independent board members to boards.

Nevertheless, even though shareowner activism is limited in Hong Kong, one individual, David Webb, a former independent non-executive board member at Hong Kong Exchanges and Clearing, has emerged as a prominent proactive investor who engages in activist campaigns with his own funds.

Some practices impede engagement in the Hong Kong market. Hong Kong companies have a single-tier board structure with no size limit, and the average level of board independence stands at 36 percent, which is low compared with that of other developed markets. This percentage indicates that companies tend to comply with the one-third board independence requirement but generally choose not to meet the higher standards of international best practice. The family-controlled capital structure still common in Hong Kong raises conflict-of-interest concerns. The large number of controlling shareowners in Hong Kong generally weakens minority shareowners' capacity to exercise their rights. Fifty-six percent of the Hong Kong companies researched for this manual have controlling shareowners. Furthermore, most votes at Hong Kong general meetings are conducted by a show of hands, which means that a vote can be largely determined by how many people are in the room rather than how many votes are cast. Observers of corporate governance in Hong Kong have long criticized this practice.

Hostile takeovers in Hong Kong are rare, mainly because most public companies are closely controlled, either by the founding families or by parent companies, but also because shareowners traditionally either support the local managers or remain passive. Poison pills are not permitted in Hong Kong, and although fair price provisions support general fairness in takeovers, in many companies, a controlling shareowner can weaken the role of minority shareowners where takeovers are concerned.

A significant right Hong Kong shareowners have, which is aligned with international best practice, is the ability to approve or disapprove by vote substantial related-party transactions. Related-party transactions are common in Hong Kong, particularly in controlled companies, so the right to approve them is important. Detailed information on both the nature of such transactions and the method of determining the "arms length" price has been quite variable, however, and the subject of considerable criticism.

In May 2008, Railways Pension Trustee Company, one of the largest U.K. occupational pension funds, published a statement about Hong Kong corporate governance policy. Regarding shareowner rights, this report states that the Trustee Company expects companies listed on the Hong Kong Stock Exchange (HKEx) to have at least one-third independent board members on the board, to separate the role of chair and CEO or to nominate a lead independent director, and to adopt voting by poll rather than by a show of hands at the annual general meeting.

Legal and Regulatory Framework

Many key shareowner rights are delineated in the corporate governance standards in the listing rules for companies listed on the main board of the HKEx or Growth Enterprise Market.[9] These rules include regulations for the supervision of board members, operation of boards, composition of committees, and shareowner rights. Companies must state in their half-year and annual reports whether they have complied with the rules. These rules are administered by Hong Kong Exchanges and Clearing, the stock exchange operator in Hong Kong.

The Hong Kong Securities and Futures Commission, an independent statutory body, is the main authority for and supervisor of the securities market in Hong Kong. To strengthen public confidence in the market, investor awareness, and investor protection, the commission regulates investment products offered to the public, listed companies, the HKEx, share registration approval, and those entities that participate in trading activities. The Takeovers and Mergers Panel and the Takeovers Appeal Committee is overseen by the Securities and Futures Commission. The Takeovers and Mergers Panel is charged with administering the Takeovers Code. The Takeovers Appeal Committee is charged with reviewing disciplinary rulings of the Takeovers and Mergers Panel at the request of an aggrieved party to determine whether any sanction imposed by the panel is unfair or excessive.

A number of mechanisms are presently in place in Hong Kong to facilitate shareowner engagement. The Hong Kong Companies Ordinance mandates the practice of one share, one vote for listed companies. It also states that shareowners are allowed to bring lawsuits against board members and major shareowners on behalf of the company but that shareowners need to acquire judicial approval before launching the derivative actions. Class action suits are not allowed in Hong Kong, which makes lawsuits difficult to undertake. An extraordinary general meeting of shareowners may be called, however, by shareowners representing 5 percent of the issued share capital. Additionally, board members can be removed without cause by a simple majority vote at a shareowners' meeting. Board members are subject to election on a periodic basis by a majority vote. A supermajority vote of shareowners is required to amend a company's articles of association.

Voting in general meetings in Hong Kong is by a show of hands, or one vote per person attending the meeting, regardless of the number of shares the shareowner may hold or present, unless a poll is demanded. Thus, many votes have been approved only on a show of hands, which may not reflect the balance of proxies. Since 31 March 2004, voting by poll (one vote per share) has been required for related-party transactions, transactions that are subject to independent shareowners' approval, and transactions in which an interested shareowner will be required to abstain from voting.

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[9]The Growth Enterprise Market is a stock market set up by the Hong Kong Stock Exchange specifically for growth companies that do not yet meet the requirements of profitability or track record that would allow them to be listed on the main board of the HKEx.

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

Hong Kong Exchanges and Clearing Ltd (www.hkex.com.hk)
Securities and Futures Commission (SFC) (www.sfc.hk)
Companies Registry—Hong Kong Companies Ordinance (www.cr.gov.hk)
Hong Kong Institute of Chartered Secretaries (www.hkics.org.hk)
Hong Kong Retirement Schemes Association (www.hkrsa.org.hk)
Hong Kong Securities Institute (www.hksi.org)
Hong Kong Investment Funds Association (www.hkifa.org.hk)
Hong Kong Institute of Directors (www.hkiod.com)
Hong Kong Institute of Certified Public Accountants (www.hkicpa.org.hk)
Asia Corporate Governance Association (www.acga-asia.org)
Webb-site (www.webb-site.com)

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 promoters[10] 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 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.

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

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?	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.

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	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.icai.org)

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

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)

Italy

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 49 companies in Italy as of 15 May 2008.

Shareowners in the Italian financial market have generally strong shareowner rights, although the majority of capital in many Italian companies is held by one shareowner or a group of shareowners who control the majority of voting rights. Furthermore, the board is usually composed of non-independent members appointed by the controlling shareowners, so confrontation and contests most often take place between the controlling and minority shareowners.

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)?	60%	According to the Financial Consolidation Act, at least 1 of the members of the board of directors (2 if the board is composed of more than 7 members) should satisfy the independence requirements established for all listed Italian companies.
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	8%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	47%	Concentration of power with the banks and family-run enterprises has been the traditional ownership structure in Italy.
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	Yes	Shares must usually be deposited (but not blocked) from 2 days before until the end (or any subsequent meeting postponement) of the shareowners' meeting.
Are there share ownership limitations in this market?	Yes	In general, each shareowner has only 1 vote regardless of how many shares owned. There are restrictions for a few issuers—the *banche popolari* (banks). For the banche popolari, if a shareowner holding a vote wishes to appoint a proxy, the proxy must be granted to another shareowner in that company, not to any person who is not a shareowner. A few companies have issued "saving shares," which are nonvoting shares but which allow the shareowner to have more dividends and other financial rights.

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?	Yes	A proxy bearer (or proxy agent) can represent up to 200 shareowners for companies with more than EUR25 million share capital (this restriction may be canceled in accordance with Directive 2007/36/CE). Shareowners holding more than 2% (or another, larger threshold, as in the legal provisions of the issued share capital) seeking to vote those shares must file their stock with the company and with the *Commissione Nazionale per le Società e la Borsa*, or CONSOB (securities market regulator). According to Italian law, votes cannot be "disjointed" (i.e., portions voted different ways) by the same beneficial owner.
Do companies adhere to a majority voting standard in the election of board members?	Yes	According to the principles of the *Comitato per la Corporate Governance* (Italian Corporate Governance Code), the appointment of board members must occur according to a transparent procedure. According to the Italian Civil Code, each proposal in the agenda must be adopted by a majority vote. In accordance with a new law in 2008, the minority shareowners may present a slate of candidates for the board of directors. At least one director must be elected from the minority slate that obtained the largest number of votes and that is not linked in any way, even indirectly, with the shareowners who presented or voted the majority or highest voted slate.
Do companies allow for cumulative voting in the election of board members?	No	
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, including management stock option plans of the entire board of directors, must be decided by vote at the shareowner meeting. The board is authorized to decide on additional remuneration of the executives and distribution to board members of any remuneration approved at the shareowners meeting. The Italian Corporate Governance Code encourages companies to prepare and publish remuneration reports and to put them to a vote at the annual general meeting, but doing so is discretionary.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	Shareowner approval is required if the plan could affect the company's capital structure (e.g., dilute shares).
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	According to Italian company law, shareowners representing 2.5% of the listed company's capital may introduce new and/or dissident resolutions for the agenda of a shareowners' meeting.
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' meetings can be convened upon request of shareowners representing a minimum of 10% of the issued share capital or a lesser quota if it is established in the bylaws.
What percentage of companies include golden shares in their capital structure?	12%	The companies in Italy with golden shares are A2A S.p.A., Enel S.p.A., Eni S.p.A., Finmeccanica S.p.A., Snam Rete Gas S.p.A., Terna S.p.A., and Telecom Italia S.p.A.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Usually, the poison pill consists of resolutions approved by the (core/controlling) shareowners that grant the board the power to increase the company's capital up to 5 times the amount already underwritten and paid in by the shareowners.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	Approval of a capital increase, merger, or transaction that calls for amendment to the company bylaws requires a $^3/_4$ majority vote (counting abstentions as "against") of shareowners at the meeting.
Do companies require a supermajority vote to approve a merger?	Yes	
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	

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are derivative suits commonly used in this market?	No	In accordance with the corporate law reform of 2003, minority shareowners that represent 5% of the issued share capital, or the lower percentage provided for in the bylaws, may take derivative legal action in the name of the company against board members of the company. Such suits are not, however, commonly used.

Current Engagement Practices and Shareowner Rights Developments

Traditionally in Italy, shareowner power has been concentrated in the banks and family-run enterprises. An evolving market structure—defined by an acceptable level of liquidity, a shift of power toward investment institutions, and an active takeover market—suggests Italian investors will soon see a more even distribution of rights. Although shareowner engagement is still not strong, this shift is expected to accelerate engagement and activism in the Italian market. To date, most change has been driven by controlling shareowners forcing out underperforming old-style managements but with little input from minority shareowners.

New laws provide mechanisms for minority shareowners to appoint board directors. All Italian issuers must have at least one director (the one with the most votes) who is from the minority slate and who is not linked in any way with the majority shareowners.

A number of Italian issuers have made a substantial effort not only to disclose their corporate governance systems but also to modify their systems to conform to provisions of the Corporate Governance Code. Some have gone so far as to publish detailed information not required by the code.

A few Italian financial institutions, known as *banche popolari*, are governed by a special set of regulations and corporate governance rules markedly different from those that other issuers follow. The special requirements for the banche popolari are not considered to be in compliance with the best international corporate governance principles.

Legal and Regulatory Framework

In Italy, the rights of shareowners are protected by three core sets of rules and regulations: the Italian Civil Code, the Legislative Decree No. 58/1998–Consolidated Financial Act (LDCF), and the CG Code of 2006. The CG Code was adopted by a committee of the stock exchange to set and define the corporate governance principles applicable to Italian listed companies.

Adoption of and compliance with the CG Code is voluntary. The *Borsa Italiana*, which organizes and manages the Italian stock exchange, monitors both the implementation of the CG Code by issuers and ongoing development of the regulatory framework. A listed company adopting the CG Code, in whole or in part, must annually make a "comply or explain" statement. The company discloses information to the relevant market about which recommendations of the CG Code have been implemented and how they have been implemented and also explains why the company has not complied with certain sections. Article 124-*bis* of the LDCF (disclosure obligations concerning codes of conduct) provides that issuers must annually disclose information about the adoption of codes of conduct promoted by management companies of regulated markets or by trade associations of market participants. Issuers also disclose their compliance with the obligations resulting from those codes, including an explanation of reasons for any failures to comply with the principles of any such code.

Regulation implementing the Corporate Governance Code of 2006 was not issued until May 2007, so compliance with and the enforcement of some principles of the new laws have been delayed.

Under Italian laws and regulations, shareowners representing at least 10 percent of the issued share capital (or a lesser quota as established in the bylaws) have the right to request a shareowner meeting outside the annual general meeting; they also have the power to add agenda items to the shareowner meeting agenda.

Shareowners representing one-tenth of 1 percent (0.1%) of the issued share capital (5 percent for non-listed companies), or a lesser quota as established in the bylaws, have the power to challenge a decision adopted at the shareowner meeting.

Furthermore, minority shareowners representing (in the case of listed companies) 5 percent of the issued share capital (or a lower percentage as established in the bylaws) have the right to bring legal action in the name of the company.

Protection for Italian shareowners increased in 2008 with amendments to the LDCF. Bylaws of all Italian issuers must now include specific processes that ensure equitable appointments to the board of directors. Among directions to be included in the bylaws are the following: a plan for how and on what basis board members shall be elected, a definition of the minimum participation shares required of a candidate for nomination to the board, and language stating that at least one board member must be elected from the minority slate (whoever received the most votes) and that the minority candidate(s) must not be linked in any way, even indirectly, with the shareowners who presented or voted the majority (or highest voted) slate.

With the release of the CG Code, boards of directors were urged to initiate activities that promote the broadest possible shareowner participation in shareowner meetings. Boards also have been charged with facilitating shareowners' ability to increase their rights and with maintaining consistent communications with the shareowners.

Another result of amendments to the Corporate Governance Code in 2006 and 2008 is that a board of directors must make a "best effort" to ensure that shareowners have access to any corporate information that is material to the shareowners' ability to understand and exercise their rights. To that purpose, the issuer must establish an easily identified and accessed dedicated section of the corporate website containing such material information. This site must detail the procedures provided for shareowner participation and voting rights at shareowner meetings and provide documentation relating to items on the agenda, including the relevant professional qualifications of individuals listed as candidates for the positions of board member and auditor.

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

Borsa Italiana SpA (organizes and manages the Italian Stock Exchange) (www.borsaitaliana.it)

Commissione Nazionale per le Società e la Borsa, CONSOB (securities market regulator) (www.consob.it)

Banca D'Italia (Central Bank of Italy) (www.bancaditalia.it)

Assogestioni (National Association of Assets and Investment Managers) (www.assogestioni.it)

Assonime (an association of Italian limited companies including the listed issuers) (www.assonime.it)

Japan

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 444 companies in Japan as of 15 May 2008.

Shareowners in the Japanese market face a variety of obstacles to exercising their rights. Shareowners often find it difficult to attend annual general meetings in Japan, partly because so many are scheduled at around the same dates and partly because of the "unit stock system." First introduced to Japanese companies in 1982 to inhibit corporate racketeers, the unit stock system has become common practice in Japanese companies and has driven away individual investors because it fosters a relatively high minimum trading cost. Under this system, most companies designate 1,000 shares as a unit and any entity holding less than one unit, or 1,000 shares, is not entitled to a vote. Additionally, because companies are required to release their proxies only 14 days before the annual meeting, those voting by proxy have a short time to do so. Japanese boards still tend to be composed of a majority of corporate executives; boards composed of independent directors remain a rarity. Poison pill plans, which are being implemented by more and more companies, are usually ratified by shareowners and may be redeemed (canceled) by shareowner vote before the poison pill's scheduled renewal.

