

# Malaysia (corrected August 2013)

## Summary of Current Shareowner Rights

*Percentages cited reflect information gathered by GMI Ratings about 29 companies in Malaysia as of 31 August 2012.*

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

<b>Issue</b>	<b>Current Standard or Usual Practice</b>	<b>Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)</b>
What is the average percentage of independent board members on public company boards (% independent board members)?	58%	
What percentage of companies have fully independent audit committees?	69%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	34.5%	
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?	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 re-election at least once every three years.

(continued)

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	
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or non-binding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	No	
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	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 for certain prescribed matters or may confer special rights for appointments to the board of directors.
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 legal requirement.
Do companies require a supermajority vote to approve a merger?	Often	

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	
Are class action suits commonly used in this market?	No, mostly	They are rare but not unheard of.
Are derivative suits commonly used in this market?	No, mostly	They are rare but not unheard of.

na = not applicable.

## Current Engagement Practices and Shareowner Rights Developments

The shareowner engagement process in Malaysia has gradually improved in recent years, 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 choose to have a representative of this organization attend general shareowners' meetings on their behalf.

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

The Malaysian Code on Takeovers and Mergers is administered by the Suruhanjaya Sekuriti (Securities Commission 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 does not prohibit a hostile takeover bid, but hostile takeover bids are not common in Malaysia. According to the code, an acquirer who

obtains 33% 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 substantive and procedural requirements are often prohibitive and overwhelming to shareowners. Such cases take an average of two to three years from filing to the completion of the trial, but 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 are in compliance.

Despite the adoption of the Malaysian Code on Corporate Governance in 2005, only recently have companies begun to recognize the importance of good investor relations. In September 2007, Bursa Malaysia (the Malaysia Stock Exchange) disclosed that approximately 130 of its 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. Progress has occurred: Whereas companies had previously focused communications mostly toward their stakeholders,<sup>1</sup> a recent trend shows companies increasingly including shareowners in communications.

In July 2011, the Securities Commission Malaysia published the *Corporate Governance Blueprint 2011*, a review of corporate governance practices and regulations in Malaysia. The report is the first “deliverable” of the Capital Market Masterplan 2, an attempt to double the size of Malaysia’s capital markets by 2020. It focuses on six core issues:

- shareholder rights,
- the role of institutional investors,
- the board’s role in governance,
- improving disclosure and transparency,

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<sup>1</sup>Stakeholders in a company include all those that are affected by the company’s operations, including governments, employees, shareowners, and the society in which the company operates.

- the role of gatekeepers and influencers, and
- public and private enforcement.

In March 2012, the Securities Commission published the “Malaysian Code on Corporate Governance 2012,” the first deliverable of the *Corporate Governance Blueprint 2011*. This code focuses on eight guiding principles:

- Establish clear roles and responsibilities of the board.
- Strengthen board composition.
- Reinforce board independence.
- Foster commitment to shareholder rights.
- Uphold integrity in financial reporting.
- Recognize and manage risks.
- Ensure timely and high-quality disclosure.
- Strengthen the relationship between the company and shareholders.

The code encourages companies to put substantive resolutions up for vote by poll (instead of a simple show-of-hands vote) and to make an announcement of the detailed results that shows the number of votes cast for and against each resolution. The code states that the chairman should inform shareholders of their right to demand a poll vote at the commencement of the general meeting. Companies are also encouraged to conduct poll voting electronically.

## Legal and Regulatory Framework

The Securities Industry Act and the Securities Commission Act form 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 a financially independent entity that is responsible for shareowner protection. The Securities Commission is funded through levies and fees charged in the capital markets. However, the Securities Commission is accountable to the Ministry of Finance and the two houses of parliament and must submit its annual report and audited accounts to all three entities.

The Securities Commission does not require approval from the Ministry of Finance to exercise any of its administrative, supervisory, investigatory, or enforcement powers. Rather, approval from the Ministry 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 issue of whether the Securities Commission is—despite its financial independence—an 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, part of the Ministry of Domestic Trade and Consumer Affairs, applies the Companies Act and is empowered to investigate potential violations and perform prosecutorial functions. However, the Registrar of Companies does not have the power to pursue civil action on behalf of investors who suffer loss or damage.

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

An extraordinary general meeting of shareowners may be called by two or more shareowners representing 10% 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% of the total shareowner voting rights may place items on the agenda of the annual general meeting. Bursa Malaysia prohibits companies from deleting from, amending, or adding to their articles of association unless they have sought and obtained the written approval of the exchange. Approval of shareowners representing 75% of the shares outstanding is needed to change the articles of association. 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 terms 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 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% 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.

In June 2010, Malaysia enacted the Competition Act, which prohibits horizontal or vertical agreements between enterprises that have the object or effect of significantly preventing, restricting, or distorting competition or that encourage abuse of a dominant position in any market for goods or services. The law took effect on 1 January 2012 and applies to any commercial activity within Malaysia as well as outside Malaysia if it has an effect on competition in any Malaysian market.

## 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](http://www.bursamalaysia.com))

World Bank Group ([www.worldbank.org](http://www.worldbank.org))

Ministry of Finance in Malaysia ([www.treasury.gov.my](http://www.treasury.gov.my))

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

Pengawas Pemegang Saham Minoriti Berhad (Minority Shareholders Watchdog Group) ([www.mswg.org.my](http://www.mswg.org.my))