

Taiwan

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 79 companies in Taiwan as of 15 May 2008.

Shareowners in the Taiwan market have generally good shareowner rights for a developing market. All board members are elected at the same time because Taiwan does not permit staggered election terms for board members. Under the Company Law, shareowners may cumulate their votes in the election of board members and board members may be removed from office at any time by a special shareowner resolution (two-thirds of the votes cast). Although many companies do not publish full voting results for all proposals, all companies do publish the number of votes cast for each board member elected at the annual meeting. Currently, shareowner activism is not common in Taiwan.

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)?	17%	The low percentage of independent board members is a result of 2 factors: a high level of executive board membership and the requirement for board members in aggregate to own a certain percentage of the company (under ratios regulated by the Securities and Futures Commission [SFC]). The ownership requirement has led to many board memberships being "held" by legal entities that then designate a natural person to act as the legal entity's representative. Some attempt has been made to improve the level of independence by allowing companies to lower the board member ownership ratio if they have 2 independent board members and 1 independent supervisor (on a 2-tiered board). Independent board members are not required to own shares.
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	16%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	5.1%	
Is voting by proxy permitted?	Yes	A shareowner may delegate a proxy to attend each meeting of shareowners.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Must shares be deposited or blocked from trading in order to vote?	Yes	The register of shareowners must be closed for a period of 60 days before each ordinary meeting of shareowners, 30 days before each extraordinary meeting of shareowners, and 5 days before each record date. ¹⁷
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations apply in some industries, such as basic telecommunications and broadcasting.
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?	No	
Do companies allow for cumulative voting in the election of board members?	Yes	Yes (default rule)
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?	Yes	The remuneration of board members and supervisors is determined by a meeting of shareowners.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Sometimes	Generally, but this policy varies on a company-by-company basis. The SFC requires the exercise price of options granted in an incentive plan to be not less than the market price unless the company gets a $\frac{2}{3}$ vote of shareowners to approve a lower price. Resolutions seeking shareowner approval have occurred in 13% of the companies researched for this manual.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right is standard.
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	An extraordinary general meeting of shareowners may be called by shareowners representing a minimum of 3% of shares.
What percentage of companies include golden shares in their capital structure?	1.3%	Chunghwa Telecom is the only one of the companies researched for this manual that has a golden share.

¹⁷Date on which a shareowner must own shares in order to be entitled to a dividend.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Although poison pills are permitted, only a few are in place. None of the companies researched for this manual 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	2/3 of votes cast are required.
Do companies require a supermajority vote to approve a merger?	Yes	2/3 of votes cast are required.
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 pricing is a legal requirement.
Are class action suits commonly used in this market?	No	Class action suits are not common, but the number has increased a little since the Securities Investors and Futures Traders Protection Act enhanced the mechanisms for securities class action in 2002.
Are derivative suits commonly used in this market?	No	Although not unheard of, they are not common.

Current Engagement Practices and Shareowner Rights Developments

Traditionally, minimal shareowner engagement and activism has occurred in Taiwan, primarily because of the family or executive ownership structure so prevalent in Taiwanese companies. Furthermore, share ownership and trading outside of this family structure are dominated by individual shareowners (non-institutional investors), who have inadequate resources (or motivation) to engage companies on governance issues and tend to have a shorter-term view of their investments than do institutional investors. Institutional investors hold a minority of the shares on the market in Taiwan and have tended to be passive in their approach to investment in the market. Institutional investment (both domestic and foreign) has been on the rise in recent years, however, and with it has come an increase in shareowner engagement in Taiwan.

The Securities and Futures Investors Protection Center (SFIPC) has been actively involved in many shareowner meetings recently. The SFIPC has raised concerns about such issues as private placement, acquisitions and mergers, asset disposals, remuneration, and elections, and has expressed opposition to removing the ban on board members' engagement in businesses similar to the ones of the boards they serve on. The SFIPC also has filed lawsuits to revoke those resolutions that it anticipates could have an impact on investors' rights and interests.

The Company Law requires that the aggregate compensation of board members be approved by shareowners if it is not already dictated by the company's articles of incorporation. Shareowner approval also is required for the distribution of employee bonuses in the form of stock. As of 1 January 2008, companies must price stock issued to employees at market value and then book the stock as an operational expense; companies now also must expense their stock options. The Securities Exchange Law requires a company to obtain shareowner approval to transfer shares to employees at less than the average actual repurchase price (requires the consent of at least two-thirds of the voting rights present at a shareowners meeting attended by shareowners representing a majority of total issued shares).

Prior to 2008, companies disclosed only aggregate compensation paid to board members and executives, but they are now required to disclose the compensation ranges of individual board members and also senior managers.

Every public company in Taiwan is required to either establish an audit committee (for a one-tiered board) or appoint supervisors (for a two-tiered board). Most companies have adopted a two-tier structure that consists of a board of directors and a board of supervisors, both of which are elected by shareowners. Supervisors in Taiwan are responsible for the effective monitoring of a company's board and management and generally fill a role equivalent to that filled by audit committees in other markets.