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)?	10%	The majority of Japanese companies have none or few independent board members.
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	3.6%	Relatively rare in the Japanese market
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	7.9%	Some controlling share ownership is a result of the *keiretsu*[11] system.
Is voting by proxy permitted?	Yes	
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations are not common but do apply in sensitive industries, such as utilities, arms, nuclear power equipment, and aircraft production.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	Yes, somewhat	Although not strictly a restriction on appointing a proxy, the unit stock system, which requires units of a number of shares for each vote (e.g., 1,000 shares per vote), can have the effect of restricting voting rights.
Do companies adhere to a majority voting standard in the election of board members?	Yes	Standard in Japan

[11]Keiretsu is a group of companies organized around a single company, usually a bank, for their mutual benefit. These companies often own equity in each other.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies allow for cumulative voting in the election of board members?	No	Never allowed
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?	Mostly, no	Most Japanese companies still do not use remuneration committees.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	This policy is a requirement in Japan.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	No	Possible but only with restrictions; all resolutions are binding in Japan.
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	This right is standard.
What percentage of companies include golden shares in their capital structure?	0.2%	Only one Japanese company researched for this manual, Inpex Holdings, has a golden share; the share is held by Japan's trade ministry.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	More and more Japanese companies have been adopting rights plans in recent years; 21% of the companies researched for this manual have poison pills in place.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	The majority of the plans are ratified by shareowners.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is standard.
Do companies require a supermajority vote to approve a merger?	Yes	This requirement is standard in Japan.
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	This requirement is standard in Japan.
Are class action suits commonly used in this market?	No	They can be filed, but they are not common.
Are derivative suits commonly used in this market?	No	They can be filed, but they are not common.

Current Engagement Practices and Shareowner Rights Developments

Perhaps the biggest issue in Japanese corporate governance is the lack of independence in the composition of boards of directors; boards are still occupied primarily by management. On average, only 10 percent of the members of the boards researched for this manual are independent. In contrast to boards in other developed markets, a high proportion of company board members are promoted from among employees; joining the board is perceived as the ultimate goal for "salarymen" in Japan.

Another characteristic of the Japanese market is the clustering of most annual general meetings (AGMs) in a short time span. In 2008, 70 percent[12] of AGMs for Japanese companies took place between 24 and 28 June. Although that five-day span was actually an improvement over past years, when as many as 95 percent of companies held general meetings on the same day, it remains a significant deterrent to effective shareowner participation. Originally implemented to fend off the *sokaiya*—organized crime members who disrupt shareowner meetings by asking management tough questions, committing violence unless paid by the company, or even silencing dissenting shareowners for the company—this defensive measure now merely prevents higher shareowner presence at AGMs because shareowners cannot attend more than a few of them.

Corporate law exacerbates the problem of low attendance because companies must hold their AGMs within 90 days of their fiscal year-ends, which is 31 March for most, and companies try to make the most of the 90-day window. Effective voting is also impeded because companies are required to release their proxies only 14 days before the AGM but foreign institutional investors need to follow deadlines set by their custodian banks. Because these deadlines tend to be about 10 days before the meeting, these investors have little time to vote. In response to these issues, the Tokyo Stock Exchange (TSE), Japan Securities Dealers Association, and U.S.-based Automatic Data Processing established an internet voting platform to facilitate the voting process for institutional and foreign shareowners. More than 300 Japanese companies participate in this electronic voting platform.

In Japan, the market for corporate control is not active. However, unwinding material ties represented by cross-shareholdings among the *keiretsu* groups, the decline of shareholdings by major Japanese banks, and the growth of foreign share ownership in recent years have significantly eroded protections against hostile takeovers for Japanese corporations. A milestone revision to the Japanese Corporate Law to allow foreign corporations to acquire Japanese companies through indirect stock swaps became effective in May 2007. Japanese companies are now forced to prepare decisive and sophisticated measures against takeovers rather than relying on massive emergency dividend hikes as in the past.

Subsequent to the Corporate Law revisions, more and more companies have begun to adopt an early-warning rights plan that allows the company's board to take actions to dilute the position of any unwanted acquirers trying to gain 20 percent or more of the company's shares. Many of these plans may be removed or redeemed (cancelled) by shareowner vote; they may contain a sunset provision of one, two, or three years' duration; and they may have an independent review clause. Despite requiring shareowner approval or ratification, these provisions are simply guidelines rather than binding recommendations. All the same, many Japanese poison pills are in compliance with regulators' guidelines.

Proponents of anti-takeover mechanisms in Japan cite as justification cases involving the activities of the hedge fund Steel Partners, including its failed hostile takeover bid for Sotoh in 2003. Unprepared for a takeover bid, Sotoh management could only rely on increasing the company's dividend to hike up its stock price to fend off Steel Partners' bid. Although the defense succeeded, Sotoh experienced a massive cash outflow because of the dividends, whereas Steel Partners sold its position in the company and made a sizable profit thanks to the increased stock price. Then, in 2007, Steel Partners lost an appeal in which it sought to prevent Bull-Dog Sauce Company from implementing anti-takeover defenses to block Steel Partners' takeover bid. Japan's Supreme Court upheld a decision made by a lower court in support of Bull-Dog Sauce's proposed, shareowner-approved poison pill.

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[12]Out of the 444 companies researched for this manual, 82 percent held their AGMs between 18 June and 30 June 2008.

At the Aderans Holdings Company 2008 AGM, the company's largest shareowner, Steel Partners, was able to block the nominations of most of the board's directors and ousted its president. Steel Partners had one of its representatives appointed to the board when the company named a president shortly thereafter. This activity was reportedly the first time the management of a Japanese company had been replaced by an activist fund.

Another challenge to takeover defenses in Japan worth noting is the 2008 case in which the Japanese government ordered U.K. activist fund Children's Investment Fund (TCI) to cease its plan to raise its equity stake in Electric Power Development. TCI had tried to force Electric Power to accept TCI executives as board members. After Electric Power rejected the plan, because foreign investors seeking a stake in Japanese utilities greater than 10 percent must first receive official approval, TCI asked the Japanese government's permission to raise its stake in the company from 9.9 percent to 20 percent. The government order for TCI to cease cited Japan's foreign exchange law as the authority under which foreign companies may be prevented from acquiring 10 percent or more in a domestic power supplier if the result of the acquisition may be deemed a threat to stable power supply or the maintenance of public order in Japan.

Increasing pressure for shareowner rights has come also from domestic asset managers, such as the Pension Fund Association (PFA), which represents Japan's corporate pension funds and oversees more than USD100 billion of assets. Tomomi Yano has led the fund in promoting shareowner interests since becoming head of investment in 2001 by having companies downsize their large boards, pay higher dividends, and provide better disclosure for shareowners. The PFA has stated it will not automatically support management at the companies in which it has holdings unless certain investment standards are met; the PFA also has committed to vote against board members who seek to implement poison pill plans and other takeover defenses if those plans do not have shareowner approval.

Legal and Regulatory Framework

In Japan, shareowner rights are largely determined by the Japanese Corporate Law Code, which is one of six codes that make up the main body of Japanese statutory law.

The Japanese regulatory system is generally, given the absence of formal enforcement mechanisms, based on guidelines rather than requirements. Government agencies issue "recommendations," "directions," "suggestions," and "warnings," and the implication is that, although these guidelines are not requirements, those who do not comply will in some way be obstructed by the agency in the future.

For example, the amended Corporate Law that addressed enhanced disclosures in annual regulatory filings for fiscal years commencing after April 2003 was issued as guidelines only. Although it was an instruction provided by the Financial Services Agency, rather than a legal requirement under the code, for companies to disclose collective remuneration and fees paid to accounting firms, the vast majority of companies have followed these guidelines. The same adherence to guidelines has been demonstrated with the implementation of rights plans, as described in the previous section.

Shareowner rights in Japan are influenced by the investor's share ownership position. One percent (or 300 share units) shareowners can, among other rights, propose voting resolutions for the shareowners' meeting. A 3 percent shareowner may call for an extraordinary general meeting at any time and ask a court for the dismissal of a board member or auditor who has breached his or her obligations; a 10 percent holder may ask the court for dissolution of the corporation in certain circumstances. Shareowners with 33 ⅓ percent holdings can veto resolutions concerning mergers, board member dismissals, and changes to the articles of incorporation. Shareowners with 50 percent and greater holdings enjoy all of these rights and more. The Japanese Corporate Law was amended to allow shareowners to oust a board member by a simple majority, as opposed to the two-thirds majority previously required. Companies may alter their bylaws, however, to restore the two-thirds requirement. Companies typically do not allow cumulative voting in the election of board members.

Although minority shareowners may propose candidates for the board and the process is relatively easy, this right is not exercised frequently. All board members are subject to election on a periodic basis by majority vote, and more and more companies are moving toward annual elections.

A Financial Instruments and Exchange Law was proposed in June 2006 in response to corporate scandals in previous years; it has been dubbed "J-SOX" (meaning, the Japanese version of the Sarbanes–Oxley Act). This law was enacted in April 2008. J-SOX requires that the management of listed companies evaluate, document, and issue a report on their companies' internal processes and control procedures.

On 27 May 2008, the TSE announced that it was conducting hearings and surveys to gather opinions from investors aimed at "improving conditions to enhance the corporate governance of listed companies." The TSE hopes to use these data to identify issues and develop measures to improve the listing system.

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

Tokyo Stock Exchange (www.tse.or.jp/english/)

Osaka Securities Exchange (www.ose.or.jp/e/)

Financial Services Agency (www.fsa.go.jp/en/index.html)

Shareholders Ombudsman (http://kabuombu.sakura.ne.jp)

Ministry of Economy, Trade, and Industry (www.meti.go.jp)

Malaysia

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 27 companies in Malaysia as of 15 May 2008.

Shareowners in the Malaysian market have fairly strong shareowner rights for an emerging market, although the shareowner engagement process is still developing. A significant issue in the Malaysian market is the presence of a staggered board structure. Despite this structure, shareowners have the right to remove board members without cause and also have the right to change the company's articles of association.

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)?	57%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	7.4%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	26%	
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	Often	59% of the companies researched for this manual require shares to be deposited.
Are there share ownership limitations in this market?	Yes	In the water and energy supply, broadcasting, defense, and security industries, foreign investors may hold only up to 30% of the company's shares.
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	This practice is standard in Malaysia. Under the listing requirements, board members must retire and stand for reelection at least once every 3 years.
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is not the practice in Malaysia.
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?	No	

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	A shareowner holding a minimum of 5% of the total shareowner votes may introduce dissident resolutions.
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 (alone or in aggregate) holding a minimum of 10% of a company may call an extraordinary meeting.
What percentage of companies include golden shares in their capital structure?	0%	Although no single golden shares exist, government-linked companies sometimes have "special shares" with extraordinary voting rights. These special shares are similar to golden shares. A special share may require the express consent of its holder over certain prescribed matters or may confer special rights over appointments to the board of directors.
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	This right is a legal requirement.
Do companies require a supermajority vote to approve a merger?	Often	41% of the companies researched for this manual require a supermajority vote in such instances.
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	Although not unheard of, they are rare.
Are derivative suits commonly used in this market?	No	Although not unheard of, they are rare.

Current Engagement Practices and Shareowner Rights Developments

In recent years in Malaysia, the shareowner engagement process has gradually improved, partly because of increasing activities by a few government-related agencies. One such group is the *Badan Pengawas Pemegang Saham Minoriti Berhad* (Minority Shareowners Watchdog Group), which is the most active agency; shareowners may even appoint the Watchdog Group to attend general shareowners meetings on their behalf.

Malaysian companies have a single-tier board structure comprising both executive and non-executive board members, where the chair of the board and chief executive officer roles are usually filled by different people. A serious issue in the Malaysian market is that all the board terms are staggered over a three-year rotation process. This practice may entrench the boards, but shareowners have the right to remove board members without cause at an extraordinary general meeting. New board members are usually elected by the passing of an ordinary resolution at a general shareowners meeting. Notably, attendance at the annual general meeting is generally poor and dominated by retail investors.

The Malaysian Code on Takeovers and Mergers is administered by the *Suruhanjaya Sekuriti* (Securities Commission of Malaysia), and the provisions of the code are mandatory under Malaysian law. According to the code, the Securities Commission is required to ensure the fair and equal treatment of all shareowners, particularly minority shareowners, in relation to takeover offers, mergers, or compulsory acquisitions. In practice, Malaysian companies usually do not establish their own anti-takeover devices; poison pills are not used in Malaysia. The Code on Takeovers and Mergers also does not prohibit a hostile takeover bid. Hostile takeover bids are not common, however, in Malaysia. According to the code, an acquirer who obtains 33 percent of the voting rights in a company must make a mandatory general offer for the remaining shares. The code grants the Securities Commission the sole authority to grant waivers from such requirements.

In Malaysia, shareowners face practical obstacles when pursuing legal action against board members for breach of fiduciary duties. The costs of funding an action and the complexities of the substantial and procedural requirements are often prohibitive and overwhelming to shareowners. The estimate is that cases take, on average, two to three years from filing to completion of trial, although in practice most cases involving company law are settled out of court.

The *Kod Tadbir Urus Korporat Malaysia* (Malaysian Code on Corporate Governance) provides companies with a set of principles and best practices on corporate governance. Although compliance with the code itself is voluntary, the listing requirements section requires that the boards of publicly listed companies disclose how their company applies the principles of the code and the extent to which they have complied with it.

Despite the adoption of the Malaysian Code on Corporate Governance in 2005, only recently have more and more companies recognized the importance of good investor relations. In September 2007, *Bursa Malaysia* (the Malaysia Stock Exchange) disclosed that approximately 130 of all 987 listed companies had an official investor relations division. In response to such low attention to investor concerns, Bursa Malaysia implemented a program intended to motivate companies to focus on investor relations and rights issues. And progress has occurred: Whereas in the past companies traditionally focused communications mostly toward their stakeholders,[13] a recent trend shows companies increasingly including shareowners in communications.

Legal and Regulatory Framework

The Securities Industry Act and the Securities Commission Act make up the legislative and regulatory framework of Malaysia's capital markets, both of which are under the authority of the Ministry of Finance.

The Securities Commission is the financially independent entity that is responsible for shareowner protection. The Securities Commission is funded through levies and fees charged in the capital market. The Securities Commission is accountable to both the Minister of Finance and the two houses of Parliament in Malaysia, however, and must submit its annual report and audited accounts to all three entities.

[13]Stakeholders in a company include all those that are affected by the company's operations, including government, employees, shareowners, and the society in which the company operates.

The Securities Commission does not require approval from the Minister of Finance to exercise any of its administrative, supervisory, investigatory, or enforcement powers. Approval from the Minister of Finance may be required for the Securities Commission to grant or renew certain licenses. Such decisions are usually made in consultation with or upon the recommendation of the Securities Commission. Notably, the close ties between the Securities Commission and the Ministry of Finance do raise the question whether the Securities Commission is, despite its financial independence, a fully independent regulatory body.

The Companies Act of 1965 is the principal piece of legislation providing Malaysian shareowners with the right to participate and vote in company meetings and shareowner ballots. The Registrar of Companies, under the Ministry of Domestic Trade and Consumer Affairs, applies the Companies Act and is empowered to investigate potential violations and perform prosecution functions. The Registrar of Companies does not have the power, however, to institute civil action on behalf of an investor suffering loss or damage.

