

Chinese Taipei

Corporate Governance Institutions, Practices and Developments

1. Key Institutional Features of Corporate Governance and Company Profile in Chinese Taipei

1.1 Background

The legal basis of corporate governance in Chinese Taipei primarily arises from the application of Company Law, Securities and Exchange Act, and the listing rules of Taiwan Stock Exchange (TWSE) and Chinese Taipei's computerized over-the-counter market (known as GreTai Securities Market, GTSM). The Company Law particularly aims to standardize companies' operation, for example the function of board of directors and supervisors. As for the Securities and Exchange Act, it emphasizes on public companies' information disclosure, independent director and audit committee system, and enhances the independence of directors and supervisors.

To provide a guideline on corporate governance for the listed company, TWSE and GTSM has setup the Corporate Governance Best-Practice Principles for TWSE/GTSM Listed Companies. The regulator have required the listed companies to disclose in the public offering prospectus and annual report the state of the company's implementation of corporate governance, any departure of such implementation from the Best-Practice Principles, and the reason for any such departure.

1.2 Trends

The table below indicates the trend in the number of listed companies and market capitalization at year-end 2005-2009.

	2005	2006	2007	2008	2009
Number of companies	1,194	1,219	1,245	1,257	1,287
Market Capitalization (NT\$ billion)	16,946.32	21,276.42	23,396.07	12,478.64	22,947.86

During the 2008 global financial crisis, the market capitalization declined 46.67% from year-end 2007 to 2008 and increased 45.62% from year-end 2008 to 2009.

1.3 Key Corporate Governance Rules and Practices

Please refer to Key Corporate Governance Rules and Practices in Chinese Taipei, p. 212.

2. Development, Enforcement and Assessment of Implementation of Corporate Governance Rules

2.1 Development of Corporate Governance Rules

In 2002, the Executive Yuan of Chinese Taipei declared corporate governance as Chinese Taipei's important policy and established an inter-ministerial Reform Team of Corporate Governance, which comprising of representatives from Scholars, Ministry of Economic Affairs, Ministry of Finance, Ministry of Justice, TWSE, GTSM, Securities & Futures Institute (SFI), Corporate Governance Association (CGA) and Taiwan Securities Association (TSA). The Reform Team facilitates the promotion of Corporate Governance through integrated planning and gradual movement.

2.2 Enforcement of Corporate Governance Rules

In order to implement corporate governance, the Financial Supervisory Commission (FSC) of Chinese Taipei has established a legal framework for corporate governance. The FSC amended the Securities and Exchange Act and authorized the related rules to require public companies to implement corporate governance. If the public company violates the rules, it may get the penalty and should rectify within the specified period. TWSE and GTSM have required the listed company to enhance corporate governance through the enforcement of listing contract.

Chinese Taipei has enacted the Securities Investor and Futures Trader Protection Act and then founded the Securities and Futures Investors Protection Center. The Protection Center is allowed to institute an action against the director or supervisor on behalf of the company, or to institute a lawsuit in court for an order dismissing the given director or supervisor. Besides, in order to enhance the corporate governance, the Corporate Governance Best-Practice Principles for Financial Industry has requested the bank, the insurance company, the securities firm and the investment company to consider the invested companies' corporate governance when executing investment decision.

2.3 Assessment of Corporate Governance Practices

In 2002, Chinese Taipei has observed the OECD Principles of Corporate Governance and announced the Corporate Governance Best-Practice Principles for Listed Companies. The six principles (establishing an effective corporate governance framework, protecting shareholders' rights and interests, strengthening the powers of the board of directors, fulfilling the function of supervisors, respect stakeholders' rights and interests, and enhancing information transparency) introduced in the Best Practice are in line with OECD principles. In addition, CGA conduct the Corporate Governance Framework Certification System. The methodology used to assessing the implementation of corporate governance observes the OECD Principles as well.

SFI conducts the Information Transparency and Disclosure Ranking among all the listed companies annually. This year will be the seventh year that it has done so. The ranking result for 2009 indicated 362 companies with a grade A and above among all the listed companies.

3. Awareness and Advocacy for Good Corporate Governance

3.1 Company Directors

Many professional training institutes, including SFI, CGA, Accounting Research and Development Foundation, The Institute of Internal Auditors, Taiwan Development & Research

Academia of Economic & Technology, Computer Audit Association, and Taiwan Academy of Banking and Finance, hold corporate governance training courses for directors.

Board of Directors' club, organized by CGA, consists of members representing directors, independent directors, supervisors or executive officers of listed companies in Chinese Taipei. The club holds conference every two months, inviting authority officers and scholars to discuss corporate governance issues.

In accordance with TWSE/GTSM Listing Rules, completion of three hours training courses of directors and supervisors is a prerequisite for listing. Under "Corporate Governance Best-Practice Principles for TWSE/GTSM Listed Companies", new member of the boards should take at least 12 hours of training course and at least three hours of continued training courses every year in his/her term. Moreover, listed companies should disclose the hours of training of directors and supervisors in annual reports, prospectuses and the Market Observation Post System (MOPS) on an ongoing basis.

3.2 Media

The financial authority monthly publishes the Financial Outlook Monthly. It also cooperates with TWSE, GTSM, SFI and CGA to edit a bi-monthly publication "Introduction in Development of International Corporate Governance", which covers the latest developments in corporate governance and other financial information. CGA also publishes monthly and quarterly newspaper updating the latest corporate governance events.

3.3 Educational System

Courses on corporate governance are offered in most of the top business schools and law schools in Chinese Taipei. They are available in both tertiary and higher education program.

