India

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI Ratings about 61 companies in India as of 31 August 2012.

No significant limitations on shareowner rights exist in India, where the only voting shares are ordinary shares (one vote per share). Board members are nominated by the board and elected by shareowners at the annual meeting. Shareowners with 10% or more of the company's shares may remove a board member by passing an ordinary resolution without cause and calling a shareowners' meeting. Indian companies have staggered board terms; however, one-third of those board members are required to retire annually by rotation (i.e., boards have rotational directors). Permanent board members are usually promoters[1] or executive directors of a company. For a large number of Indian companies, the government or a family block is the controlling shareowner.

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%	The Companies Bill requires at least one-third of directors to be independent.
What percentage of companies have fully independent audit committees?	44.3%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	52.5%	
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	

(continued)

[1]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 share ownership limitations in this market?	Yes, usually	Indian companies usually have limits on foreign ownership. The limits vary depending on sector/industry, from 26% to 100% (with 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.
Are there (other) common restrictions on the rights of shareowners to vote in person or by proxy?	No, mostly	Proxy voting is unrestricted. Meeting chairs often declare resolutions 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.
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?	Yes	Allowed according to the Companies Act
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 something comparable?	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 and not 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 something comparable?	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 and not through options or other equity-based plans.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
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.
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?	Yes	The Companies Bill allows class action.
Are derivative suits commonly used in this market?	Yes	The Companies Bill allows derivative suits.

na = not applicable.

Current Engagement Practices and Shareowner Rights Developments

Shareowner activism or engagement, although not completely unknown in India, is rare. Indian institutional investors have begun exercising their voting rights but have not achieved the level of engagement attained by large investors in other markets. The limited

shareowner activism in India grew originally out of the stock manipulation scandals of the early 1990s. For example, in 2012, only 460 resolutions were proposed by shareowners, 458 of which were simply for the appointment or re-appointment of directors.

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. When issues do arise, shareowners usually address them in analysts' meetings or through direct contact with the company but rarely in a corporate governance context.

In India, a company is required by law to hold an AGM every year, where the company's registered offices are located (quite a few companies are headquartered in remote locations that are often difficult to access). In most cases, board members are nominated by the board and elected by shareowners at the AGM. Although shareowners may nominate a candidate at least 14 days before the AGM, they seldom exercise this right.

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 (i.e., boards have 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, who are typically promoters, executive directors, or nominee directors who are not subject to shareowner election.

Under SEBI's listing agreements, at least one-third of board members must be independent if the chair and CEO roles are separate and one-half must be independent if these roles are combined. Although it is uncommon in India for the positions of chair and CEO to be held by the same person, this practice is more prevalent 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 serve on at least 10 boards. Under such circumstances, it is difficult for an individual to make an

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

Foreign investors are subject to ownership limitations in India. Until September 2001, foreign funds could own no more than 49% of any Indian company. At that time, the Reserve Bank of India, the country's central bank, raised the foreign ownership ceiling above 50% in most sectors, thus allowing foreign investors to have majority control of Indian companies in certain cases. Currently, the ownership limitation ranges from 26% to 100% (100% meaning no foreign ownership restrictions). The limitation varies on the basis of sector/industry, and mining, arms, ammunition, and atomic energy are the sectors where foreign ownership is most limited. More flexibility 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%, 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. The code requires a disclosure to the stock exchange and SEBI from any person or corporate body whose share ownership exceeds the 5% threshold. If an acquirer crosses the 15% threshold, the acquirer must make an offer for at least an extra 20% of the shares and deposit 10% (25% in the case of small companies) of the value of its bid in an escrow account. The offer must be cash or an exchange of shares. Given their substantial share ownership, government-owned financial institutions have historically 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

In late 2012, the Companies Bill was passed, and it has a number of ramifications for investors.

Some of the highlights include the following:

- **Introduction of the Concept of Independent Directors:** The bill requires at least one-third of each listed company's directors to be independent. These independent directors can hold office for up to two consecutive terms of up to five years.

- **Code for Independent Directors:** The code lays out guidelines for aspects of directors' conduct, roles, functions, duties, manner of appointment and re-appointment, resignation or removal, separate meetings of board members, and evaluation mechanism.
- **Audit Committee:** The audit committee must consist of at least three directors, with independent directors forming the majority.
- **Remuneration and Nomination Committees:** Remuneration and nomination committees are now mandatory and must consist of at least three directors, of which at least half must be independent.
- **Rotation of Auditors:** No listed company shall appoint or re-appoint (1) an individual as auditor for more than one term of five consecutive years or (2) an audit firm as auditor for more than two terms of five consecutive years.
- **Provision for Class Action Suit:** Class action lawsuits, previously not allowed, are now permitted, along with derivative lawsuits.
- **Directors Proposed by Shareowners:** Small shareowners may nominate a director to the board of a listed company.
- **Right to Vote by Electronic Means:** Shareowners can exercise their right to vote electronically.

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

The National Company Law Tribunal (formerly the Company Law Board) is the enforcement arm in India. Enforcement and implementation of laws and regulations remain important challenges in India, however, with weak regulation a key 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 annual meeting. Shareowners may vote by a show of hands, but if they own at least 10% of the total voting rights, they 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 held or present. This practice may cause many votes to not reflect the will of a balance of proxies. As noted previously, shareowners may also now vote electronically.

The Companies Act allows cumulative voting 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% 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% of the shareowners present and voting; special resolutions require approval by 75% 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 and remove board members, and the resolution does not need to have 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. Neither management nor the board can 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)

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

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