A number of mechanisms for shareowner engagement and activism are available in Malaysia. The Companies Act provides for the one share, one vote system. In some cases, however, such as in most government-linked companies, special shares with extraordinary voting rights exist. The terms of the special shares may vary from company to company. For example, they may require the express consent of the holder of the special shares over certain prescribed matters or may confer special rights over appointments to the board of directors.

An extraordinary general meeting of shareowners may be called by two or more shareowners representing 10 percent of the total shares outstanding. Shareowners may use this mechanism to request changes to the company's articles of association. Also, shareowners with at least 5 percent of the total shareowner voting rights may place items on the agenda of the annual general meeting. The Bursa Malaysia prohibits companies from deleting from, amending, or adding to their articles unless the company has sought and obtained the written approval of the exchange. Changes to the articles of association may be made only with the approval of shareowners representing 75 percent of the shares outstanding. Neither the board nor the management may unilaterally change the articles of association.

The Companies Act allows shareowners to remove board members at any time during their term of office. Special notice is required for tabling a resolution to remove a board member or to appoint someone else in his or her place. Although this provision is crucial, the law does not safeguard against random removals by significant shareowners. Companies must notify the Bursa Malaysia in the event a board member is removed, but the company is not required to provide the rationale for the removal. Shareowners with more than 5 percent of the total voting rights may petition through the Malaysian court system for dismissal of board members; notably, the Registrar of Companies and the Securities Commission may do the same.

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

Asian Development Bank Institute (http://adbi.adb.org)

Bursa Malaysia (Malaysia Stock Exchange) (www.bursamalaysia.com/)

World Bank Group (www.worldbank.org)

Ministry of Finance in Malaysia (www.treasury.gov.my)

Suruhanjaya Sekuriti (Securities Commission Malaysia) (http://sc.com.my)

Pengawas Pemegang Saham Minoriti Berhad (Minority Shareholder Watchdog Group) (www.mswg.org.my)

Mexico

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 26 companies in Mexico as of 15 May 2008.

Mexico's economy historically has been controlled by a small group of elite families, and many of the country's major companies follow that model to this day. Shareowner rights in Mexico are sometimes negatively affected because many of the country's publicly listed companies have majority non-independent boards and controlling shareowners. High levels of related-party transactions are common in Mexico. At the same time, shareowner activism in Mexico is low as a result of some restrictive regulations. Mexican pension funds invest primarily in government bonds and have a reputation for being passive owners. Until relatively recently, changes in control were rare in Mexico, and those that did happen suffered from a lack of transparency.

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)?	49%	Non-independent board members who are company employees or otherwise connected to the CEO and/or controlling shareowner are common in Mexico.
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	46%	Many Mexican companies engage in high levels of related-party transactions.
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	50%	Mexico's economy historically has been controlled by a small group of wealthy families with financial and political ties. Small- and medium-sized enterprises make up more than 95% of businesses in Mexico, and most of them are family controlled.
Is voting by proxy permitted?	Yes	
Must shares be deposited or blocked from trading in order to vote?	Mostly, yes	This practice is common in Mexico. 85% of the companies researched for this manual require shares to be deposited or blocked before a vote.
Are there share ownership limitations in this market?	Yes	Companies in certain sectors (e.g., media, transportation, glass production, beer production, cement, and telecommunications) have implemented share ownership limitations.
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?	Sometimes	Majority voting is not common in Mexico. Only 30% of the companies researched for this manual have implemented majority voting in the election of board members.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is not the practice in Mexico.
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?	No	
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	No	
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	No	
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	Mexico's *Ley del Mercado de Valores* (Securities Market Law) of 2006 allows shareowners with at least 10% of the voting and limited voting shares[14] the right to call a shareowners meeting.
What percentage of companies include golden shares in their capital structure?	0%	Golden shares are not in use in Mexico.
Are shareholder rights plans (poison pills) allowed in this market?	No	Poison pills are not in use in Mexico.
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?	No	The shareowners' right to approve significant company transactions is limited in Mexico.
Do companies require a supermajority vote to approve a merger?	In most cases	Most Mexican companies require a supermajority vote to approve a merger.
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	This kind of provision is not the practice in Mexico.
Are class action suits commonly used in this market?	No	Class action shareowner lawsuits are not permitted by Mexican law.
Are derivative suits commonly used in this market?	No	This practice is not found in Mexico.

[14]Shares with some form of restriction on voting rights.

Current Engagement Practices and Shareowner Rights Developments

In Mexico, shareowner engagement is still a new concept. Like most markets in Latin America, Mexico's economy has historically been controlled by a small group of wealthy families. As the country adopted corporate capitalism, this history translated into the emergence of clusters of family-controlled companies. With limited access to traditional sources of capital, most major companies were either state controlled or were run by financially self-sufficient family groups. Mexico's capital markets remain small and illiquid and are still not a primary source of financing for the country's major corporations.

Although Mexican controlling shareowner families have been more inclined recently to use public stock offerings to raise capital, many have been reluctant to give shareowners any real control. Half of the Mexican companies researched for this manual have controlling shareowners, and more than half of the board members at the Mexican companies researched are not considered to be independent. Common practice for controlling families is to place many family members, company employees, and affiliates on the board, which ensures loyalty and limits the potential for effective shareowner activism. Cross-shareholding arrangements and interlocking board memberships are common in Mexico. An increasing number of Mexican companies have included more independent board members in recent years. The country's 2006 *Código de Mejores Prácticas Corporativas* (Corporate Governance Code) includes new requirements for the inclusion of independent board members.

Amendments made in 2001 to Mexico's *Ley General de Sociedades Mercantiles* (Company Law) include provisions to improve the regulation of basic shareowner rights. The country's 2006 Securities Markets Law, which regulates public companies, requires that boards be composed of, at minimum, 25 percent independent board members.

Even though Mexico has privatized social security and has a number of large private pension funds, shareowner activism by institutional investors is still uncommon. Recent years of macroeconomic stability and uninterrupted economic growth encouraged private investment in the region, but Mexican institutional investors have been slow to acquire stakes in domestic companies—and even slower to engage in shareowner activism. Despite the fact that new regulations enacted in 2005 allow pension funds to invest in local equities, few funds have chosen to do so. Mexican pension funds continue to hold primarily government bonds.

To encourage risk diversification and guard against economic downturns, federal regulations restrict Mexican pension funds from investing more than 15 percent of their holdings in stocks; in fact, Mexican pension funds currently have invested only about 2 percent of their capital in local equities. Mexican pension funds have the lowest rates of investment in local equities in Latin America. Mexican mutual funds have invested 19 percent of their USD70 billion assets in equities but typically acquire small stakes with limited voting power and abide by the prevailing institutional culture of passivity.

Shareowner activism by institutional investors in Mexico is further restricted by regulations that limit pension funds to investing in instruments that replicate selected share indexes and forbid them from investing in individual listed Mexican companies.

Like most of Latin America, Mexico is affected by low market liquidity. Value traded as a percentage of market capitalization in 2006 was only 23.2 percent in Mexico, as compared with 155 percent in the United States during the same period. Slow-moving capital markets combined with a regulatory and institutional framework that discourages shareowner activism have made it difficult for investors to divest from troubled companies and have helped foster a culture of passive, long-term investment. Not surprisingly, engagement consultants and proxy advisory services are not common in Mexico.

A major shareowner rights initiative spearheaded in 2005 by Gil Francisco Díaz, then Mexico's Secretary of Finance, and supported by the country's major political parties and corporations, was stifled by an opposition group led by Mexican TV mogul Ricardo Salinas.

Legal and Regulatory Framework

Although the country's governance policies still lag behind some internationally accepted best practices, Mexican regulators are taking steps to provide better protection for minority shareowners and improve overall governance practices. A number of important reforms to the Mexican corporate governance framework have been made in the past 10 years. Mexico's capital market regulator, the *Comisión Nacional Bancaria y de Valores* (National Banking and Securities Commission) cooperated with the *Bolsa Mexicana de Valores* (Mexican Stock Exchange) to produce the country's first Corporate Governance Code in 1999. An amended copy of the governance code published in 2006, the 2001 Company Law, and the 2006 Securities Market Law are the basis for current Mexican governance practices.

A 2005 World Bank study ranked Mexico third from last in a global comparison of shareowner rights. Even with recent improvements in the 2006 Securities Market Law, a number of factors and mechanisms in Mexico still discourage shareowner engagement and activism. Protection of minority shareowner rights and the right of shareowners to participate in fundamental decisions and make their voices heard at the annual meeting continue to be areas in Mexican governance practices in need of improvement.

Although several federally imposed restrictions impede the ability of outsiders to take control of companies in certain industries, poison pills are not used in Mexico. The Mexican government reserves the right to take control of corporations in strategic sectors, and it exercised this right during the country's 1982 financial crisis.

As a rule, Mexican regulations allow foreign investors to control up to 100 percent of the capital stock of Mexican companies. Some sectors, however, are affected by regulations that limit shareowner rights. Examples of such regulations are the Federal Telecommunications Law and the Foreign Investment Law, which prohibit foreign investors from controlling more than 49 percent of the outstanding shares of Mexican telecoms. Any share transfers resulting in a violation of these foreign ownership requirements are invalid under Mexican law. The same restrictions apply to companies in the transportation sector.

Because of the country's high degree of concentrated economic power, shareowners in Mexican companies can be negatively affected by frequently occurring related-party transactions. Shareowners have complained that the majority owners continue to use the assets of publicly listed companies to boost their private business endeavors. Nearly half of the Mexican companies researched for this manual have engaged in significant related-party transactions in the past three years.

Mexico's Company Law includes provisions on a board member's fiduciary duty to shareowners. Breaches of fiduciary duty in which board members knowingly act to benefit one shareowner to the detriment of others can be penalized with prison sentences ranging from 3 to 12 years. Despite some recent improvements, shareowners still cannot rely on Mexico's court system to enforce minority shareowner rights. Arbitration is in its early stages, and Mexico's legal system suffers from a reputation for being slow, inefficient, and weakened by corruption.

In contrast to the rights of minority shareowners in developed markets, it is generally more difficult for minority shareowners in Mexico to exercise their rights as the result of the powers that board members or majority shareowners enjoy. Mexican laws require non-Mexican shareowners to agree to be considered Mexicans with respect to their shares and forfeit the right to invoke the protection of their own governments. Shareowner rights in Mexico are limited by the fact that Mexican civil procedure does not allow shareowners to initiate the same types of class action lawsuits or shareowner derivative actions as some other markets permit. Although class action lawsuits do not exist in Mexico, the country's laws do provide shareowners of 20 percent of the shares outstanding with the right to contest shareowner resolutions. In addition, according to Article 38 of the Securities Market Law, shareowners representing at least 5 percent of a company's outstanding shares may directly bring a civil liability action against any board member or committee member.

Mexico's 2006 Securities Market Law allows shareowners of 10 percent of the shares to appoint one board member and call emergency general meetings. Shareowner rights are not limited by staggered board structures. Mexican companies have a single-tier board structure.

The 2003 White Paper on Corporate Governance, published by the Latin American Roundtable on Corporate Governance, a working group organized jointly by the International Financial Corporation, the Organisation for Economic Co-operation and Development, the World Bank, and the Inter-American Development Bank, identifies privately managed pension funds as the "set of domestic institutional investors that typically carries the most weight in the region." The study states that "the degree to which pension fund managers view promoting transparency and corporate governance as part of their mandate to maximize return for their clients will be an important determinant of the pace of improvements in the coming years" and highlights the need for the creation of a strong regulatory framework and proper incentives to push fund managers to take on a more active role. Encouraging pension funds to engage the companies in which they invest remains an important area of public policy in Mexico.

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

Bolsa Mexicana de Valores (Mexican Stock Exchange) (www.bmv.com.mx)

CNBV: Comisión Nacional Bancaria y de Valores (National Securities and Banking Commission) (www.cnbv.gob.mx)

Secretaría de Hacienda y Crédito Público (Secretariat of Finance and Public Credit) (www.shcp.gob.mx)

Comisión Nacional del Sistema de Ahorro Para el Retiro, CONSAR (National Retirement Savings Commission) (www.consar.gob.mx)

Centro de Excelencia en Gobierno Corporativo (Center for Excellence in Corporate Governance) (www.uas.mx/cegc)

Consejo Coordinador Empresarial (Mexican Business Coordination Council) (www.cce.org.mx/cce/home.htm)

Organisation for Economic Co-Operation and Development (www.oecd.org)

Inter-American Development Bank (www.iadb.org)

International Finance Corporation (www.ifc.org)

Poland

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 14 companies in Poland as of 15 May 2008.

Shareowners in the Polish market have generally strong shareowner rights. For example, shareowner resolutions at general meetings have binding rather than mere advisory power. Also, Polish companies have dual board structures, with the functions of management and board members separated. Although the members of supervisory boards are usually elected for a term of longer than one year, in practice, boards seldom have a staggered structure, and their members can be removed at any time by majority of votes cast. Board members may be removed only by shareowners, not by the board; the board also is prevented from unilaterally altering the company's constituent documents (e.g., articles or bylaws).

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)?	40%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	14%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	71%	
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	Yes	7 days before the meeting (but following the 2007/36/EC Directive of the European Parliament, this requirement is expected to be abolished by August 2009)
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations are not common, but do apply in sensitive industries, such as aviation, media, and energy. Articles of association may also impose a limitation on shareowners representing more than 20% of votes.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Yes	This practice is standard in Poland.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies allow for cumulative voting in the election of board members?	Yes	Shareowners controlling at least 20% of the company's shares may require the general meeting to elect all supervisory board members in groups. Also, when looking at the supervisory board, each director can be seen to represent a proportion of the supervisory board (e.g., if there are 10 supervisory board members, each represents 10% of the supervisory board). In Poland, if a shareowner holds a percentage of shares equivalent to that representative portion, that shareowner may elect the corresponding number of supervisory board members (in the example cited that would equal one seat for every 10%).
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	Shareowners are required to vote annually on formal approval of management board actions, the management report, and annual financial statements. The requirement includes discussion of compensation and data in the management report. The bylaws may also specify if and to what extent the general meeting can be directly involved in remuneration policy.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	This practice is standard in Poland.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right is standard.
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	A minimum of 10% is the general rule, but the articles of association may allow for a lower threshold.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What percentage of companies include golden shares in their capital structure?	0%	Polish law gave the government special rights in 2005, although not strictly golden shares, to veto certain key management and shareowner decisions in a limited number of companies operating in the energy, mining, telecommunication, and transportation sectors. The key criteria are public security and market share. Each year, in September, the government publishes the list of companies affected. Among the 17 companies on the list first published in September 2007 are PGNiG, PKN Orlen, Grupa Lotos S.A., KGHM, and Telekomunikacja Polska.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Poison pills are not common, however, because of concentrated ownership in this market.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is a legal requirement in Poland.
Do companies require a supermajority vote to approve a merger?	Yes	A 75% vote is required to change the articles of association, lower shareowners' equity, liquidate shares, sell an operational subsidiary, or liquidate the company.
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	Class action suits do not exist in Polish law.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are derivative suits commonly used in this market?	Yes	Derivative actions may be filed against controlling parties and management to protect the interests of the company and the shareowners. Shareowners may also initiate legal action to seek invalidation of company resolutions through the courts if a resolution violates the Commercial Company Code or the articles of association, is contrary to the commercial integrity of the company, is against its interests, or violates shareowner rights. Before initiating such legal action against a resolution, a shareowner (representing any portion of the company's share capital) must first vote against the resolution and then demand that the vote against the resolution be recorded in the minutes.

