
South Africa

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI Ratings about 46 companies in South Africa as of 31 August 2012.

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 constituent documents—the articles and memoranda of association. These documents are often available for viewing only 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 re-election (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)?	53%	
What percentage of companies have fully independent audit committees?	76.1%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	21.7%	
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	

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	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 non-binding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	No	Shareowners must approve board members' remuneration, but they do not have the right to approve executive remuneration.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	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	One hundred 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 shareowners.

(continued)

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 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	

na = not applicable.

Current Engagement Practices and Shareowner Rights Developments

Shareowners in South Africa have standard proxy voting rights with no limitations. 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% or more of share capital. Generally, shareowners are 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% 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 needing to stand for re-election at least every three years. Board members appointed to fill a term between annual general meetings must retire their seat at the first annual general meeting following their appointment and stand for election by shareowners. Some executive board

members serve five-year terms, 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% resolution at a general meeting.

Shareowner activism is not common in South Africa. Shareowners have the power to present shareowner proposals at annual general meetings, but they rarely do. Derivative and class action lawsuits are also rare, although newly proposed legislation 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 has legal authority 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 III Report on Corporate Governance.

The recently amended Companies Act introduced the concept of personal liability for board members who fail in their fiduciary responsibilities and contains comprehensive provisions about those responsibilities.

The Companies Act also provides for a number of new features, including the following:

- The classification of companies into either profit or nonprofit companies. Profit companies are divided into four categories: private companies, personal liability companies, state-owned companies, and public companies.
- Stricter accountability and transparency requirements for state-owned companies and public companies.
- A codified standard for directors' conduct and strict director liability provisions.

- A revised regime for takeovers and fundamental transactions. The act includes specific provisions for compulsory acquisition of minority shareholding in a takeover scenario and for appraisal rights for dissenting minority shareholders, and court approval is required only when a significant minority (15%) is opposed to the transaction.
- A capital maintenance regime based on solvency and liquidity that abolishes the concept of par value shares and nominal value shares.
- A modern business rescue regime that is largely self-administered by the company—under independent supervision—and subject to court intervention at any time upon application by any of the stakeholders.

The amended Companies Act is characterized by flexibility, simplicity, transparency, corporate efficiency, and regulatory certainty. It is drafted in plain language and is not as detailed and prescriptive as the previous version of the act. Companies are allowed flexibility to change certain requirements to suit their specific circumstances.

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 first update of the report, known as the King II report, was released in March 2002. Some aspects of the King II report are mandatory for those companies listed on the Johannesburg Stock Exchange (JSE), and some aspects are subject to a “comply or explain” requirement. The King III report was published in 2010. It recommends that organizations produce an integrated report in place of an annual financial report and a separate sustainability report. The King III report further recommends that companies create sustainability reports according to the Global Reporting Initiative’s Sustainability Reporting Guidelines. The report incorporated a number of global emerging governance trends, such as

- alternative dispute resolution,
- risk-based internal audits,
- shareholder approval of non-executive directors’ remuneration, and
- evaluation of board and directors’ performance.

The King III report has incorporated a number of new principles to address key new governance elements not previously included in the other King reports, including

- IT governance,

- business rescue, and
- fundamental and affected transactions in terms of directors' responsibilities during mergers, acquisitions, and amalgamations.

Despite a requirement for companies to make regular disclosures of significant events—including directorate changes, board members' dealings in securities, and notices of annual meetings—via the JSE news service, 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 in Southern Africa (www.iodsa.co.za)

Johannesburg Stock Exchange (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)