The Corporate Governance Review

Fourth Edition

Editor
Willem J L Calkoen

Law Business Research

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THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

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EDITOR'S PREFACE

I am proud to present this new edition of *The Corporate Governance Review* to you.

In this fourth edition, we can see that corporate governance is becoming a more vital and all-encompassing topic with each year. We all realise that the modern corporation is one of the most ingenious concepts ever devised. Our lives are dominated by corporations. We eat and breathe through them, we travel with them, we are entertained by them, most of us work there. Most corporations aim to add value to society and they very often do. Some, however, are exploiting, polluting, poisoning and impoverishing us. A lot depends on the commitment, direction and aims of a corporation's founders, shareholders, boards and vital staff members. Do they show commitment to all stakeholders or to long-term shareholders only, or mainly to short-term shareholders? There are many variations of structure of corporations and boards within each country and between countries. All will agree that much depends on the personalities and commitment of the persons of influence in the corporation.

We see that everyone wants to be involved in 'better corporate governance': parliaments, governments, the European Commission, the SEC, the OECD, the UN's Ruggie reports, the media, supervising national banks, shareholder activists and other stakeholders. The business world is getting more complex and overregulated, and there are more black swans, while good strategies can quite quickly become outdated. Most directors are working diligently, many with even more diligence. Nevertheless, there have been failures in some sectors, so trust has to be regained. How can directors do all their increasingly complex work and communicate with all the parties mentioned above?

What should executive directors know? What should outside directors know? What systems should they set up for better enterprise risk management? How can chairs create a balance against imperial CEOs? Can lead or senior directors create sufficient balance? Should most outside directors understand the business? How much time should they spend on the function? How independent must they be? What about diversity? Should their pay be lower? What are the stewardship responsibilities of shareholders?

Governments, the European Commission and the SEC are all pressing for more formal inflexible legislative acts, especially in the area of remuneration. Acts set minimum standards, while codes of best practice set aspirational standards.

More international investors, voting advisory associations and shareholder activists want to be involved in dialogue with boards about strategy, succession and income. Indeed, wise boards have 'selected engagements' with stewardship shareholders to create trust. What more can they do to show all stakeholders that they are improving their enterprises other than through setting a better 'tone from the top'? Should they put big signs on the buildings emphasising integrity, stewardship and respect?

Interest in corporate governance has been increasing since 1992, when shareholder activists forced out the CEO at General Motors and the first corporate governance code – the Cadbury Code – was written. The OECD produced a model code and many countries produced national versions along the lines of the Cadbury 'comply or explain' model. This has generally led to more transparency, accountability, fairness and responsibility. However, there have been instances where CEOs gradually amassed too much power or companies have not developed new strategies and have fallen into bad results – and sometimes even failure. More are failing in the financial crisis than in other times, hence the increased outside interest in legislation, further supervision and new corporate governance codes for boards, and stewardship codes for shareholders and shareholder activists.

This all implies that executive and non-executive directors should work harder and more as a team on policy, strategy and entrepreneurship. It remains a fact that more money is lost through lax directorship than through mistakes. On the other hand, corporate risk management is an essential part of directors' responsibilities, and sets the tone from the top.

Each country has its own measures; however, the chapters of this book show a convergence. The concept underlying the book is of a one-volume text containing a series of reasonably short, but sufficiently detailed, jurisdictional overviews that permit convenient comparisons, where a quick 'first look' at key issues would be helpful to general counsel and their clients.

My aim as editor has been to achieve a high quality of content so that *The Corporate Governance Review* will be seen, in time, as an essential reference work in our field.

To meet the all-important content quality objective, it was a condition *sine qua non* to attract as contributors colleagues who are among the recognised leaders in the field of corporate governance law from each jurisdiction.

I thank all the contributors who helped with this project. I hope that this book will give the reader food for thought; you always learn about your own law by reading about the laws of others.

Further editions of this work will obviously benefit from the thoughts and suggestions of our readers. We will be extremely grateful to receive comments and proposals on how we might improve the next edition.