Current Engagement Practices and Shareowner Rights Developments

Poland, which began the transformation from a state-owned to a capital market economy in the 1990s, has a relatively young but well-organized and regulated capital market. Therefore, the conditions for shareowner engagement in Poland are reasonably mature for an emerging market. If a company's resolution violates the Commercial Company Code or the articles of association, is contrary to the commercial integrity of the company, is against its interests, or violates shareowner rights, the shareowners may initiate legal action to reverse the resolution. Shareowners must vote against the resolution in question and demand that it be recorded in the minutes in order to initiate legal action; there may be sanctions for filing frivolous claims. Derivative actions may also be filed against controlling parties and management to protect the interests of the company and the shareowners.

Although some lawsuits have been initiated by shareowners in Poland, the signs of broader shareowner activism are less noticeable than in most developed markets. So far, few significant shareowner actions have been initiated by organizations representing market participants. There may be several reasons for this: the lack of classic takeover prevention mechanisms in companies (such as poison pills, fair price provisions, stakeholder clauses); the general rule of majority election and recall of board members granted directly to shareowners; the moderate spread between the compensation of top managers and that of the rest of the company's employees; the significant state ownership position in some of the companies with the largest capitalization; and the two-tiered board structure, with separated management and supervisory board functions.

Board members may be removed without cause but only by shareowners in a general meeting. The board cannot remove a board member. The supervisory board members are elected or removed by majority vote. Although the formal term of the board of directors may be as long as five years, the supervisory boards are usually subject to election on a periodic basis. In companies with significant state ownership, because of recent political changes, supervisory board membership has tended to change more frequently than annually.

Polish companies are subject to continuous disclosure rules and, apart from regular one-on-one investor relations presentations, cannot make selective briefings to certain shareowners.

Polish companies generally do not implement voting rights limitations; such limitations are imposed on foreign investors, however, for some companies in strategically sensitive industries. Shareowners can set up voting limitations by amending bylaws and capping voting power for shareowners controlling 20 percent or more of the shares.

Legal and Regulatory Framework

Key shareowner rights in Poland are contained in four documents: the Commercial Company Code; the Civil Code, which embodies most corporate laws and takeover provisions affecting Polish companies and constitutes a broad legal framework; the Act of Trading in Financial Instruments (Trading Act); and the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies (Public Offering Act). These laws define the rules, conditions, rights, and obligations of entities engaged in trading securities and other financial instruments, including obligations that accompany the acquisition of significant stakes in public companies. The Trading Act and Public Offering Act are administered by the *Komisja Nadzoru Finansowego* (Polish Financial Supervision Authority or PFSA), which has wide-ranging enforcement powers. The PFSA may also become involved in listing issues if criminal enforcement becomes a possibility in that arena. The rules of the *Giełda Papierów Wartościowych w Warszawie* (Warsaw Stock Exchange or WSE) contain disclosure and key market regulations. Furthermore, after broad consultations with companies, market participants, and the authors of the so-called Gdansk Code (corporate governance code), the WSE published a Polish corporate governance code, *Dobrych Praktyk Spółek Notowanych na GPW* ("The Best Practices of WSE Listed Companies"). Although adherence to most sections of the code is voluntary, Polish companies are required to report and explain noncompliance with particular articles in the code (i.e., a "comply or explain" system).

A number of mechanisms are in place in Poland to ensure that shareowners' rights are secure, and Poland has endeavored to adhere to European Union directives in this area, both before and after becoming an EU member in 2004. The one share, one vote principle is fully implemented in all public companies in Poland. Shareowners also have strong rights when it comes to calling meetings outside the annual general meeting. An extraordinary general meeting of shareowners may be called, or a shareowner proposal may be filed, by shareowners representing a minimum of 10 percent of shares. A lower threshold may be allowed by a company's articles of association. Amendments to the articles of association may be made only by a qualified majority of at least 75 percent of the votes cast. Finally, shareowners holding at least 5 percent of a listed company are entitled to appoint an ad hoc auditor to investigate when shareowners suspect company irregularities.

Shareowner proposals must be filed with the company's management at least four weeks prior to a scheduled general meeting. Shareowners also must block shares for a minimum of seven days before the meeting.

Following the 2007/36/EC Directive of the European Parliament, Polish regulation concerning organization and participation in shareowner meetings is expected to change. Shareowners will no longer be required to deposit and block their shares in order to participate in a meeting, general meetings may be conducted online, and online or mailed submission of shareowner proposals may be permitted.

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

Komisja Nadzoru Finansowego (Polish Financial Supervision Authority) (www.kpwig.gov.pl)

Giełda Papierów Wartościowych w Warszawie (Warsaw Stock Exchange) (www.gpw.pl) and (www.corp-gov.gpw.pl)

Polish Association of Brokers and Investment Advisors (www.zmid.org.pl)

Polish Individual Investors Association (www.sii.org.pl)

Gdansk Institute for Market Economics (www.ibngr.edu.pl)

Polish Forum for Corporate Governance (www.pfcg.org.pl)

Centrum Analiz Społeczno-Ekonomicznych (Center for Social and Economic Research) (www.case.com.pl)

Centrum Etyki Biznesu (Business Ethics Centre) (www.cebi.pl)

Forum Odpowiedzialnego Biznesu (Responsible Business Forum) (www.odpowiedzialnybiznes.pl)

Polski Instytut Dyrektorów (Polish Institute of Directors) (www.pid.org.pl)

Polish Bank Association (www.zbp.pl)

Krajowy Depozyt Papierów Wartościowych S.A. (National Depository for Securities) (www.kdpw.com.pl)

Narodowy Bank Polski (National Bank of Poland) (www.nbp.pl)

Ministerstwo Finansów (Ministry of Finance) (www.mf.gov.pl)

Ministerstwo Skarbu Panstwa (Ministry of Treasury) (www.mst.gov.pl)

Ministerstwo Spraw Zagranicznych (Ministry of Foreign Affairs) (www.msz.gov.pl)

Ministerstwo Gospodarki (Ministry of Economy) (www.mg.gov.pl)

Polska Agencja Informacji i Inwestycji Zagranicznych S.A. (Polish Information and Foreign Investment Agency) (www.paiz.gov.pl)

Russia

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 24 companies in Russia as of 15 May 2008.

Shareowners face various challenges to their rights in Russia. Inconsistent law enforcement, growing state intervention in business, and challenges in corporate transparency are among the obstacles to stronger shareowner rights in the Russian market.

Among the rights shareowners do enjoy is the ability to call special meetings, although only if at the request of one or more shareowners holding a combined minimum of 10 percent of the voting rights. Furthermore, the Russian Federal Law on Joint Stock Companies provides those shareowners with 2 percent holdings the right to nominate their own candidates for election at both annual and extraordinary shareowners' meetings and to add items to the agenda of shareowners' meetings.

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)?	32%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	54%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	71%	Common in the Russian market
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No	Never required
Are there share ownership limitations in this market?	Yes	New Russian legislation to supervise foreign investment in the mining and resource sectors sets out a list of 42 sectors designated as strategic and also sets quantitative thresholds for oil, gold, and gas.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Mostly, yes	This practice is not a legal requirement, but many companies have adopted majority voting.
Do companies allow for cumulative voting in the election of board members?	Yes	A legal requirement in Russia
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?	No	These reports are not subject to shareowner approval.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	No	Equity-based incentive plans are not subject to shareowner approval.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right is standard. Shareowners holding 2% or more of shares may add items to the agenda for shareowner meetings.
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	This right is standard. Shareowners holding a minimum of 10% of shares may call an extraordinary general meeting.
What percentage of companies include golden shares in their capital structure?	4%	Only 1 of the Russian companies researched for this manual has golden shares. The government of Tatarstan (a republic of the Russian Federation) holds a golden share in the oil and gas company Tatneft.
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	A legal requirement
Do companies require a supermajority vote to approve a merger?	Yes	The affirmative vote of the holders of at least 75% of the shares voting at the annual meeting is required to approve a merger.
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	If an investor intends to acquire more than 30% of company shares, including those owned before the intended acquisition, the investor may make a voluntary tender offer with a price set at the acquirer's discretion. If the 30% threshold is crossed without a voluntary tender offer, however, the acquirer is obliged to make a mandatory tender offer, which is subject to a fair price provision under applicable law.
Are class action suits commonly used in this market?	No	Current reforms to Russian corporate law include instituting class action suits.
Are derivative suits commonly used in this market?	Yes	

Current Engagement Practices and Shareowner Rights Developments

Shareowner activism is a much less important mechanism of corporate governance in Russia than it is in some other markets. The high degree of transparency from companies, the strong judicial or regulatory systems, and an independent media structure that such activism requires are limited in Russia. A number of successful actions, however—mostly by foreign institutional investors—have resulted in some significant changes in companies' corporate governance.

The best-known examples of shareowner activism in Russia are associated with the actions of the Hermitage Fund, a specialist in Russian investing that is believed to be playing a deliberate "media strategy." The Hermitage Fund has generated news in such reputable international business newspapers as the *Financial Times* and the *Wall Street Journal* about Russian corporate governance abuses. This strategy has proven successful because many investors outside Russia rely on such reputable international media to help form their opinions about companies. Moreover, recurrent exposure in the international press is likely to attract a regulator's attention to a corporate malfeasance and make the regulator take steps toward stopping it. The Hermitage Fund's success in drawing attention to—and in many cases, correction of—corporate governance abuses has been important; it includes revelations at Gazprom, Sberbank, and RAO UES.

Companies in Russia are subject to a fair price provision. In July 2006, two principal amendments addressing such provisions were made to the Federal Law on Joint Stock Companies. The first amendment introduced detailed rules for the procedures for, and the rights and obligations of, parties in a situation where an acquirer of a company crosses certain ownership thresholds (30 percent, 50 percent, and 75 percent of voting shares and preferred shares with vested voting rights). In short, if an investor acquires more than 30 percent of such shares, including shares owned before the current acquisitions, the investor may make a voluntary tender offer to other shareowners with a price set at the acquirer's discretion. If the 30 percent threshold is crossed without a voluntary tender offer, the acquirer is obliged to make a mandatory tender offer to all the other security holders. To ensure fairness, the price of shares set by the acquirer in such an offer must not be lower than the maximum of the average market price of shares over the previous six months and the price at which the acquirer has bought or committed to buy shares during the previous six months.

The second amendment introduced mechanisms for the buyout of securities from minority shareowners. Upon crossing a threshold of 95 percent of shares by a controlling shareowner, the remaining security holders may require that the acquirer purchase their voting shares and securities convertible into voting shares (a minority "put option") or the acquirer may require that the remaining security holders sell such securities to the acquirer (a minority "squeeze out"). This amendment also contains minimum price requirements that are intended to ensure that squeezed-out minority shareowners receive adequate compensation. To that end, the amendment allows controlling shareowners to eliminate potential conflicts with raiders simply by becoming a sole owner of the company.

Legal and Regulatory Framework

Key shareowner rights are contained in the Federal Law on Joint Stock Companies, which embodies all corporate laws and takeover provisions affecting Russian companies. The Federal Law is administered by the Federal Financial Markets Service (FSFM) and was amended in 1996, 1999, 2001, 2002, 2003, 2004, and 2006. The Federal Law initially emphasized minority shareowner protection and has continued to develop in this direction. The one share, one vote system is a standard requirement in Russia. Provisions for minority shareowners include protection against dilution; that is, decisions on large issuances of ordinary shares (more than 25 percent) require approval of 75 percent of shareowners. Also, amending the company's articles of association or approving a merger requires the affirmative vote of the holders of at least 75 percent of the shares voting at the annual meeting. A shareowner (or shareowners) of 1 percent of the company's shares may sue a board member/manager on behalf of the company for damages caused to the company by the board member's/manager's misconduct or inaction. Board members are subject to annual elections by all shareowners. New board members may be appointed to fill vacancies between annual general meetings, but they must stand for election by shareowners at the next available general meeting. Shareowners cannot remove an individual board member; they can only dismiss the entire board. Poison pills are not used in Russia.

Recently, government intervention in Russian business has become significant. In April 2008, new Russian legislation was passed to supervise foreign investment in the mining and resource sectors. This legislation sets out a list of 42 sectors designated as strategic and requiring review by the Russian Foreign Investment Review Board (FIRB). Before a Russian company can sell its shares to foreign portfolio buyers, the FIRB must determine whether the foreign buyers are eligible. Foreign acquisition of more than 50 percent (a majority) of a company with reserves exceeding the thresholds is prohibited. The following thresholds were set: 490 million barrels for oil, 1.67 million ounces for gold, and 50 billion cubic meters for gas. A zero threshold was fixed for the mining of uranium, diamonds, quartz, cobalt, nickel, platinum group metals, beryllium, and lithium. Therefore, companies with, for example, mining in the "zero threshold" fields are prohibited from having a foreign majority owner. These thresholds are important because Russia is one of the world's largest mineral producers and because raw metals and aluminum make up more than 60 percent of Russian exports.

According to the law, all foreign investors holding more than 5 percent stakes in Russian companies are obliged to report this fact to the Federal Antimonopoly Service within 180 days. A parallel review process also has been introduced for all Russian companies seeking to sell shares abroad. This review is broader in application than the strategic foreign investment regime. The new regulation—adopted by a decree of the FSFM—permits Russian companies to list for sale no more than 30 percent of their issued stock outside Russia.

The Ministry of Economic Development and Trade recently developed a thorough plan to reform Russian corporate law. Reforms include providing companies with the choice between a one-tier and a two-tier board, clarifying the concept of an independent board member and criteria of independence, and establishing the procedure for electing independent board members. The government has large stakes in many companies and plans to replace state officials on the boards of directors with independent board members. In July 2008, officials released the first lists of independent board members appointed to represent the state on the boards of directors in government-controlled entities.

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

Federal Financial Markets Service (formerly, the Federal Commission for Securities Markets) (www.fcsm.ru/eng/)

National Association of Securities Market Participants (www.naufor.ru)

National Council on Corporate Governance (www.nccg.ru/en)

Russian Trading System Stock Exchange (www.rts.ru)

Corporate Governance in Russia (Investor Protection Association) (www.corp-gov.org)

Russian Institute of Directors (www.rid.ru)

South Africa

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 46 companies in South Africa as of 15 May 2008.

Shareowners' rights in South Africa tend to be strong in comparison with rights in other emerging markets, but determining what these rights are can be difficult because legislation leaves much up to companies and because most companies do not electronically disclose their articles or memoranda of association. The constituent documents of a company (the articles and memoranda of association) tend to be available only for viewing at companies' headquarters, although shareowners may also be allowed to purchase a copy from the company. Board terms are staggered. All non-executive board members are eligible to retire from the board and offer themselves for reelection (which must be by majority vote) every three years. Some executive board members have five-year contracts, during which time they are not subject to shareowner election.

