

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.

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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)