Willem J L Calkoen
NautaDutilh
Rotterdam
March 2014

Chapter 24

TAIWAN

Stephen C Wu, Benjamin Y Li and Derrick C Yang[1]

I OVERVIEW OF GOVERNANCE REGIME

All companies incorporated in Taiwan are governed by the Company Act. The listed companies in Taiwan are further subject to the Securities and Exchange Act (SEA) and ancillary regulations, as well as rules published by the two stock exchanges, the Taiwan Stock Exchange Corporation (TWSE) and the GreTai Securities Market (GTSM), which mainly set forth and promote the disclosure requirements to ensure the transparency of the publicly listed and traded companies. In addition, to establish a sound corporate governance regime and to advance the integrity of the securities market, the TWSE and the GTSM jointly adopted the 'Corporate Governance Best Practice Principles for TWSE/GTSM Listed Companies' on 4 October 2002.[2]

The SEA, enacted on 30 April 1968 and last amended on 5 June 2013, provides a comprehensive framework for securities[3] regulation in Taiwan. Prior to 2 April 1997, the SEA was enforced by the Securities and Exchange Commission (SEC). Subsequent to the amendment to the Futures Trading Act on 26 March 1997, the SEC was renamed as the Securities and Futures Commission (SFC) as of 2 April 1997. On 1 July 2004, following the institutional reorganisation of certain financial regulatory agencies, the

1 Stephen C Wu and Benjamin Y Li are partners and Derrick C Yang is an associate at Lee and Li Attorneys-at-Law.

2 The 'Corporate Governance Best Practice Principles for TWSE/GTSM Listed Companies' mainly encompasses the following aspects: (1) protecting shareholders' rights; (2) enhancing the function of board of directors; (3) empowering the supervisors; (4) recognising the stakeholders' importance; and (5) improving information transparency.

3 Pursuant to Article 6 of the SEA, securities are defined as including government bonds, shares and bonds publicly issued by a company limited by shares, and other securities approved by the government.

SFC became the Securities and Futures Bureau (SFB) under the Financial Supervisory Commission (FSC) of the Executive Yuan (i.e., Taiwan's administrative branch). In its capacity as the supervisory and regulatory agency for the securities and futures markets, the FSC may request account books, financial statements, documents, or other reference or report materials for inspection, render remedial measures in the event of any non-compliance, and impose administrative fines against SEA violations.

In principle, corporate governance is embodied by a corporate structure that consists of a board of directors, supervisors and the shareholders, and this is applicable to all companies limited by shares. The shareholders, as the beneficial owners of the company, are vested with the rights to elect directors and supervisors as well as approving the proposals prepared by the board. The board holds discretionary powers delegated by the shareholders and oversees the business operations of the company. The supervisors are responsible for overseeing the financial condition of the company, examining and auditing the accounts and financial statements, and supervising the conduct of the directors.

On a more detailed level, for certain public companies,[4] the 11 January 2006 amendment to the SEA (the 2006 Amendment) requires that independent directors occupy at least two seats on the board, which shall be no less than one-fifth of the total number of directors, to ensure the board's function and safeguard the interests of the shareholders. The 2006 Amendment also introduced the audit committee, which replaces the supervisors. Moreover, the 24 November 2010 amendment to the SEA prescribed that all TWSE or GTSM listed companies shall establish a remuneration committee to review the company directors' remuneration.

II CORPORATE LEADERSHIP

i Board structure and practices

Structure of the board

Under the Company Act, a company limited by shares is legally required to establish the board to oversee its business operations.[5] The one-tier board structure is commonly adopted in Taiwan. The board shall comprise no less than three directors. On the other hand, Article 26-3 of the SEA prescribes that the board of a public reporting company shall consist of at least five directors.

4 According to the FSC's Letter (Ref. No. Jin-Guan-Zheng-Fa-1020053112) dated 31 December 2013, the adoption of independent directors shall apply to financial holding companies, banks, bills corporations, securities investment trust companies, integrated securities firms and listed futures commission merchants, as well as other listed companies that do not belong to the financial industry. For other listed companies that do not belong to the financial industry but have a paid-in capital of NT$10 billion or less, a grace period for complying with the aforesaid ruling is given to the incumbent directors of said companies.

