

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.

¹³Stakeholders 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)