



**The Fourth Asian Roundtable on Corporate
Governance**

***Shareholder Rights and the Equitable
Treatment of Shareholders***

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The past eighteen months since the last roundtable is perhaps one of the most significant periods in the history of corporate governance for the greater China area. With the continuous quick expansion of the securities market and ever increasing market awareness, mainland China, Hong Kong, and Taiwan have all made great efforts to strengthen the responsibility of the board and management. There have been significant achievement and progress in transparency and the protection of small and medium sized investors.

Mainland China

With the total number of listed firms surpassing 1200 in October 2002, corporate governance becomes a pressing issue for the China Securities Regulatory Commission (CSRC). Two path breaking documents have been released recently, Code of Corporate Governance for Listed Companies in China enacted by both the CSRC and State Economic and Trade Commission in 2002 and Guidelines for Introducing Independent Directors to the Board of Directors of Listed Companies issued by CSRC in 2001.

Code of corporate governance is based on the guideline issued by Shanghai Stock Exchange at

the 2000 international conference on corporate governance. It stipulates the code of conduct of all the following parties in the listed companies: shareholders and shareholders' meeting, directors and board of directors, and the supervisors and the supervisory board. The code sets out both the rules for establishing performance assessment and incentive and disciplinary systems and the rules for disclosing information and maintaining transparency. In particular, listed companies that are more than 30% owned by controlling shareholders are required to adopt a cumulative voting system.

Due to the insufficient legal infrastructure, it is still difficult to hold parties violating the practice of the code accountable for their wrongdoings. In the case of insider trading, related party transactions, and material false statement, investors can only sue in those closed cases in which the party has already been punished by CSRC. Class action is still not in practice in the legal system, greatly hindering the incentive of the market to punish the wrongdoers.

Guidelines for Introducing Independent Directors to the Board of Directors of Listed Companies set the qualifications for an independent director and requires the independent director be free of conflict of interest. Under the guidelines, the independent director enjoys special rights especially in the major related party transactions. Major related party transactions whose value exceeds a certain level should be approved by the independent director before being submitted to the board of directors for discussion. Before the independent director makes his or her judgment, an intermediary agency can be employed to produce an independent financial advisory report, which will serve as the basis for his or her judgment. The independent directors can also put forward the proposal to the board of directors relating to the appointment or removal of the accounting firm.

In addition to the two documents, regulators are paying particular attention to controlling shareholders. Recently published rules on the appointment of senior management, information disclosure, and verification of capital injection are all designed to target loopholes that may provide large shareholders with the opportunity to violate other investors' rights. Besides the development in regulations, shareholders are becoming more and more aware of self-protection. With the improvement of communications technology such as web broadcasting, the participation of minority shareholders in corporate affairs has become easier and timely. The means of information disclosure has at the same time become very efficient.

China understands that in order for the rules to be effective and its regulatory system to be sound, it must be vigilant in the supervision of the markets and robust in the enforcement efforts. Furthermore, China must have the necessary regulatory and enforcement tools. As in other jurisdictions, for the regulator to be effective, it must be supported by an appropriate legal framework, and have the assistance of other law enforcement agencies and an independent judiciary. China believes it is in this direction that the regulatory efforts should be focused.

Together with the promulgation of the new rules, China should expand its efforts in investor education to improve the knowledge base of our existing and potential investors. The

educational process will enhance the understanding of the importance of corporate governance by both the companies and the investors.

Hong Kong

In terms of corporate governance, Hong Kong is a relatively good example for Asian emerging markets due to its better legal infrastructure, although its further improvement is somewhat constrained the fact that the majority of Hong Kong listed companies continue to be dominated by families. At the same time, Hong Kong is still pushing forward the best practices of corporate governance by amending its corporate governance guideline. Before the end of last month, the HKEx is seeking advice on its Proposed Amendments to the Listing Rules Relating to Initial Listing and Continuing Listing Eligibility And Cancellation of Listing Procedures.

For information disclosure, Hong Kong is more concerned with the balance among three factors, frequency, coverage and timely report. According to the current listing rules, the listed firms on the main board are required to file semiannual and annual reports and those on the second board are required to file quarterly reports. Although more frequent reporting is feasible, there is concern that it might increase short run stock price volatility.

According to K C Kwong, the chief executive of Hong Kong Exchanges and Clearing Limited, For the independent director, the company holds that all shareholders should have the same voting rights and be responsible for the company. Well-coordinated board leads to good decision process. Therefore, big shareholders should not be deprived of the rights of nominating and appointing independent director. Accordingly, independent director should not be elected by minority shareholders.

To obtain independent director's objectivity and functionality, the definition of independence should be carefully considered. The current proposal requires that at least 1/3 of the board, at least two members, and at least one member with accounting background or experience should be independent directors. Finally, SFC believes that in the end good corporate governance depends on individual professional integrity.

Taiwan (Some of the information below is based on the material from International Conference on Investor Protection organized by the Shanghai Stock Exchange in June 2002)

The number of the listed companies in Taiwan has reached 636 in September 2002 with the market capitalization standing for more than 100% of its GDP, close to figures in mature markets. At the same time, retail investors are playing a major role in the market. The stock market is characterized by high volatility, large turnover rate, and highly leveraged transactions, reflecting more speculation than investment. Therefore, how to promote corporate governance and protect small investors is also quite a challenge to market regulators

in Taiwan.

Taiwan Stock Exchange newly released the Listed Companies' Corporate Governance Practice (the Practice). It reflects to a significant degree the needs to protect investors, strengthen functions of both the board and supervisory body, and increase company transparency. The Practice encourages shareholders to actively participate in the corporate governance of listed companies and restricts the rights of the chairman of board. It also provides the guideline to coordinate the relationship between listed company and its related business aiming to minimize the conflict of interest of the management. For example, listed company managers can not hold similar position in the related company at the same time. In addition to the independent director, the Practice emphasizes the function of the supervisory committee and independent supervisors.

The current information disclosure of listing companies in Taiwan includes six categories. They are financial and investment related matters, legal actions, material events related to operation and production, changes in management and board members, decisions related to dividend and shareholders' right, and other matters that may have impacts on stock price or shareholders' equity. The company accordingly shall file its financial reports including quarterly, semi-annual and annual reports, and report of monthly revenue as well. And, if there are any information related to company's significant decision, or any events that may affect stock price, on the day of events or before the next trading day if it has been reported by media, the company must input the information into the Market Observation System (MOS) with the Exchange. The MOS is linked to exchange's Website where everyone can easily have accesses to the aforesaid matters.

Taiwan's Securities and Exchange Law states clearly that investor protection is one of the two purposes of its enactment. Besides, there are some provisions of the Law that are designed to prevent investor's damages indirectly from listed company's unjustified activities. In order to further promote corporate governance, especially to protect investors, the Taiwan has, for years, been working on the legitimacy of Investor Protection Law. In May 2002, the Financial Committee of the Legislature passed the primary testimony of the legislation of the law.

In the Protection Law, a service of consultation is imposed to advance investors' claims and help negotiating with troubled securities companies. More importantly, litigation of Class Actions is proceeded for investors to fight against the fraud. The action is legally represented by the trustee free of charge.

The role of honest and capable courts and regulators is critical to the evolution of corporate governance. However, without the support of markets and incentives, the overemphasis on regulations and rules carries the risk of a triumph of form over substance. Therefore, education, regulation, and enforcement are equally important in our effort to ensure a healthy capital market and a sustainable economic growth. Thank you very much.