5 For other types of companies (i.e., limited companies, unlimited companies and unlimited companies with limited liability shareholders), the power and authority of the board will be exercised by the individual managing directors or shareholders.

The chairman of the board represents the company, while other directors may only do so if authorised by the board. The chairman shall preside over the shareholders' meeting, the meeting of the board of directors, and the meeting of the managing directors, if applicable. The board, functioning through its meetings, is granted a wide range of powers. Except for the matters that shall be effected pursuant to the shareholders' resolutions as required by law or the articles of incorporation, the operations of a company are by and large determined by the board's resolutions adopted at the board meetings. The board may also establish internal rules to govern the procedures for specific types of transactions, such as extending loans and providing endorsements or guarantees.

Legal responsibilities of the board

The legal responsibilities of the board include convening the shareholders' meeting, keeping the articles of incorporation, the minutes of the shareholders' meetings, the financial statements and other books for inspection, reporting to the shareholders' meeting, declaring the bankruptcy of the company, announcing or notifying the dissolution of the company, etc.

Except as otherwise provided in the Company Act, the following matters must be resolved and adopted by a majority of the directors present at a meeting representing more than one-half of the directors of the company (if no higher quorum and vote are stipulated in the articles of incorporation):

a appointment and dismissal of external auditors and managers, and determination of their remuneration;
b approval of public issuance of the shares of the company;
c approval of the amount of capital contribution in kind;
d convening the shareholders' meetings;
e reporting losses of the company to the shareholders' meeting when the losses reach half of the paid-in capital; declaring bankruptcy when the company's assets are not sufficient to satisfy its indebtedness;
f approval of the annual reports and proposals regarding earnings distribution or loss-offsetting for submission to the shareholders' meeting for approval;
g approval of a merger or spin-off agreement for submission to the shareholders' meeting for approval; and
h amendment of the articles of incorporation for submission to the shareholders' meeting for approval.

Aside from the above, the following matters must be resolved and adopted by a majority vote of the directors present at a board meeting attended by two-thirds or more of the directors (if no higher quorum and vote are stipulated in the articles of incorporation):

a approval of a company share buy-back;
b approval for entering into a share subscription agreement with its employees whereby the employees may subscribe, within a specific period of time, for a specific number of shares of the company;
c making proposals to the shareholders' meeting to engage in any of the following transactions;

- entering into, amending, or terminating any contract for the lease of the company's business in whole, or for entrusted business, or for regular joint operation with others;
- transferring the whole or any essential part of the company's business or assets; or
- accepting the transfer of another party's whole business or assets that have a great impact on the business operations of the company;

d electing the chairman of the board or the managing directors from the directors;
e offering corporate bonds;
f issuance of new shares; and
g application for reorganisation of the company.

According to the Company Act, the board must comply with relevant laws and regulations, the company's articles of incorporation and resolutions adopted at a shareholders' meeting. While the Company Act is silent on whether the board resolution should be deemed null and void if the aforesaid obligation is breached by the board, a series of court decisions held that the company may not invoke the fact that a resolution is null and void as a defence against a *bona fide* third party. Moreover, according to the Company Act, in the event that such a resolution causes damage to the company, the supervisor as well as any shareholder who has continuously held the shares of the company for one year or longer may request the board to discontinue such an act. The board members participating in the passing of such a resolution would be liable to the company for the damage resulting therefrom, except for those who raise objections in writing or whose objection is duly recorded in the meeting minutes.

Delegation of responsibilities

Under the Company Act, the chairman of the board represents the company. If the chairman is on leave or absent or for any reason cannot exercise his or her power and authority, the vice chairman shall act on his or her behalf. In the cases where the company does not have a vice chairman, or the vice chairman likewise cannot exercise his or her power and authority for any cause, the chairman should appoint one of the directors to act on his or her behalf.