Board member and supervisor terms may not exceed three years, and all are elected at the same time. Pursuant to the Company Law, a legal entity that owns company shares may be elected as a board member or supervisor, in which case, a natural person must be designated to act as the legal entity's representative. A board member or supervisor who serves as the representative of a legal entity may be removed or replaced at any time at the discretion of that legal entity, and the replacement board member or supervisor may serve the remainder of the term of office of the replaced board member or supervisor. A legal entity refers to any shareowner whose equity is greater than 10 percent or who is one of the top 10 shareowners; distinguishing between the legal responsibilities of the legal entity and of its appointees can be difficult. Securities and Futures Bureau (SFB) legislation passed in March 2007 prohibits a legal entity from nominating both board members and supervisors; a legal entity may nominate *either* board members or supervisors but not both. That same legislation also requires all listed financial institutions to elect independent board members (when next holding board elections). The SFB requires that a company have at least two independent directors and that no less than one-fifth of its board be independent directors. Independent and non-independent board members would be elected at the same time but in separately calculated votes (using cumulative voting). Another few years will be required for financial institutions to completely satisfy this new requirement because of the length of board members' terms (often three years) and the fact that they are often elected as a group (commonly only every three years).

Legal and Regulatory Framework

The Company Law and the Securities and Exchange Law form the primary legal basis of corporate governance in Taiwan. The SFB also enacted the Securities Investors and Futures Traders Protection Law (Protection Law).

The one share, one vote system is fully entrenched in Taiwan. Furthermore, the election of board members is by cumulative voting. Shareowners are required to block their shares from trading however, in order to vote. Under the Company Law, the register of shareowners should be closed for a period of 60 days before each ordinary meeting of shareowners, 30 days before each extraordinary meeting of shareowners, and 5 days before each record date. This long period for blocking shares, given the exposure of those shares to the market during that period, is a substantial deterrent to active traders and institutional shareowners voting their shares.

Shareowner rights in Taiwan are stipulated in the Company Law. A company cannot modify or alter its articles of incorporation without a resolution adopted at a meeting of shareowners. A board member may, by a resolution adopted at a meeting of shareowners, be removed from office at any time. Any individual shareowner or entity holding more than 1 percent of company shares may suggest candidates for nomination and propose agenda items for the shareowner meeting. Shareowners also have strong rights in terms of calling meetings outside the annual general meeting; shareowners representing at least 3 percent of shares may call for an extraordinary general meeting of shareowners.

The Company Law provides that in order to approve certain major corporate actions—including any amendment of the articles of incorporation, merger or spin-off, and removal of board members—a special resolution may be adopted with the consent of at least two-thirds of the voting rights present at a shareowner meeting attended by shareowners representing a majority of total outstanding shares. Public companies are also subject to fair price protection that allows all shareowners to receive the same price for the shares tendered in a merger bid.

Under the Company Law, when a company issues new shares for cash, existing shareowners have preemptive rights to subscribe to the new issue in proportion to their existing shareholdings; a company's employees, whether or not they are shareowners of the company, have rights to subscribe to 10–15 percent of the new issue. Any new shares that remain unsubscribed at the expiration of the subscription period may be offered to the public or privately placed. The preemptive rights do not apply to offerings of new shares through a private placement approved at a shareowners' meeting.

Shareowners who have continuously held 3 percent of shares for one year or longer may petition a supervisor (in a two-tiered structure, as described previously) to sue board members on the shareowners' behalf; in structures without supervisors (e.g., in a unitary board structure), the shareowners may sue board members directly. Although supervisors are understandably reluctant to initiate expensive and lengthy legal action against management, if they should fail to file suit within 30 days, the shareowners may file the lawsuit themselves. Still relatively uncommon, lawsuits have become more prevalent in Taiwan since the Protection Law enhanced the mechanisms for securities class action in 2002.

Some companies listed on the Taiwan Stock Exchange—those in the airline transport, telecommunications, and broadcasting industries—are subject to foreign ownership limits.

Listed companies are required to disclose their foreign investments and foreign direct investment in China. In July 2008, incoming Taiwanese President Ma Ying-jeou's new cabinet approved raising the cap on China-bound investment (investment in China) from 40 percent to 60 percent of a company's net worth. Multinational companies' subsidiaries in Taiwan are exempt from any investment limits.

Key organizations with information relevant to shareowner rights in Taiwan include the following:

Financial Supervisory Commission (www.sfb.gov.tw)

Taiwan Stock Exchange (www.twse.com.tw)

Taiwan Integrated Shareholder Service Company (www.twevote.com.tw)

Securities and Futures Investors Protection Center (www.sfipc.org.tw)

Corporate Governance Association (www.cga.org.tw)

Securities & Futures Institute (www.sfi.org.tw)

Ministry of Finance, R.O.C. (www.mof.gov.tw)

Ministry of Economic Affairs (www.moea.gov.tw)

Central Bank of the Republic of China (Taiwan) (www.cbc.gov.tw)