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)?	51%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	13%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	15%	
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	No	
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	Always
Do companies allow for cumulative voting in the election of board members?	Rarely	
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?	No	Shareowners must approve board members' remuneration, but they do not have the right to approve executive remuneration.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Sometimes	Such approval is not required per se. Any options issued to board members, however, must be approved by special resolution of a 75% majority of shareowners; any increase in shares to accommodate future options is also subject to such a resolution.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right exists but is rarely invoked.
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	100 members, or holders of 5% of the shares, may convene a general meeting
What percentage of companies include golden shares in their capital structure?	2.2%	
Are shareholder rights plans (poison pills) allowed in this market?	No	They do not exist.
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	
Do companies require a supermajority vote to approve a merger?	Yes	Mergers require approval of 75% of holders.
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	This practice is required under the Securities Regulation Code on Takeovers and Mergers and the rules of the Securities Regulation Panel, which has legal force under the Companies Act of 1973.
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

Shareowners in South Africa have standard proxy voting rights with no limitations, but electronic voting either via telephone or the internet is not yet widely used. One share, one vote is the standard in South Africa, although a few companies have issued preference shares or additional classes of ordinary shares that hold extra voting power. The number of votes per share is typically the same for foreign and domestic investors and does not vary on the basis of duration of ownership.

Shareowners have the right to call a general meeting with the agreement of 100 shareowners or shareowners who represent 5 percent or more of share capital. Shareowners are generally asked to approve the financial statements and board members' remuneration; occasionally, they are asked to approve a share incentive scheme or other remuneration plan, but such approval is not required unless it involves issuing shares or options to board members or if implementing the plan will require additional share capital. When approval is called for, a 75 percent supermajority special resolution is required. Board members are not authorized to unilaterally purchase or issue shares, and shareowners are often asked to grant them such power.

Board terms in South Africa are staggered, with non-executive board members retiring (with the option to offer themselves for reelection) at least every three years. Board members appointed to fill a term between annual general meetings must retire their seat at the first AGM following their appointment and stand for election by shareowners. Some executive board members serve out five-year contracts, during which time they are not subject to shareowner election to the board. Shareowners have the right to remove a board member without cause by a 50 percent resolution at a general meeting.

Shareowner activism is not common in South Africa. Shareowners have the power to present shareowner proposals at the AGM, but they rarely do. Derivative and class action lawsuits are also rare, although new legislation under consideration includes options for personal liability actions against board members who fail in their fiduciary responsibilities.

Hostile takeovers are rare in South Africa, and most companies disclose relatively few takeover defenses. The Securities Regulation Code on Takeovers and Mergers and the rules of the Securities Regulation Panel, which is given legal force under the Companies Act of 1973, govern the conduct of takeovers and provide for fair prices for minority shareowners. Shareowner rights plans, or poison pills, do not exist in South Africa, and golden shares are rare. Board members may not issue shares to thwart a takeover attempt without shareowner approval.

Legal and Regulatory Framework

Shareowners' rights in South Africa are governed by the Companies Act and the King II Report on Corporate Governance, both of which are to be amended in the near future. As of this manual, a newer Companies Bill has been passed by South African legislators but not yet signed into law by the president; it is not due for implementation until at least 2010. (The King III Report has not yet been released. It may come out in 2009, but as of this manual, its release date is still unclear.)

The Companies Bill will introduce the concept of personal liability for board members who fail in their fiduciary responsibilities and will contain comprehensive provisions about those responsibilities. It also will consolidate a number of shareowner rights and propose changing the threshold for convening a meeting to 25 percent of shareowners unless a different percentage is established in the company's "memorandum of incorporation" (as it will now be known). Reaction to the new bill has been mixed; some critics of the Companies Bill—much as did critics of the Sarbanes–Oxley Act in the United States—argue that the cost of implementation will outweigh the benefits.

The first King Report on corporate governance, published in November 1994 by the Institute of Directors, led to significant changes in legislation and listing requirements. The updated and modernized report, known as King II, was released in March 2002. Some aspects of the King II report are mandatory for those companies listing on the Johannesburg Stock Exchange (JSE); some aspects are subject to a "comply or explain" requirement.

Despite a requirement for companies to make regular disclosure via the JSE News Service of significant events—including directorate changes, board members' dealings in securities, and notices of annual meetings—shareowner access to key information remains a problem in South Africa. Unfortunately, the JSE does not maintain a comprehensive archive of such disclosure announcements on its website, nor do companies consistently post these announcements on their own websites. The JSE also does not post annual reports or other filings on its website; all South African listed companies tend to post their annual reports on their websites, although not always in a timely manner.

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

Institute of Directors of South Africa (www.iodsa.co.za)

JSE Limited (www.jse.co.za)

South African Department of Trade and Industry (www.dti.gov.za)

Financial Services Board (www.fsb.co.za)

National Treasury (www.treasury.gov.za)

Chamber of Mines of South Africa (www.bullion.org.za)

South Korea

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 94 companies in South Korea as of 15 May 2008.

Shareowner engagement in South Korea is often hindered by the country's conglomerates, whose circular, complex networks of cross-holdings shield them from market disciplines. Shareowner activism is also hindered by the country's regulatory ambiguities, which often undermine shareowners' abilities to fully exercise their rights. A prevailing management structure that fosters the infrequent placement of independent members on company boards further weakens shareowner rights in this market. Despite these obstacles, shareowners in the South Korean market hold considerable rights.

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)?	27%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	53%[15]	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	10%	
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations are not common but do apply in strategically sensitive industries such as telecommunication and maritime and aviation transportation.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Yes	Majority voting is a requirement in South Korea. Board members are not required to retire ahead of the annual general meeting, however, as applies in a number of markets.

[15]For more on related-party transactions in South Korea, see *Related-Party Transactions: Cautionary Tales for Investors in Asia* (www.cfainstitute.org/centre/topics/governance/relatedparty.html).

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies allow for cumulative voting in the election of board members?	Mostly, no	South Korean companies can take 1 of 3 positions concerning cumulative voting: (1) preempt it by putting a clear provision banning cumulative voting in the bylaws; (2) conditionally allow cumulative voting by not formally banning it, which, in turn, allows shareowners to request cumulative voting with a 3% ownership threshold; or (3) explicitly allow it with a clear provision in the bylaws. The first or second position is most common.
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?	No	This right is not the practice in South Korea.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	This right is standard in South Korea.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Shareowners may call an extraordinary general meeting or make a shareowner proposal with only a 3% voting threshold for a company with less than KRW10 billion in capitalization and a 1.5% threshold for a company with more than KRW10 billion in capitalization. All shareowner proposals that pass are binding.
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	
What percentage of companies include golden shares in their capital structure?	0%	This practice is not allowed in South Korea.
Are shareholder rights plans (poison pills) allowed in this market?	No	
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 requirement in South Korea.

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	This practice is a requirement in South Korea.
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	This provision is a requirement in South Korea.
Are class action suits commonly used in this market?	No	Class action and derivative suits were introduced in late 2005 but are not yet common.
Are derivative suits commonly used in this market?	No	

Current Engagement Practices and Shareowner Rights Developments

Although shareowner engagement in South Korea has evolved rapidly, political factors and other influences have prevented fully realized shareowner rights. The issue of shareowner engagement has traditionally been treated as political, and considerable focus remains on the omnipresent financial and political influence that the country's family-controlled conglomerates, or *chaebols,* exert on society.

The issues of shareowner engagement and corporate governance entered public debate in 1998, when South Korea began restructuring the *chaebol* system under the International Monetary Fund's mandate. As a result of this activity, public companies improved the accountability of their boards by substantially reducing board sizes and by seating board members from outside the *chaebol* on their boards. Most restrictions on foreign ownership also were removed. In 2001, People's Solidarity for Participatory Democracy (PSPD), one of South Korea's largest civic groups, took advantage of this opening and started a minority shareowner campaign. With a mere 1 percent of voting stock, PSPD activists challenged management at the shareowner meetings of Samsung Electronics, SK Corporation, and others, thus bringing the issues of shareowner rights and activism to media attention. Although its five-year campaign failed to bring specific improvements to the governance of the *chaebol* companies that it targeted, PSPD's high-profile efforts have sustained public debate about the issues of shareowner rights and activism.

PSPD had largely discontinued the campaign by 2006, and in late 2006, Jang Ha-sung, one of the two college professors who led the campaign, began to work as an adviser to Lazard's Korea Corporate Governance Fund, the first such fund formed by a foreign entity. Kim Sang-jo, the other professor, began to lead Solidarity for Economic Reform, a governance and regulatory reform advocacy group that involved some former supporters of PSPD. The divergent routes of these leaders marked a shift away from the public perception that shareowner engagement is primarily a social justice issue.

In South Korea, shareowner engagement is hampered by the absence of a strong local advocate. Local engagement consultants have begun to emerge, but their influence appears marginal. Policymakers have long proposed using the National Pension Service (NPS) as a vehicle for shareowner engagement. For example, in March 2008, the NPS, which currently invests KRW14.5 trillion (USD14.5 billion) in local stock exchanges, said it would vote against appointing the founders of Hyundai Motor Company and Doosan Infracore as board members because of their involvement in financial scandals. This move was a first-of-its-kind shareowner engagement by the fund. Furthermore, new legislation planned for 2009 that will allow brokerages to conduct banking business suggests that the landscape of shareowner engagement in South Korea will change yet again. Once brokerages become full-fledged investment banks in South Korea, the need to articulate shareowner rights and engagement practices will be even greater.

In South Korea, regulatory inadequacies often impede both the formation of independent corporate boards and the improvement of shareowner engagement practices. South Korean regulations require that 50 percent of the board of a public company with KRW2 trillion (USD2 billion) in market value be independent; for a public company with less than KRW2 trillion, at least 25 percent of the board's members must be independent. The regulations do not explicitly define the term "independent," however, and the terms "independent director" and "outside director" are used interchangeably. The materiality threshold for related-party transactions is set at KRW5 billion (USD50 million), and no materiality/time threshold has been set for professional/personal services provided by outside board members. These unclear rules cumulatively result in corporate boards that tend to be far less independent than the companies claim them to be. Board member elections are often staggered because many board members are elected to two- or three-year terms on different schedules, although practice varies. New board members may be appointed to fill vacancies between annual general meetings, but they must stand for election by shareowners at the next available general meeting (annual or extraordinary).

In South Korea, takeover rules are modest. Poison pills are not allowed, although talk of introducing them has been going on since 2006. Shareholdings that enmesh *chaebol* affiliates into a web of cross-shareholdings greatly hamper the market mechanism of takeovers. The complex networks of cross-shareholdings, further strengthened by routine related-party transactions between *chaebol* affiliates, seriously reduce the exposure of the conglomerates to market disciplines.

Legal and Regulatory Framework

Key shareowner rights are stipulated in three pieces of legislation: the Company Law, the Commercial Code, and the Securities Trade Law. Legislation is administered by the Financial Supervisory Service (FSS), which has a wide range of enforcement powers. Disclosure and key market regulations are governed under the Securities Exchange Listed Company Regulations, which has legislative backing. The FSS oversees the enforcement of takeover rules and regulatory disciplines but has no criminal enforcement authority.

A number of mechanisms are available in South Korea for shareowner engagement and activism. The one share, one vote system is generally entrenched, and some restrictions are in place to hold the influence of *chaebols* in check. South Korea's anti-monopoly and fair trade regulations restrict the voting rights of the financial and insurance units of the conglomerates with KRW5 trillion (USD5 billion) in market value connected with the shares they own in other units of the same conglomerates. Their voting rights are reinstated but with a 30 percent voting power ceiling, regardless of the number of shares they own, when they vote on such key issues as mergers and acquisitions or amendments to the articles of incorporation. As of June 2008, the restrictions affect 1,003 affiliates of 41 conglomerates. The Securities Trade Law imposes a voting cap of 3 percent in the election of audit committee or audit board members.

A request for an extraordinary general meeting or a shareowner proposal may be made by a shareowner holding a minimum of 3 percent of the voting shares for companies with less than KRW10 billion (USD10 million) in capitalization or holding 1.5 percent of shares for companies with more than KRW10 billion (USD10 million) in capitalization.

Shareowners may appoint proxies for general meetings without restrictions and are not required to block shares in order to vote. Board members may be removed without cause with a supermajority vote of shareowners or of the board.

On 3 February 2009, the Capital Markets Integration Act took effect. It lowers regulatory walls between banks and non-banking financial institutions. The act was designed to realign the financial industry by encouraging mergers and acquisitions, but it may take some time for this change to come to fruition because of the global financial crisis and the limited amount of capital available for acquisitions in the current environment.

Another bill in the parliament would affect shareowners' rights through amendments to the Commercial Code. Ongoing gridlock in the legislature, however, has slowed the progress of this bill. The amendments, if passed, offer mixed results for the future of shareowner engagement. Some proposals could help weaken the one share, one vote principle by allowing shares with differing voting rights; other proposals are designed to make it easier for shareowners to take such actions as calling special meetings or filing derivative lawsuits. In conjunction with the amendment, the lack of a national consensus on whether *chaebols* should be allowed to own controlling stakes in lending institutions offers another point of political contention.

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

Korea Stock Exchange (www.kse.or.kr/index.html)

National Pension Service (www.nps.or.kr)

Solidarity for Economic Reform (www.ser.or.kr/main.html)

People's Solidarity for Participatory Democracy (www.peoplepower21.org)

Financial Supervisory Service (www.fss.or.kr/kr/main.html)

Center for Good Corporate Governance and CGInfo Service (www.cgcg.or.kr)

Korea Listed Companies Association (www.klca.or.kr)

Korea Outside Directors Directories (www.outside-director.or.kr)

Korean Institute of Directors (www.kiod.or.kr)
[At press time this website was temporarily closed for restructuring.]

Switzerland

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 49 companies in Switzerland as of 15 May 2008.

Although Swiss companies are usually not required to implement a specific board structure, shareowner rights in Switzerland are otherwise relatively strong. Companies may adopt a dual-board structure (such as is required in Germany), a unitary board structure (typical in Anglo-American markets), or the French *président-directeur-general* (PDG) system, which gives much of the power to a single person (the PDG); the PDG is another form of the unitary board system. Two-thirds of the Swiss companies researched for this manual have adopted a unitary board structure; one-third have a dual board structure.