With respect to the power and authority of the board, according to the interpretation of the Ministry of Economic Affairs (MOEA),[6] during the recess of the board of directors, the managing directors may regularly exercise the power and authority of the board if such matters are not specifically required to be resolved by the entire board. The Company Act prescribes that while the managing directors are not mandatory, if the managing directors are elected, the number thereof shall not be less than three and no more than one-third of the total number of directors. Accordingly, the company must have at least nine directors to elect three managing directors to attend to the entrusted corporate affairs.

6 See MOEA's Letter Ref. No. Sun-04379, dated 12 February 1988.

In this regard, the 'Corporate Governance Best Practice Principles for TWSE/GTSM Listed Companies' provide that the board of directors of a TWSE/GTSM listed company may, taking into account the size of the board and the number of the independent directors, set up audit, nomination, risk management or any other functional committees and, on the basis of a belief in corporate social responsibility and sustainable operation, set up an environmental protection or other committee, and have such a committee stipulated in the articles of incorporation.

Remuneration of directors

According to the Company Act, the remuneration of the directors of the company, if not prescribed in the articles of incorporation, shall be determined by a meeting of shareholders and cannot be ratified. The SEA requires all listed companies to set up a remuneration committee, which consists of at least three members, to periodically review topics surrounding the performance of the company and directors' remuneration. The details in respect of the qualifications of the committee member and the procedures for exercising his or her power are set forth in the 'Regulations Governing the Appointment and Exercise of Powers by the Remuneration Committee of a Company Whose Stock is Listed on the Stock Exchange or Traded Over the Counter' promulgated by the FSC.

Board and company practice in mergers and acquisitions

According to the Business Mergers and Acquisitions Act, upon adopting a resolution in respect of mergers and acquisitions, the board shall act in the best interest of the shareholders and exercise the care of a good administrator in attending to relevant affairs. In addition, before the adoption of the aforesaid resolution, the board of a public listed company shall seek the opinion of an independent expert on the fairness of the share exchange ratio or distribution of cash or other assets to shareholders, and report the fairness opinion to the board and shareholders' meeting, if applicable.

Note that the 'Corporate Governance Best Practice Principles for TWSE/GTSM Listed Companies' provides that if a TWSE/GTSM listed company is involved in a management buyout, it is recommended that such a company establishes an objective and independent committee to review the fairness of the acquisition price and the acquisition plan to alleviate any conflict of interest concerns.

ii Directors

Appointment, nomination, and term of office

The board of directors of a company shall be elected at a shareholders' meeting. When electing the directors, each share carries the number of votes equal to the number of seats to be elected, and a shareholder may cast all the votes for one candidate or divide the votes among several candidates. Accordingly, the minority shareholders are afforded the opportunity to cause certain candidates to be elected as directors by means of a collective action. A shareholders' meeting may resolve to discharge a director at any time by a supermajority vote, provided that the director may claim against the company for any damages resulting from the discharge if he or she is discharged without cause. The term of office of a director shall not exceed three years, but a director is eligible for re-election.

Legal responsibilities of the directors

In the 2001 amendment to the Company Act, the directors' fiduciary duty was formally codified. A director owes the duty to faithfully and loyally conduct the company's business and to exercise the care of a good administrator.

According to the Company Act, a director should also comply with the relevant laws and regulations, the company's articles of incorporation and the resolutions adopted at a shareholders' meeting. If this duty is breached, the director could be held jointly and severally liable with the company to third parties.

For a director who competes with the company (i.e., engaging in a transaction for oneself or any third party's behalf that is within the scope of the company's business), that director shall disclose the important contents of such an action to the shareholders' meeting and obtain its approval (by a resolution adopted by a majority of the shareholders present at a meeting representing two-thirds or more of the total number of its outstanding shares); otherwise, the meeting of shareholders may, by a resolution, recover the profits that the director made from the transaction, unless one year has lapsed since the realisation of the profits.

The Company Act also provides that where a director (or the juristic person he or she represents) has an interest in the agenda and this interested relationship may prejudice the company's interest, the director shall abstain from voting on the agenda. According to a series of court decisions, the 'interested relationship' refers to the situation where the director will acquire rights or be exempted from obligations, or lose rights or assume obligations, as a result of the adoption of the resolution on the agenda in question. 'Prejudice the company's interest' is interpreted as 'being detrimental to the company's interests', which lacks an objective guideline and thus will be subject to a case-by-case review. On the contrary, if the 'self-dealing' (i.e., the director or the juristic person he or she represents is the contracting party to the company) occurs, it is perhaps less ambiguous under the Company Act, and the disinterested supervisors will step in and act for the company in dealings with the interested director.

Shadow director

Under Paragraph 3, Article 8 of the Company Act, amended on 4 January 2012, a non-director of a public reporting company, who (1) *de facto* performs a director's duties, or (2) has *de facto* control over a company's personnel, financial or business operation and can instruct a director to perform his or her duties, shall be deemed a shadow director and shall, likewise, be subject to a director's liabilities. The legislative intent, published by the Legislative Yuan when this Article was passed, provides some guidance on the definition of what constitutes a statutory shadow director and, according to the legislative intent, this Article is intended to address the corporate governance issues surrounding direct or indirect shareholders that circumvent director's liabilities by not acting as directors but manipulating the company's affairs through appointing 'in name only' nominees to the board.

Independent directors

Certain public reporting companies are required to designate and elect at least two independent directors to seats on the board, which shall not be less than one-fifth of the total number of directors, in accordance with the SEA. The professional qualification requirements for an independent director include at least five years' work experience in any of the following fields or positions:

a an instructor (or of a higher position) of a department of commerce, law, finance, accounting (or other academic department related to the business needs of the company) in a public or private junior college, college, or university;

b a judge, public prosecutor, attorney, certified public accountant, or other professional or technical specialist who has passed a national examination and been awarded a certificate in a profession necessary for the business of the company; or

c have work experience in commerce, law, finance, accounting or an area otherwise necessary for the business of the company.

During the term of his or her office and two years before his or her election, an independent director shall not, *inter alia*, be:

a an employee of the company or any of its affiliates;

b a director or supervisor of the company or any of its affiliates (the same does not apply, however, in cases where the person is an independent director of the company, its parent company or any subsidiary in which the company holds, directly or indirectly, more than 50 per cent of the voting shares);

c an individual shareholder who holds shares, together with those held by the person's spouse, minor children, or held by the person under others' names, in an aggregate amount of 1 per cent or more of the total number of issued shares of the company or ranking in the top 10 in shareholdings;

d a spouse, relative within the second degree of kinship, or lineal relative within the third degree of kinship, of any of the persons in the preceding three subparagraphs;

e a director, supervisor, or employee of a corporate shareholder that directly holds 5 per cent or more of the total number of issued shares of the company or that holds shares ranking in the top five in holdings;

f a director, supervisor, officer, or shareholder holding 5 per cent or more of the shares, of a specified company or institution that has a financial or business relationship with the company; or

g a professional individual or an owner, partner, director, supervisor, or officer of a sole proprietorship, partnership, company, or institution that provides commercial, legal, financial, accounting services or consultation to the company or to any affiliate of the company.

III DISCLOSURE

i Internal control

Since independence is one of the salient features of a supervisor, a supervisor is prohibited from serving as a director, manager or other officer concurrently. A company limited by shares should elect at least one supervisor who will be responsible for reviewing the financial condition of the company, examining and auditing the accounts and documents, and supervising the conduct of the directors. For a listed company, there should be at least three supervisors, with at least one of them domiciled in Taiwan.