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)?	73%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	2%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	22%	
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	Mostly	A majority of Swiss companies require shareowners to deposit their shares at least 10 days before voting.
Are there share ownership limitations in this market?	Rarely	Only 6% of the Swiss companies researched for this manual have ownership limitations.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Sometimes	43% of the Swiss companies researched for this manual have implemented majority voting in the election of board members.
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is not allowed.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
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	Shareowners vote on approving the annual report, which includes the remuneration report.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Sometimes	25% of the Swiss companies researched for this manual have given this ability to their shareowners. Generally speaking, executive/board member option incentive schemes are not subject to shareowner vote unless the scheme extends to all employees.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right is standard.
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	This right is standard. A minimum 10% holding is required to convene a special meeting.
What percentage of companies include golden shares in their capital structure?	0%	The last remaining golden share (in Swisscom AG) has been abolished, and no Swiss public company retains a golden share.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	They are extremely rare.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	Issuing share capital as a poison pill is not permitted without the consent of the general meeting.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is a legal requirement.
Do companies require a supermajority vote to approve a merger?	Commonly	74% of the Swiss companies researched for this manual require a supermajority.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Sometimes	Shareowners who directly, indirectly, or by joint agreement with third parties exceed a limit of 33.3% of the voting rights must make a public offer to all other owners of stock in the company. This offer must correspond at least to the stock market price and must not be more than 25% below the maximum price paid by the bidder for the relevant shares in the previous 12 months. Companies are allowed to exclude this offer requirement from their articles (to "opt out"). If they do so after the stock market listing, exclusion is subject to a reservation stating that decisions of the general meeting may be contested if they breach the principle of equal treatment or inappropriately limit shareowner rights or deprive them of such rights. In addition, when the Stock Market Law was adopted, companies were allowed the possibility of opting out unconditionally for a transitional period of 2 years ("grandfathering"). Many companies with majority shareowners (e.g., family companies, subsidiary companies, and others) made use of this provision.
Are class action suits commonly used in this market?	No	Not allowed in Switzerland
Are derivative suits commonly used in this market?	No	Not allowed in Switzerland

Current Engagement Practices and Shareowner Rights Developments

Centered mainly on issues of socially responsible investing (SRI) and corporate social responsibility (CSR), shareowner engagement in Switzerland has increased in recent years. Ethos: Swiss Foundation for Sustainable Development is Switzerland's most important SRI investor. Ethos was created by two Swiss pension funds and currently comprises 80 institutional investors. Ethos conducts its investment and consulting activities through Ethos Services. Using an SRI approach, it advises investment funds and discretionary asset management mandates valued at CHF2.1 billion (approximately USD2 billion).

The most prominent recent case of investor activism is the campaign by Olivant Adviser Ltd, Ethos, and others seeking board and executive changes at leading Swiss bank UBS AG. Other shareowners have used various mechanisms also to put pressure on the board of UBS to make fundamental changes. As a result of the various shareowner campaigns, UBS has significantly changed its board (reducing board terms from three years to one year), disclosed details of a probe into its write-downs (negotiated with Ethos), and divided its three key businesses. The UBS situation demonstrates the significant momentum that investor activism has gained in Switzerland. Ethos also weighed in on probes into large write-downs following the subprime mortgage meltdown of 2007–2008.

Shareowner rights limitations arise from the varying board structures of Swiss companies; particular concerns relate to companies that have implemented either a dual-board or PDG system. The dual-board system is modeled after the German system, in which companies have both a supervisory board and a management board. The supervisory board is charged with oversight of the management board, including appointment and dismissal of management board members. The management board makes executive decisions, and shareowners have no direct means of influencing management board membership.

Swiss companies structured after the French PDG system also limit shareowner rights. The centralized structure of the PDG system enables the PDG to single-handedly determine the future direction of a company. The PDG has nearly unchecked control over the company and controls the board of directors with practically no counterbalance in place. The PDG controls the selection of members of the board and can dictate their responsibilities to them. Although this arrangement is comparable to the combined chair and CEO position found in markets with unitary board structures, the powers of the PDG are far more extensive. In many developed markets, shareowners commonly pressure companies with a combined chair/CEO to separate these roles, but shareowners of companies structured using the PDG system do not have this opportunity.

In Switzerland, corporate takeovers are primarily overseen by the Swiss Takeover Board (TOB), a federal commission established under the Federal Act on Stock Exchanges and Securities Trading (SESTA) of March 1995. The TOB has jurisdiction to issue general rules and ensure compliance with the provisions applicable to public takeover offers. Furthermore, mergers between Swiss companies and companies from European Union (EU) member states must be approved by the European Commission. Potential suitors of Swiss companies could be deterred by the requirement to attain supermajority shareowner approval (usually 67 percent) to undertake a merger and/or amend the company's articles of association. A quarter of the Swiss companies researched for this manual require only a simple majority to approve a merger or to amend the articles of association.

Swiss corporations model their corporate governance structure primarily after the Swiss Code of Best Practice for Corporate Governance. Although companies are not required to abide by the code, they usually at least report whether or not they are in compliance. The code provides guidelines and recommendations on matters regarding corporate governance for publicly held Swiss companies. Companies listed on the Swiss Exchange (SWX) must comply with the Corporate Governance Directive of the SWX, which requires listed companies to disclose important information regarding their board and senior managers. In cases of nondisclosure, companies are required to explain their noncompliance with the directive. The directive came into force in 2002 and was revised, including updates to address disclosure on executive compensation matters, for 2007.

Legal and Regulatory Framework

Administered by the Federal Department of Justice and Police (EJPD), the Swiss Company Law is the primary law governing publicly traded Swiss companies and contains a number of rules regarding shareowner rights. The Code of Obligations (CO) is part of the Swiss Company Law and relates closely to corporate governance and shareowner rights issues. In addition to the Swiss Company Law, the SESTA of 1995 and its associated ordinances, the Stock Exchange Ordinance, and the Ordinance of the Swiss Federal Banking Commission on Stock Exchanges and Securities Trading contain important provisions related to shareowner rights; all are based on the principle of self-regulation. Within this framework, the SWX is responsible for issuing rules and regulations on the admission of securities to trading as well as the implementation of all provisions and can require specific corporate governance practices. The EJPD conducts criminal enforcement of these rules and laws.

A variety of mechanisms in Switzerland facilitate shareowner engagement and activism. In particular, the CO assigns important nontransferable powers to the general meeting of shareowners, including the right to adopt and amend the articles of incorporation, to approve the annual and consolidated accounts (including the company's remuneration or compensation committee report), and to set dividend prices.

Unlike EU regulations that require companies to obtain shareowner approval of buybacks at general meetings, Swiss law holds no such requirement. For buybacks above 2 percent but not exceeding 10 percent of the company's capital, however, approval of the Swiss TOB is required in order to avoid the full requirements of the public takeover provisions of SESTA. Such approval is subject to certain conditions provided for in Swiss TOB Release No. 1. The Swiss Takeovers Board can exempt other offers outside these limits on a case-by-case basis. In either case, the approval of shareowners is not required. Furthermore, companies are not required to approve shareholding programs (e.g., stock options) for executives and board members at the general meeting unless those options are made available to all employees of the company. Special meetings of shareowners may be called if shareowners holding an aggregate of at least 10 percent of company shares request such action. Additionally, shareowners representing shares with a nominal value of at least CHF1 million can ask for an item to be placed on the agenda. Shareowners who invoke this right must present their proposal sufficiently far in advance for the board of directors to include the motion of the board as well as the shareowner agenda item in the invitation to the general meeting. In most cases, changes to the articles of association and bylaws must be approved by a supermajority vote (67 percent), although a growing number of companies require only a simple majority.

Shareowners may exercise their voting rights by proxy without any restrictions. In companies that have issued bearer shares,[16] those shares must be deposited before they may be voted at the general meeting of shareowners. In practice, bearer shares are a less important factor than they were a few years ago; registered shares have become more prevalent because of the market trend toward one share, one vote. SESTA mandates that shareowners who—directly, indirectly, or by joint agreement with third parties—exceed a limit of 33.3 percent of the voting rights must make a public offer to all other owners of stock in the company. This offer must, at a minimum, correspond to the stock market price and be no more than 25 percent below the maximum price paid by the bidder for the relevant shares in the previous 12 months. In certain circumstances, however, companies may opt out of this requirement.

Although board members may be removed without cause, most Swiss companies have not implemented a majority voting standard for the election of board members. In Switzerland, board member terms can extend to a maximum of three years, but many Swiss companies hold board member elections annually.

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

Federal Department of Justice and Police (www.ejpd.admin.ch)

Federal Department of Finance (www.efd.admin.ch)

Swiss Takeover Board (www.takeover.ch)

Competition Commission (www.weko.admin.ch)

SIX Swiss Exchange (www.swx.com)

economiesuisse (www.economiesuisse.ch)

Ethos: Swiss Foundation for Sustainable Development (www.ethosfund.ch)

European Commission—Competition (http://ec.europa.eu/comm/competition/index_en.html)

European Commission—Company Law & Corporate Governance (http://ec.europa.eu/internal_market/company/index_en.htm)

[16]Bearer shares are equity securities not registered on the books of the issuing corporation. Such shares are transferred by physical delivery. The issuer disperses dividends to the bearer when a physical coupon is presented to the issuer.

Taiwan

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 79 companies in Taiwan as of 15 May 2008.

Shareowners in the Taiwan market have generally good shareowner rights for a developing market. All board members are elected at the same time because Taiwan does not permit staggered election terms for board members. Under the Company Law, shareowners may cumulate their votes in the election of board members and board members may be removed from office at any time by a special shareowner resolution (two-thirds of the votes cast). Although many companies do not publish full voting results for all proposals, all companies do publish the number of votes cast for each board member elected at the annual meeting. Currently, shareowner activism is not common in Taiwan.

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)?	17%	The low percentage of independent board members is a result of 2 factors: a high level of executive board membership and the requirement for board members in aggregate to own a certain percentage of the company (under ratios regulated by the Securities and Futures Commission [SFC]). The ownership requirement has led to many board memberships being "held" by legal entities that then designate a natural person to act as the legal entity's representative. Some attempt has been made to improve the level of independence by allowing companies to lower the board member ownership ratio if they have 2 independent board members and 1 independent supervisor (on a 2-tiered board). Independent board members are not required to own shares.
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	16%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	5.1%	
Is voting by proxy permitted?	Yes	A shareowner may delegate a proxy to attend each meeting of shareowners.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Must shares be deposited or blocked from trading in order to vote?	Yes	The register of shareowners must be closed for a period of 60 days before each ordinary meeting of shareowners, 30 days before each extraordinary meeting of shareowners, and 5 days before each record date.[17]
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations apply in some industries, such as basic telecommunications and broadcasting.
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?	No	
Do companies allow for cumulative voting in the election of board members?	Yes	Yes (default rule)
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	The remuneration of board members and supervisors is determined by a meeting of shareowners.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Sometimes	Generally, but this policy varies on a company-by-company basis. The SFC requires the exercise price of options granted in an incentive plan to be not less than the market price unless the company gets a ⅔ vote of shareowners to approve a lower price. Resolutions seeking shareowner approval have occurred in 13% of the companies researched for this manual.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right is standard.
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	An extraordinary general meeting of shareowners may be called by shareowners representing a minimum of 3% of shares.
What percentage of companies include golden shares in their capital structure?	1.3%	Chunghwa Telecom is the only one of the companies researched for this manual that has a golden share.

[17]Date on which a shareowner must own shares in order to be entitled to a dividend.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Although poison pills are permitted, only a few are in place. None of the companies researched for this manual 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	⅔ of votes cast are required.
Do companies require a supermajority vote to approve a merger?	Yes	⅔ of votes cast are 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)?	Yes	This pricing is a legal requirement.
Are class action suits commonly used in this market?	No	Class action suits are not common, but the number has increased a little since the Securities Investors and Futures Traders Protection Act enhanced the mechanisms for securities class action in 2002.
Are derivative suits commonly used in this market?	No	Although not unheard of, they are not common.

Current Engagement Practices and Shareowner Rights Developments

Traditionally, minimal shareowner engagement and activism has occurred in Taiwan, primarily because of the family or executive ownership structure so prevalent in Taiwanese companies. Furthermore, share ownership and trading outside of this family structure are dominated by individual shareowners (non-institutional investors), who have inadequate resources (or motivation) to engage companies on governance issues and tend to have a shorter-term view of their investments than do institutional investors. Institutional investors hold a minority of the shares on the market in Taiwan and have tended to be passive in their approach to investment in the market. Institutional investment (both domestic and foreign) has been on the rise in recent years, however, and with it has come an increase in shareowner engagement in Taiwan.

The Securities and Futures Investors Protection Center (SFIPC) has been actively involved in many shareowner meetings recently. The SFIPC has raised concerns about such issues as private placement, acquisitions and mergers, asset disposals, remuneration, and elections, and has expressed opposition to removing the ban on board members' engagement in businesses similar to the ones of the boards they serve on. The SFIPC also has filed lawsuits to revoke those resolutions that it anticipates could have an impact on investors' rights and interests.

The Company Law requires that the aggregate compensation of board members be approved by shareowners if it is not already dictated by the company's articles of incorporation. Shareowner approval also is required for the distribution of employee bonuses in the form of stock. As of 1 January 2008, companies must price stock issued to employees at market value and then book the stock as an operational expense; companies now also must expense their stock options. The Securities Exchange Law requires a company to obtain shareowner approval to transfer shares to employees at less than the average actual repurchase price (requires the consent of at least two-thirds of the voting rights present at a shareowners meeting attended by shareowners representing a majority of total issued shares).

Prior to 2008, companies disclosed only aggregate compensation paid to board members and executives, but they are now required to disclose the compensation ranges of individual board members and also senior managers.

Every public company in Taiwan is required to either establish an audit committee (for a one-tiered board) or appoint supervisors (for a two-tiered board). Most companies have adopted a two-tier structure that consists of a board of directors and a board of supervisors, both of which are elected by shareowners. Supervisors in Taiwan are responsible for the effective monitoring of a company's board and management and generally fill a role equivalent to that filled by audit committees in other markets.

Board member and supervisor terms may not exceed three years, and all are elected at the same time. Pursuant to the Company Law, a legal entity that owns company shares may be elected as a board member or supervisor, in which case, a natural person must be designated to act as the legal entity's representative. A board member or supervisor who serves as the representative of a legal entity may be removed or replaced at any time at the discretion of that legal entity, and the replacement board member or supervisor may serve the remainder of the term of office of the replaced board member or supervisor. A legal entity refers to any shareowner whose equity is greater than 10 percent or who is one of the top 10 shareowners; distinguishing between the legal responsibilities of the legal entity and of its appointees can be difficult. Securities and Futures Bureau (SFB) legislation passed in March 2007 prohibits a legal entity from nominating both board members and supervisors; a legal entity may nominate *either* board members or supervisors but not both. That same legislation also requires all listed financial institutions to elect independent board members (when next holding board elections). The SFB requires that a company have at least two independent directors and that no less than one-fifth of its board be independent directors. Independent and non-independent board members would be elected at the same time but in separately calculated votes (using cumulative voting). Another few years will be required for financial institutions to completely satisfy this new requirement because of the length of board members' terms (often three years) and the fact that they are often elected as a group (commonly only every three years).

Legal and Regulatory Framework

The Company Law and the Securities and Exchange Law form the primary legal basis of corporate governance in Taiwan. The SFB also enacted the Securities Investors and Futures Traders Protection Law (Protection Law).

The one share, one vote system is fully entrenched in Taiwan. Furthermore, the election of board members is by cumulative voting. Shareowners are required to block their shares from trading however, in order to vote. Under the Company Law, the register of shareowners should be closed for a period of 60 days before each ordinary meeting of shareowners, 30 days before each extraordinary meeting of shareowners, and 5 days before each record date. This long period for blocking shares, given the exposure of those shares to the market during that period, is a substantial deterrent to active traders and institutional shareowners voting their shares.

Shareowner rights in Taiwan are stipulated in the Company Law. A company cannot modify or alter its articles of incorporation without a resolution adopted at a meeting of shareowners. A board member may, by a resolution adopted at a meeting of shareowners, be removed from office at any time. Any individual shareowner or entity holding more than 1 percent of company shares may suggest candidates for nomination and propose agenda items for the shareowner meeting. Shareowners also have strong rights in terms of calling meetings outside the annual general meeting; shareowners representing at least 3 percent of shares may call for an extraordinary general meeting of shareowners.