In 2006, audit committees were introduced to the SEA as an alternative to statutory supervisors for public companies. While certain public companies are required to establish an audit committee,[7] most public reporting companies are allowed to choose whether to adopt an audit committee in lieu of supervisors. The audit committee shall comprise at least three independent directors, at least one of whom shall be an accounting or finance professional. In addition to the duties prescribed for independent directors, the audit committee should also review the internal control system and the company's financial reports (Paragraph 1, Article 14-5 of the SEA).

ii Mandatory disclosure

For a private company, there is no requirement for filing annual financial reports with the authorities other than a tax return. However, public reporting companies are subject to disclosure and periodic reporting requirements prescribed under the securities regulations. In a nutshell, a public reporting company is required to upload certain information that is subject to mandatory disclosure onto the website of the Market Observation Post System (MOPS) either on a regular basis (e.g., report about the company's finance-related information on monthly basis), or from time to time under certain circumstances (e.g., material information on occurrences that may affect the shareholders' interest, asset acquisitions or disposals, capital increases, proxy solicitations, etc.). To facilitate sound disclosure, in 2008, the TWSE and the GTSM announced the 'Public Company Material Information Disclosure Process' with the aim of helping corporate insiders and the employees of a company better understand the relevant laws and regulations.

IV CORPORATE RESPONSIBILITY

Section 4.3 of the 'National Action Plan for Anti-Corruption' promulgated by the Executive Yuan provides that corporate social responsibility shall be advanced. In this regard, the TWSE and the GTSM have jointly adopted the 'Corporate Social Responsibility Best Practice Principles for TWSE/GTSM-Listed Companies' for listed companies to observe in carrying out corporate social responsibility.

7 According to the FSC's Letter (Ref. No. Jin-Guan-Zheng-Fa-10200531121) dated 31 December 2013, the adoption of an audit committee shall apply to financial holding companies, banks, bills corporations, insurance companies, integrated securities firms of listed companies or the subsidiaries of financial holding companies and other listed companies that do not belong to the financial industry but have paid-in capital of NT$10 billion or more. As for other listed companies that do not belong to the financial industry but have a paid-in capital between NT$2 billion and NT$10 billion, the adoption of an audit committee shall be applicable as of 1 January 2017, provided that a grace period for complying with the aforesaid ruling is given to the incumbent directors and supervisors of such companies.

Moreover, the regulations governing the information to be published in the annual reports and offering prospectuses provide that all listed companies are required to disclose performance and achievement in respect of corporate social responsibility, in areas such as the environment, community service, social welfare, consumer rights, human rights and safety and sanitation, in the annual report and prospectus.

V SHAREHOLDERS

i Shareholders' rights and powers

Voting power and shareholders' meeting

Shareholders, being the beneficial owners of a company, enjoy voting rights on the matters prescribed by the Company Act, which include:

a election and dismissal of the directors and supervisors;
b proposal of agenda items for the regular shareholders' meeting to consider;
c determination of remuneration of the directors and supervisors;
d modification of the articles of incorporation; and
e approval of material transactions.

Generally speaking, each outstanding share is entitled to one vote unless otherwise prescribed by the Company Act (e.g., no voting rights for holders of special shares or for a company that holds its own shares in accordance with the law).

In Taiwan, there are two types of shareholders' meetings: a regular meeting and a special meeting. The regular shareholders' meeting shall be held within six months of the close of each fiscal year to approve (1) the business report, (2) financial statements and (3) the surplus earnings distribution or loss-offsetting proposals prepared by the board. The special shareholders' meetings can be convened by the board of directors whenever material events occur (e.g., transfer or sale of all or substantially all of the business or assets) or by the supervisor when necessary.

Aside from the above, when a company limited by shares is organised by a single government shareholder or a single juristic person shareholder, the functional duties and power of the shareholders' meeting shall be exercised by the board of directors. The directors and supervisors of the company shall be appointed by such a government shareholder or juristic person shareholder. Unless otherwise prescribed by the articles of incorporation, at least half of the directors should constitute the quorum and the matters that should be resolved at a shareholders' meeting should be adopted by a simple majority vote at a board meeting.

Inspection and pre-emptive rights

Under the Company Act, the board of directors shall prepare the business report, the financial statements and the surplus earning distribution or loss-offsetting proposals for the supervisor to audit before such statements and records are submitted to the shareholders' meeting for ratification. The shareholders' meeting may select and appoint inspectors for inspection.

In the event that a company proposes to issue new shares, the company shall notify its current shareholders to subscribe for, with pre-emptive right, the new shares, except those reserved for the employees under the Company Act. The subscription will be made according to the proportion of the shareholders' shareholding. Certain exceptions also apply to public reporting companies under the SEA and ancillary regulations.

Rights of dissenting shareholders

When a company is considering engaging in specific types of transactions (e.g., sale or purchase of all or substantially all of a company's business or assets, spin-off or merger), the board of directors shall submit the proposal to the shareholders' meeting. Any shareholder who dissents in writing or verbally with the record made before or during the meeting may waive the voting right and request that the company buy back his or her or its shares at a fair price, which should be made in writing within 20 days after the adoption of the resolution in question. In cases where no agreement on fair price can be reached between the dissenting shareholder and the company within 60 days after the resolution is adopted, the shareholder may, within 30 days prior to the expiration of the 60-day period, apply to the court for a decision.

ii Shareholders' duties and responsibilities

Article 154 of the Company Act provides that if a shareholder materially abuses the company's status as a legal entity and causes the company to assume certain debts that the company apparently would have difficulty in repaying, the shareholder shall become liable for such debts. This law has been promulgated and effective for less than a year (since June 2013), and there is no settled law or meaningful court decision in the area as to how a shareholder will be deemed to have manipulated its power and fall under this statutory 'piercing the corporate veil' rule. Accordingly, any guidance that the courts may develop on a case-by-case basis shall be considered in future.

iii Shareholder derivative actions

The shareholders may claim against a director by a direct action instituted within 30 days after a resolution to institute such an action is passed by the shareholders' meeting. For any shareholder who has been continuously holding 3 per cent or more of the total number of the outstanding shares of the company for over a year, such a shareholder may initiate a derivative action seeking the supervisors of the company to institute, for the company, an action against a director of the company. However, if the outcome of the lawsuit is in favour of the director, then the shareholder who commenced the derivative proceedings may be personally liable to indemnify the company for any damage suffered by it therefrom.

To facilitate the shareholders' voting rights, the Company Act provides that the voting rights may be exercised in writing or by way of electronic transmission, provided that the methods for exercising the voting rights are stipulated in the meeting notice of the shareholders' meeting. Listed companies having registered capital of NT$5 billion or more and 100,000 or more shareholders recorded in the shareholder roster in the most recent lock-up period shall include electronic voting as one of the voting methods for the shareholders.

iv Contact with shareholders

If contacting shareholders with the intention of garnering their support, proxy solicitation is allowed in accordance with the applicable regulations. In Taiwan, a shareholder may appoint a proxy to attend the shareholders' meeting on the shareholder's behalf by executing a power of attorney printed or issued by the company stating the scope of the power authorised to the proxy. Except for trust enterprises or stock agencies approved by the authority, when a person acts as a proxy for two or more shareholders, the number of votes represented by him or her shall not exceed 3 per cent of the total number of voting shares of the company; otherwise, the number of votes in excess shall not be counted. Moreover, a shareholder may only execute one power of attorney and appoint one proxy only, and shall serve this written proxy to the company no later than five days prior to the date of the shareholders' meeting (Article 177 of the Company Act).

To regulate proxy solicitation in connection with listed companies' shareholders' meetings, the authority has promulgated the 'Regulations Governing the Use of Proxies for Attendance at Shareholder Meetings of Public Companies' in accordance with Article 25-1 of the SEA, which contains the following key provisions:

a except for trust enterprises or stock agencies, a proxy solicitor shall be a shareholder holding 50,000 shares or more of the total issued shares, provided that if election of directors or supervisors is on the agenda of a shareholders' meeting, a higher threshold shall apply;

b a proxy solicitor shall meet certain qualifications;

c no solicitation will be allowed unless a proxy solicitor has submitted to the company the documents regarding proxy solicitation within the time limit (i.e., 38 days before the convention of the annual shareholders' meeting or 23 days before the convention of a special shareholders' meeting);

d a shareholder shall personally fill out the name of the proxy solicitor or the proxy on the proxies, unless a trust enterprise or stock agent is engaged to act as a proxy, in which event affixation of seals to the proxies will suffice;

e a proxy solicitor shall sign or affix its seal to the solicited proxies and may not assign such proxies to any other person; and

f proxies may not be obtained in exchange for money or other benefits, except for distribution of souvenirs at a shareholders' meeting on behalf of the company or where reasonable fees are paid by a proxy solicitor to a person mandated to conduct solicitation.