The Company Law provides that in order to approve certain major corporate actions—including any amendment of the articles of incorporation, merger or spin-off, and removal of board members—a special resolution may be adopted with the consent of at least two-thirds of the voting rights present at a shareowner meeting attended by shareowners representing a majority of total outstanding shares. Public companies are also subject to fair price protection that allows all shareowners to receive the same price for the shares tendered in a merger bid.

Under the Company Law, when a company issues new shares for cash, existing shareowners have preemptive rights to subscribe to the new issue in proportion to their existing shareholdings; a company's employees, whether or not they are shareowners of the company, have rights to subscribe to 10–15 percent of the new issue. Any new shares that remain unsubscribed at the expiration of the subscription period may be offered to the public or privately placed. The preemptive rights do not apply to offerings of new shares through a private placement approved at a shareowners' meeting.

Shareowners who have continuously held 3 percent of shares for one year or longer may petition a supervisor (in a two-tiered structure, as described previously) to sue board members on the shareowners' behalf; in structures without supervisors (e.g., in a unitary board structure), the shareowners may sue board members directly. Although supervisors are understandably reluctant to initiate expensive and lengthy legal action against management, if they should fail to file suit within 30 days, the shareowners may file the lawsuit themselves. Still relatively uncommon, lawsuits have become more prevalent in Taiwan since the Protection Law enhanced the mechanisms for securities class action in 2002.

Some companies listed on the Taiwan Stock Exchange—those in the airline transport, telecommunications, and broadcasting industries—are subject to foreign ownership limits.

Listed companies are required to disclose their foreign investments and foreign direct investment in China. In July 2008, incoming Taiwanese President Ma Ying-jeou's new cabinet approved raising the cap on China-bound investment (investment in China) from 40 percent to 60 percent of a company's net worth. Multinational companies' subsidiaries in Taiwan are exempt from any investment limits.

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

Financial Supervisory Commission (www.sfb.gov.tw)

Taiwan Stock Exchange (www.twse.com.tw)

Taiwan Integrated Shareholder Service Company (www.twevote.com.tw)

Securities and Futures Investors Protection Center (www.sfipc.org.tw)

Corporate Governance Association (www.cga.org.tw)

Securities & Futures Institute (www.sfi.org.tw)

Ministry of Finance, R.O.C. (www.mof.gov.tw)

Ministry of Economic Affairs (www.moea.gov.tw)

Central Bank of the Republic of China (Taiwan) (www.cbc.gov.tw)

Turkey

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 14 companies in Turkey as of 15 May 2008.

Shareowner engagement has not yet been a particular focus of market activity in Turkey. Shareowners have limited ability to exercise power through the mechanisms available in established capital markets, such as proxy battles, threatened takeovers, shareowner resolutions, board member removal, litigation, or negotiation with management. Although shareowner rights have improved in recent years, Turkish shareowners remain constrained by a number of legal and structural obstacles.

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)?	27%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	0%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	93%	
Is voting by proxy permitted?	Yes	Shareowners are allowed to vote by proxy but must have their ballots notarized; voting by telephone, the internet, or postal ballot is not permitted.
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	No	
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	Yes	Notarization is required for in-person proxies, and telephone, internet, and postal ballots are not valid.
Do companies adhere to a majority voting standard in the election of board members?	Yes	
Do companies allow for cumulative voting in the election of board members?	No	Cumulative voting is not permitted for publicly traded companies.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
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?	No	This right is not generally provided for, although an individual company could determine to allow it. None of the Turkish companies researched for this manual provide for this opportunity.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	A dissident may also request that notes of the dissident resolution(s) be included in the minutes of the annual general meeting (known as the general assembly meeting in Turkey).
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 whose holdings represent at least 5% of the company's outstanding capital are permitted to call extraordinary general meetings. A company may lower the 5% threshold in its articles of association.
What percentage of companies include golden shares in their capital structure?	14%	A few companies in Turkey do incorporate a golden share scheme in their structure. Typically, these companies have been privatized and are of strategic importance. For example, Türkiye Petrol Rafinerileri A.S. is the sole supplier of fuel to Turkish armed forces, Turk Telecom is the key telecommunications operator, and Eregli Demir ve Celik Fabrikaları T.A.S. is the largest supplier of steel in Turkey. These companies, and a few others, have a golden share to protect Turkish strategic interests.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Such plans are allowed but are neither common nor relevant in many cases because most Turkish companies are majority controlled.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	Shareowners provide their approval via the endorsement of an amendment to the articles of association.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	According to Turkish Commercial Code
Do companies require a supermajority vote to approve a merger?	Yes	According to Turkish Commercial Code

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
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	The Capital Markets Board (CMB) of Turkey requires that when a transaction would give control or a significant, specified percentage of the company's capital or voting rights to the party making the offer, the company must make a follow-up offer to the remaining shareowners. It must offer them cash consideration equivalent to the highest per-share consideration that would be paid to the shareowners in the transaction (or transactions) that triggered the follow-up offer requirement.
Are class action suits commonly used in this market?	No	Not permitted
Are derivative suits commonly used in this market?	No	Not permitted

Current Engagement Practices and Shareowner Rights Developments

From the mid-1980s until after the economic crisis of 2000–2001, thin markets, relatively few active institutional investors, and an unpredictable macroeconomic environment limited incentives for Turkish companies to adopt good corporate governance practices. Since then, however, the return of foreign investors, greater opportunities for Turkish companies to transact business abroad, and increasing competition for foreign capital appears to be encouraging companies to implement good corporate governance as a tool in establishing their competitive advantage.

Despite an expanded recognition of improved corporate governance in general, the kind of shareowner engagement practiced in other markets is still rare in Turkey. Shareowners have limited opportunities to seek redress through the mechanisms commonly exhibited in more established capital markets, such as proxy battles, threatened takeovers, shareowner resolutions, board member removal, litigation, or negotiation with management.

The Turkish corporate sector is presently dominated by family-controlled, complex financial/industrial company groups, usually composed of both publicly held and privately held companies. Conversely, the group of large institutional investors—such as pension funds and mutual funds regulated by the CMB—is small. The balance of power between corporations and institutional owners is skewed heavily toward the corporations, so the opportunities to engage in a proxy battle or initiate a takeover are few.

The current Turkish government prepared a draft commercial code for discussion in 2005. The draft has been accepted by the Justice Commission and is still pending before the Turkish Grand National Assembly. It is expected to be enacted in 2009, but it is unclear how long parliamentary deliberations will take. The government has signaled that certain sections of the draft law could be implemented gradually amid concerns the package could be further postponed or canceled as a result of political battles or by additional challenges from the Constitutional Court. Shareowner rights and the balance of power between companies, majority shareowners, and minority investors may be somewhat changed as a result of proposed reforms to the Turkish Commercial Code (TCC), which has been in place since 1956. The current TCC has some serious limitations. For example, non-shareowner real persons and shareowner legal entities (such as corporations) are not allowed to serve on boards of directors. The draft code would change this situation by stipulating that non-shareowner real persons and shareowner legal entities may be appointed as members of boards. In cases of a shareowner legal entity being appointed to a board, the draft code would provide that the entity be represented by a real person it appoints. Under the draft code, real persons representing the legal entities would have to be registered for this purpose with the relevant trade registry as the sole representative of the subject legal entity and would have to have a university degree.

Pyramidal structures are common in the Turkish market, as is a high degree of cross-ownership within Turkish corporations. Controlling shareowners frequently hold shares with nomination privileges and/or multiple voting rights, and controlling family members typically serve on the board and play a leading role in the daily management and strategic direction of publicly held companies. Preserving family control is the norm in Turkey, where a small number of families control a large number of the listed companies. Some listed companies in Turkey adopt dual- or multiple-class shares. In other cases, companies issue founders' shares with extremely high voting rights. All of these methods tend to preserve family controls.

Turkey has no takeover code, and the concentrated ownership structure of Turkish companies further restricts takeover attempts. Golden shares exist in a few state-owned companies.

Pension funds—and, to a lesser degree, mutual funds—are the typical drivers of shareowner engagement in developed markets. However, Turkish restrictions on the participation of mutual funds and pension funds in the governance of the companies in which they invest limit shareowner engagement in Turkey. Furthermore, because the TCC does not confer legal status on such funds, there is uncertainty about whether the votes attached to shares held by such funds can be exercised at all. Through their guidance statements, the CMB also has prohibited such funds from pursuing the aim of "participating in the management" of the companies in which they invest. This restriction clearly prohibits fund representatives from serving on the board of a company in which the fund has invested. Less clear is whether the restriction also prohibits the fund's asset managers from discussing possible management or governance improvements with the company's board.

On a procedural level, shareowners that are unable to vote in person face a number of obstacles. Although some proxy voting is permitted, shareowners may not vote online, by telephone, or by postal ballot; they must appoint an in-person representative through a notarized power-of-attorney statement, which is costly and thus a serious deterrent to voting shares by proxy. The new draft code provides for holding general meetings by video or audio conferencing, which may provide some relief. Shareowners that hold at least 5 percent of the company's capital are granted minority rights and may call an extraordinary general meeting or propose agenda items.

Corporate practices that have an impact on shareowner rights may be altered only with the agreement of the majority of shareowners present at a meeting where at least half of the company's share capital is represented. In case of adjournment, the quorum requirement is reduced to 33 $^1/_3$ percent. In meetings concerning the alteration of the articles of association, each share carries one vote.

Turkish companies are subject to a fair price provision. The Capital Markets Board mandates that any person or legal entity acquiring individually or collectively more than 25 percent of share ownership or voting rights must make a tender offer for the remaining shares equivalent to the highest per-share consideration paid to the shareowners in the transaction. The offerer must obtain the CMB's approval before launching the offer, provide a disclosure document to the offerees summarizing the terms of the offer and the offerer's plan for the company, and keep the offer open for at least 15 days.

Recent positive trends with regard to shareowner rights have occurred. Consistent with the CMB governance principles, some listed companies are encouraging participation by minority shareowners in shareowner meetings. Also, some companies that previously restricted attendance at shareowner meetings are opening up such meetings to stakeholders, analysts, and the media. Some companies report in their corporate governance compliance reports about shareowner attendance at meetings and whether or not shareowners asked questions; some also publish summaries of shareowner meetings on their websites.

Legal and Regulatory Framework

Turkey is a civil law country. The Capital Markets Board, the Istanbul Stock Exchange (ISE), and Takasbank (the Turkish settlement and custody bank) are the major institutions involved in regulating Turkey's capital market. The CMB regulates the operations of ISE. A simple picture of the corporate governance and shareowner rights framework in Turkey is difficult to develop because corporate governance standards, enforcement mechanisms, and remedies are specified in a range of statutes, instruments, and other documents.

The CMB consists of a seven-member, full-time executive board appointed to a six-year term by resolution of the Council of Ministers. The CMB is equipped with ample regulatory power and is capable of directly imposing on companies such penalties as warnings, fines, suspension, or cancellation of licenses. It cannot directly take cases to court, however, because this right is granted to public prosecutors only. The CMB board may request the courts to prosecute violators by submitting a written complaint to the public prosecutor's office. If the prosecutor decides not to press charges, the CMB is empowered to raise an objection in compliance with the criminal procedure code.

The CMB develops corporate governance standards for publicly held companies and approves the ISE's listing standards for companies that trade in the national market. The CMB principles adopted in 2003 are the primary source of (nonbinding) corporate governance standards for publicly held companies. Listed companies must publish an annual corporate governance compliance statement disclosing, among other things, which of the CMB principles have not been adopted and why (a "comply or explain" requirement).

The principal sources of general mandatory corporate governance standards are the joint stock company provisions in the TCC, the Capital Markets Law (CML), and subordinate instruments published under the CML (usually in the form of the CML's media statements, Capital Markets Communiqués).

In Turkey, the fundamental document governing shareowner rights is the company's articles of association, which should provide for the rights to participate in the general assembly meeting, to vote and acquire information, to have the company audited, to file a complaint, and to take civil or legal action. The TCC contains no mandatory provisions for the articles of association. In addition, the TCC provides for privileged shares and imposes practically no limit on the extent of privileges that may be granted, such as multiple voting rights, a predetermined dividend rate, or priority entitlement at the time of liquidation. According to the Commercial Code, minority rights start with ownership of 5 percent for public companies and 10 percent for nonpublic ones.

Neither class action nor derivative action are concepts that exist under Turkish law; nevertheless, several channels for investor redress do exist. If a company tries to prevent certain rights, shareowners representing at least 5 percent of share capital have the right to petition the company's internal auditors to remedy the situation. If decisions made at the annual general meeting are against the law, the articles of association, or good faith, any shareowner who was present at the AGM and opposed the resolution, was illicitly deprived of his or her voting rights, or otherwise claims that proper procedures were not followed may request that the courts nullify the resolution in question. Shareowners may file a complaint with the Ministry of Industry and Commerce, CMB, and/or ISE.

Shareowners generally refrain from bringing their cases to court, however, because the legal system is complicated, slow, and costly. Furthermore, Turkey has no specialized courts and judges to address shareowner or corporate issues, and existing civil remedies appear to be insufficient deterrents to misconduct. In addition, some anecdotal evidence suggests that shareowners are seldom aware of the means available to them to either understand or protect their rights.

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

Capital Markets Board (www.cmb.gov.tr)

Istanbul Stock Exchange (www.imkb.gov.tr)

Corporate Governance Association of Turkey (www.tkyd.org)

Corporate Governance Forum of Turkey (http://cgft.sabanciuniv.edu/eng/)

SAHA Ratings (www.saharating.com)

United Kingdom

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 382 companies in the United Kingdom as of 15 May 2008.

The United Kingdom is known for having a solid corporate governance framework, strong shareowner rights, and an institutional culture of cooperation and activism. The U.K. system of business regulation is principles rather than rules based; instead of mandating compliance with a fixed set of rules, the United Kingdom has a "comply or explain" system, whereby companies compare their practices with the Combined Code on Corporate Governance (latest edition, June 2008). This code gives listed companies the option of following a set of general governance principles and explaining any differences between company policies and established best practices.

Companies are given some leeway in complying with corporate governance regulations, and investors are given the tools to help encourage listed companies to adopt the best practices. Boards and shareowners are encouraged to engage in dialogue on corporate governance matters. The key relationship is between publicly listed companies and their shareowners, not between the companies and the regulator. The regulatory framework in the United Kingdom encourages investor activism. For example, shareowners representing 10 percent of shares may call for general meetings, and shareowners may remove board members by a majority vote without cause. U.K. company law provides shareowners with comparatively extensive voting rights, and board members are subject to a majority voting standard. U.K. companies are forbidden from adopting poison pills or taking measures to thwart takeover attempts.