VI OUTLOOK

On 26 December 2013, the FSC announced the 'Road Map for Strengthening Corporate Governance in Taiwan', which includes measures such as reinforcing a corporate governance culture, promoting shareholder activism, enhancing the function of the board, disclosing material information in connection with corporate governance and stressing the legal affairs of a company. The TWSE and the GTSM will also participate in promoting this road map for a five-year term. During the term, the FSC will review and make necessary adjustments to this road map on a year-by-year basis, which is expected to serve as a foundation for reshaping corporate governance practice and developing more sustainable corporate management. Meanwhile, the FSC will proceed with amending relevant regulations governing listed companies to achieve the same objectives.

Appendix 1

ABOUT THE AUTHORS

STEPHEN C WU

Lee and Li Attorneys-at-Law

Stephen joined Lee and Li in 2000 and became a partner in 2008.

Having completed a Fair Trade Act programme conducted by the Taiwan Fair Trade Commission in 2001, Stephen specialises in competition law and has been recognised as being among the world's leading competition lawyers since 2012 by *Who's Who Legal: Competition Lawyers & Economists*. He is currently the partner leading the competition law practice group of Lee and Li and also the founding chairman and active member of the Competition Law Committee of the Taipei Bar Association. With the support of a team with extensive knowledge and experience, he has successfully handled numerous antitrust filings, cartel investigations and unfair competition cases on behalf of domestic and international clients. He keeps abreast of the latest developments in global antitrust and competition laws and regularly contributes briefings and articles to the *Global Competition Review*, AntitrustAsia.com and many competition law publications.

Stephen also has extensive experience in handling M&A transactions including but not limited to the acquisition of KG Telecom by Far EasTone, several of Carlyle's deals related to cable TV business, HSBC's disposal of shares in Tong Lung Metal Industry Co, Ltd, and several of Philips' deals in Taiwan. In addition, he is active in public policy reforms in various areas, such as M&A, knowledge-based economy, corporate governance, telecom and media convergence, venture capital, limited partnerships, industrial holding companies and investor protection.

BENJAMIN Y LI

Lee and Li Attorneys-at-Law

Benjamin Y Li is a partner at the firm's corporate department, specialising in mergers and acquisitions, capital markets and cross-border investments. He focuses on the representation of listed issuers and leading investment banks and private equity firms, and also has assisted a number of multinational companies in complex commercial disputes and anti-corruption investigations, as well as with corporate governance issues.

Benjamin was educated at Lincoln College, University of Oxford (MBA), New York University School of Law (LLM) and the National Taipei University (Bachelor of Law). He is licensed to practise law in Taiwan and New York, and is fluent in English and Mandarin Chinese, with conversational Taiwanese and Cantonese. His speaking engagements include the Asia Business Conference at Harvard Business School (March 2010), G2E Asia (June 2010) and the Foreign Issuers IPO Seminar hosted by GreTai Securities Market in Bangkok (May 2012) and Kuala Lumpur (October 2012).

DERRICK C YANG

Lee and Li Attorneys-at-Law

Derrick joined Lee and Li in 2011 and focuses on corporate investment, M&A transactions, tax consultancy, estate planning and dispute resolution. He is admitted to practise law in Taiwan and New York.

Derrick obtained a bachelor's degree and a master's degree in law in Taiwan. In 2005, Derrick passed the ROC Bar Examination and the Civil Service Level III Senior Examination. After completing his law firm apprenticeship, Derrick joined the Taipei National Tax Administration, where he handled personal income tax and withholding tax cases. In 2009, Derrick continued his legal studies in the LLM programme in the Northwestern University School of Law. After graduating from the Northwestern University, he entered the Permanent Mission of the Republic of the Marshall Islands to the United Nations in New York as an adviser for a one-year term.

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