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)?	60%	The Combined Code on Corporate Governance recommends that boards contain a balance of independent and executive board members. Nearly all of the U.K.-based companies researched for this manual comply with this recommendation.
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	5.5%	High levels of related-party transactions are not common in the United Kingdom.
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	7.1%	Family controlled companies are not common in the United Kingdom. Almost none of the publicly listed companies researched for this manual have controlling shareowners.
Is voting by proxy permitted?	Yes	
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	No	Restrictions on share ownership are not common in the United Kingdom. Foreign shareowners are affected by restrictions on levels of ownership, however, in companies in strategic sectors, such as airlines and national defense.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies adhere to a majority voting standard in the election of board members?	Yes	Board members retire before the election and then may offer themselves for reelection; they are reelected only by a majority vote.
Do companies allow for cumulative voting in the election of board members?	No	
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	This right is a (nonbinding) requirement in the United Kingdom.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Shareowners are allowed to introduce binding resolutions at annual meetings.
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	The holders of a minimum of 10% of a company's outstanding shares may convene a general meeting.
What percentage of companies include golden shares in their capital structure?	0.8%	Not common practice in the United Kingdom
Are shareholder rights plans (poison pills) allowed in this market?	No	U.K. laws forbid targeted companies from taking measures to thwart takeover attempts.
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	
Do companies require a supermajority vote to approve a merger?	No	
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

The development of corporate governance in the United Kingdom has its roots in a series of corporate collapses and scandals in the late 1980s and early 1990s, including the collapse of the Bank of Credit and Commerce International and the Robert Maxwell pension fund scandal.

In response to the scandals of the previous decade, the Committee on the Financial Aspects of Corporate Governance, chaired by Sir Adrian Cadbury, was founded in 1991. In 1992, the committee issued a series of recommendations known as the Cadbury Report.

In 2003, following the Enron Corporation and WorldCom scandals in the United States, the U.K. Combined Code was updated to include corporate governance guidance on the role of nonexecutive board members (the Higgs Report) and the role of the audit committee (the Smith Report). Additional changes were made to the code in 2006 and 2008.

Since the early 1990s, activist investors have come to have a strong presence in the United Kingdom, and shareowner engagement is now quite common. The Combined Code encourages communication with shareowners and states that the boards of publicly listed companies have a responsibility to ensure that a satisfactory dialogue with shareowners takes place.

The United Kingdom has implemented a set of corporate laws and corporate governance recommendations that encourages investor activism. Although class action shareowner lawsuits are not allowed in the United Kingdom and derivative lawsuits are not common, shareowners are provided with a number of tools to use to prod underperforming companies into action.

Institutional investors, in particular, are able to exert a high degree of influence. Regulations allow shareowners representing at least 10 percent of shares to call general meetings. Board members may be removed without cause by a majority vote. Pension funds, hedge funds, and private equity funds have had success at using these actions, or the threat of these actions, to push managers to implement new strategies or make personnel changes and help turn around underperforming companies.

Investor activism is not impeded by the presence of poison pills, and controlling shareowners are not common. Majority independent boards are relatively common in the United Kingdom, which is in line with the recommendations of the Combined Code.

Legal and Regulatory Framework

The United Kingdom has a strong legal tradition and a corporate law code that includes numerous investor-friendly provisions. In recent years, activist investors have successfully agitated for corporate change in terms of strategy, structure, and management.

At annual general meetings, the statutory rule is majority voting; that is, to be elected, each board member up for election must receive a majority (excluding abstentions) of the "yes" votes cast. Majority voting standards allow shareowners to vote against candidates and make it easier for activist investors to launch campaigns to unseat underperforming board members. The holders of 10 percent or more of a company's outstanding shares may call a general meeting. Rules in the United Kingdom also allow shareowners the right to unseat an incumbent board member with or without cause by a simple majority vote.

Although shareowners in the United Kingdom have the right to call general meetings or vote to alter a company's bylaws or charter, a substantial amount of shareowner activism takes place behind closed doors rather than in a public forum. Helped by a supportive regulatory framework and the presence of a number of proactive funds, U.S.-style investor activism has become increasingly popular in the United Kingdom. Institutional investors, such as pension funds and private equity firms, have earned a reputation for successfully engaging the senior executives of publicly listed companies in private meetings, including cooperative action. Cooperation between institutional investors has also been achieved through groups such as the Association of British Insurers and the National Association of Pension Funds.

Investor activism is further encouraged by the facts that few U.K. companies have controlling shareowners and all U.K. companies are prohibited from adopting poison pills. In fact, the U.K. City Code on Takeovers and Mergers prohibits target boards from initiating any action that might frustrate a takeover bid. Existing regulations are designed so that all proposed mergers and takeover attempts are put to a shareowner vote as quickly as possible.

For a few companies in select industries, shares are subject to restrictions on foreign ownership or golden shares have been issued to prevent outsiders from taking control. Foreign shareowners are affected by restrictions on levels of ownership in companies in airlines and national defense and in companies that are symbols of national prestige, such as Rolls-Royce.

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

Financial Services Authority (www.fsa.gov.uk)

Financial Reporting Council (www.frc.org.uk)

Association of British Insurers (www.abi.org.uk)

National Association of Pension Funds (www.napf.co.uk)

U.K. Shareholders' Association (www.uksa.org.uk)

Hermes U.K. Focus Funds (www.hermes.co.uk)

Centre for Corporate Governance (at the London Business School)
(www.london.edu/facultyandresearch/researchactivities/centreforcorporategovernance.html)

Higgs Report (Guidance on the role of the audit committee)
(www.frc.org.uk/documents/pagemanager/frc/Suggestions%20for%20good%20practice%20from%20the%20Higgs%20Report%20June%202006.pdf)

Smith Report (Guidance on director remuneration)
(www.frc.org.uk/documents/pagemanager/frc/Smith%20Report%202005.pdf)

Combined Code on Corporate Governance (June 2008)
(www.frc.org.uk/documents/pagemanager/frc/Combined_Code_June_2008/Combined%20Code%20Web%20Optimized%20June%202008(2).pdf)

United States

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 1,742 companies in the United States (or 933 Delaware-incorporated companies, as the case may be) as of 15 May 2008.

Considering that the United States is a developed market, shareowners in the United States have moderate rights. No single body has regulatory oversight or enforces a national or uniform code of corporate law. Instead, corporate law is largely state based; therefore, corporations have wide latitude in setting shareowner rights. The result is significant variation from company to company and state to state. Some deficiencies in shareowner rights are being remedied, however, as more and more companies adopt majority voting provisions and allow shareowners advisory input on executive compensation. Because providing a definitive, countrywide view of shareowner rights is difficult, much of the following information is specific to companies incorporated in Delaware, which is a representative state (most large U.S. public companies are incorporated there).

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)?	74%	The equivalent percentage for Delaware-incorporated companies researched for this manual is 75%.
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	7%	The equivalent percentage for Delaware-incorporated companies researched for this manual is 7%.
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	9%	The equivalent percentage for Delaware-incorporated companies researched for this manual is 9%.
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No	Never allowed
Are there share ownership limitations in this market?	Sometimes	Share ownership limitations are not common but do apply in sensitive industries, such as airlines. They are also commonly found with real estate investment trusts.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is generally unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Varies	Although majority voting is applicable to only a minority of companies, adoption of majority voting is increasing; 30% of U.S. companies (31% of Delaware-incorporated companies) researched for this manual have some form of majority voting.
Do companies allow for cumulative voting in the election of board members?	Sometimes	This practice is not general; only a small minority of companies have cumulative voting.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
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?	No	Almost never, but this issue is a relevant topic today. A number of companies may adopt an advisory version of this practice in the near future.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Most, if not all, companies allow the introduction of dissident resolutions, but such resolutions are almost never binding.
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?	In some cases	This right is determined by the company; 14% of U.S. companies (5% of Delaware-incorporated companies) researched for this manual provide this right for those owning 10% or less of company shares.
What percentage of companies include golden shares in their capital structure?	0%	No U.S. companies have golden shares.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Such plans are a common anti-takeover mechanism in the U.S. market. 36% of U.S. companies (39% of Delaware-incorporated companies) researched for this manual have instituted shareowner rights plans.
If shareholder rights plans are in use, do they have to be approved by shareowners?	No	Shareowner rights plans are rarely approved by shareowners.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	Almost all companies have this right, but some exceptions do exist.
Do companies require a supermajority vote to approve a merger?	In many cases	This practice is at the discretion of the company. 26% of U.S. companies (20% of Delaware-incorporated companies) researched for this manual require this approval.
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	In many cases	This provision is usually at the discretion of the company but sometimes by state law. 19% of U.S. companies (17% of Delaware-incorporated companies) researched for this manual have this provision.
Are class action suits commonly used in this market?	Yes	Such suits are allowed for all companies and are commonly used by shareowners.
Are derivative suits commonly used in this market?	Yes	Such suits are allowed for all companies and are commonly used by shareowners.

Current Engagement Practices and Shareowner Rights Developments

In the United States, the shareowner engagement process is widespread and driven by multiple constituencies with diverse interests. Shareowner activism, which once was primarily the domain of pension funds, has extended to include other large shareowner groups, such as buyout firms, hedge funds, and to a lesser extent, mutual funds. Engagement may take the form of proxy battles, threatened takeovers, shareowner resolutions/board member removal, publicity campaigns, litigation, and/or negotiation with management.

Among the most prominent entities involved in engagement are the large public pension funds located in heavily populated states, such as California (the California Public Employees' Retirement System [CalPERS] and the California State Teachers' Retirement System). Additionally, national organizations that represent large investment interests, such as the Teachers Insurance and Annuity Association–College Retirement Equities Fund (generally known as TIAA–CREF) have been notable in engagement. The Council of Institutional Investors (CII), a not-for-profit association of public, union, and corporate pension funds, also has been a key force in engagement. The CII and CalPERS each publish an annual focus list targeting companies with poor governance performance. Inclusion on these lists, and the associated negative publicity that the dubious distinction draws, is meant to put pressure on the managers of the listed companies and encourage increased shareowner engagement. Some hedge funds and buyout firms (e.g., those run by famed corporate raider Carl Icahn) also have reinvented themselves as shareowner activists, and they have the clout to exert heavy pressure on companies.

With the exception of antitrust concerns and certain sensitive industries, takeover rules in the United States are not a major deterrent to takeover bids, although they do serve to keep pressure on a company to perform. Companies are free to institute a number of unilateral anti-takeover mechanisms. Chief among them is the shareowner rights plan (poison pill), which essentially allows a company to block unwanted takeover attempts through a dilution-triggering event. Compounding this issue is the fact that the adoption of poison pills is rarely put to a shareowner vote. In some cases, boards have full power to decide whether to accept a takeover offer, even if any such action is contrary to the interests of the company's shareowners.

Traditionally, removing board members from companies in the United States has been quite difficult. The terms of many company boards are staggered over a three-year rotation process, although that system is changing; a number of companies have moved to declassify their boards (all board members must stand for election every year) and have board members stand for election annually. Cumulative voting, even though it is used only at a small percentage of U.S companies, is a means for shareowners to remove board members. Majority voting also has gained traction in the U.S market. Although specifics vary by company, a majority voting standard in the United States generally dictates that a board member nominee who fails to win a majority of the votes cast must tender his or her resignation. This arrangement provides shareowners with additional opportunities to unseat board members. With the exception of proxy contests for full or partial control, for a board member nominee to fail to win election or reelection under a plurality voting standard was exceedingly uncommon until recently.

"Proxy access" is an issue that has entered public discussion in recent years. Currently, significant obstacles exist to nominating dissident board members—and subsequently placing these nominees on proxy ballots—and proxy access refers to reform measures that would allow larger investors, particularly institutional investors, greater participation in the board member nomination process. The U.S. Securities and Exchange Commission (SEC) is currently investigating this issue.

Shareowner resolutions, although not binding in the United States, are becoming an increasingly effective means for shareowners to communicate dissatisfaction to management. The negative publicity associated with companies rejecting majority-approved shareowner resolutions can increase pressure on corporate executives.

The idea of shareowner "say on pay" has been gathering momentum in the United States. Investors are increasingly seeking opportunities to have a say on remuneration with proposals for non-binding advisory votes on executive remuneration. Although only a handful of companies have adopted this measure, the expectation is that more will do so in coming years. Legislation to grant this vote to shareowners is currently before the U.S. Congress; if the reform is not adopted in legislation, the number of proposals at individual companies is all the more likely to increase. A say-on-pay vote would give shareowners another potential forum for engagement—and over the contentious issue of executive compensation levels.

Legal and Regulatory Framework

No single body in the United States oversees all of the legal and regulatory issues affecting shareowner rights. The SEC directly—and through its oversight of the Financial Industry Regulatory Authority (FINRA; formerly, the NASD), the NYSE, and other stock exchanges—is the main enforcer of the nation's securities laws. Via the Securities Exchange Act of 1934, the SEC has jurisdiction over financial and proxy disclosure and, by extension, a number of (but not all) issues that affect shareowner engagement. The SEC also has enforcement power but only for matters detailed under relevant legislation, such as the Securities Exchange Act of 1934 and the Sarbanes–Oxley Act of 2002.

U.S. corporate law is largely state based, so some shareowner rights issues are influenced by regulations at the state level. Each state has its own securities regulatory body, typically known as the state securities commissioner. Generally, key shareowner rights are contained in each state's body of corporate law, and they filter down into a company's bylaws and articles of incorporation. Because of its business-friendly laws, Delaware is the most popular state in which to incorporate for U.S. companies.

The one share, one vote system, although prevalent for most U.S. companies, is not an absolute requirement to companies incorporated in Delaware. State law generally provides corporations considerable flexibility with respect to allocation of voting rights. Virtually all state corporate codes adopt one vote per common share as the default rule but allow corporations to depart from the norm by adopting appropriate provisions in their organizing documents. Delaware is no exception.

Corporations also have the discretion to grant or withhold specific shareowner-friendly mechanisms such as majority or cumulative voting in the election of board members.

By default, Delaware law allows shareowners representing 50 percent of shares to call a special meeting, with the same requirement for action by written consent. Additionally, any board member or the entire board of directors may be removed at any time, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of board members. Corporations do, however, have the discretion to amend or eliminate these rights. Thus, the possibility of shareowner engagement by these means varies considerably from company to company.

Shareowners in the United States have access to legal remedies via both class action and derivative lawsuits. Class action lawsuits may be brought in federal court if the claim arises under federal law. Most, but not all, states provide for some form of class action as well, but procedures vary greatly from state to state. Derivative suits are brought at the state level. The most frequently used states for corporate charter, however (Delaware, New York, and California), have instituted a number of barriers to derivative suits.

Large shareowners may engage companies by virtue of a threat of takeover. Most companies have free rein in how they structure their charter and bylaws, so they can thwart a takeover attempt without consent from shareowners. No national or general regulation directs companies on how to structure their takeover defenses, but shareowners are generally unrestricted in takeover attempts, except in cases where antitrust issues arise or sensitive industries are involved.

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

Securities and Exchange Commission (www.sec.gov)

New York Stock Exchange (www.nyse.com)

Council of Institutional Investors (www.cii.org)

CalPERS (www.calpers.ca.gov)

National Association of Corporate Directors (www.nacdonline.org)

Society of Corporate Secretaries & Governance Professionals (www.ascs.org)

National Investor Relations Institute (www.niri.org)

Millstein Center for Corporate Governance and Performance (http://millstein.som.yale.edu/)

CFA Institute Centre for Financial Market Integrity

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