Corporate governance is also a critical subject of the on-the-job training program for judges and prosecutors who handle securities cases, which are provided by the Judges and Prosecutors Training Institute of the Ministry of Justice.

3.4 Stock Exchange

Both TWSE and GTSM regularly invite directors of listed companies to attend conferences or training courses on corporate governance. The Exchanges also supports the Taiwan Corporate Governance Association and other organizations advocating corporate governance.

4. Corporate Governance of State-Owned and Family-Controlled Enterprises

4.1 State-Owned Enterprises

The governing bodies that oversee the State's investments in companies are the Ministry of Economic Affairs, the Ministry of Finance, and the Ministry of Transportation and Communications, etc. In addition to the Company Act and Securities and Exchange Act, state-owned public companies have to follow regulations on government units such as the Administrative Law of State-Run Enterprise, Budget Act, Accounting Act, and Financial Statement Act.

The government not only exercises its shareholders' right actively, but also monitors and evaluates performance regularly, will act as director or supervisor once elected, and will setup the guideline to assign, manage, and evaluate the proxies that exercise the duty on its behalf.

The government has also continuously encouraged the state-owned companies to enhance its corporate governance or to privatize. Chunghwa Telecom and China Steel are examples of excellence in corporate governance and performance. Both of them have already received good corporate governance certificates from CGA. The State-owned Enterprise Commission under Ministry of Economic Affairs has also deputed CGA to conduct corporate governance assessment among five state-owned companies.

4.2 Family-Controlled Enterprises

Chinese Taipei's corporations have the features of family-controlled companies, whereby the ownership overlaps with the management power. Therefore, the major corporate governance issue is the prevention of abuse of board of directors' power and full disclosure of related-party transactions. Some family-controlled companies prefer not to go public due to the degree of information disclosure required for public companies. However, there are many examples of successful family-controlled companies that are also listed companies which actively promote corporate governance. A number of them have received the certificate of good corporate governance from CGA.

5. Role of Professional Service Providers in Corporate Governance

- Accounting and auditing firms: the financial reports of a public company shall be duly audited and certified by a CPA. A CPA will evaluate a company's internal control including its board of directors' meeting procedures and propose improvements or suggestion to correct any defect in the course of auditing procedure, and as a result enhanced the implementation of corporate governance.
- Rating agencies: rating agencies in Chinese Taipei focus on operational risk and financial risk. Good corporate governance is one of the elements of good credit rating.
- Commercial banks: One of the key criteria for banks when making investment decisions is to consider the corporate governance performance of potential investment targets.
- Securities analysts: securities analysts focus on the business and financial performance when doing research on a company and deciding whether to introduce it to investors. Corporate governance issues within the company will also emphasized as well.
- Law firms: law firms are usually hired by companies to consult on compliance issues. Law firms advise companies on how to comply with the corporate governance regulations, and the remedy and penalties measures in case of violation.
- Corporate governance consultants: CGA plays a key role in assisting enterprises to setup good corporate governance systems.

6. Recent Developments in Corporate Governance

6.1 Corporate Governance Developments

The 2006 amendment of Securities and Exchange Act introduced the independent directors and audit committee system. It also reinforced the independence of directors and supervisors, improved the quality of information in annual reports and public offering prospectus, and enhanced information disclosure on Market Observation Post System by creating a corporate governance and financial watch-list column.

Furthermore, to protect the minority security holders, Chinese Taipei has amended the Company Act to include the right of minority shareholders to propose agenda items at the shareholder meetings, to nominate director and supervisor candidates, to be able to execute their voting right through electronic forms, and to strengthening shareholders protection.

6.2 Enforcement of Corporate Governance Rules

In 1992, Chinese Taipei has announced the Securities Investor and Futures Trader Protection Act to introduce class-action litigation or arbitration. To further protect the investors and actively exercise protection institutions' rights, Chinese Taipei amended the Act in 2009 to allow an action against the director/supervisor on behalf of the company and to dismiss the given director/ supervisor. As a result, Chinese Taipei has further enhanced shareholder protection.

6.2 Current Issues and Challenges for Corporate Governance

Challenges

In 2009, foreign investors represented 16.3% of securities transaction in the Chinese Taipei stock market in terms of trading value, an increase from 3.6% in the year 2000. With more and more foreign investors entering, Chinese Taipei appreciates opinions on good corporate governance from foreign investors or experts to improve practices. For example, foreign investors like to have information on shareholders' meeting as early as possible. However, Chinese Taipei has to balance the interests of companies and shareholders, communicate with both and improve practices in line with international trend.

Priorities for Reform

The priorities for reform are to enhance information disclosure, align the accounting standards with international standards, and encourage shareholders to execute their voting rights through the use of electronic forms, strengthen the market monitoring system and promote enterprises that value social responsibility.

Financial Crisis

Since the global financial crisis, Chinese Taipei has become more aware that risk management and risk diversification are of great importance and the government has worked on the amendments to the code of best practice for listed companies on corporate governance. The amendment has been announced in 2009 and 2010. Listed companies are strongly encouraged to set up a risk management committee and compensation committee. Then, executive compensation should be disclosed, and should reflect his/her personal contribution, long-term performance and risk. Finally, continuing education for directors and supervisors of listed companies should include risk management issues.

Key Corporate Governance Rules and Practices in Chinese Taipei

Element	Yes	No	Source(s) of Rule	Comments
RIGHTS OF SHAREHOLDERS				
1. Do shareholders add items to the agenda for shareholders' meetings?	X		CL	Normally – Shareholders are entitled to propose items of agenda at a regular shareholders' meeting since 2005.
2. Do shareholders ask questions of directors at shareholders' meetings and do they receive answers?	X		CGC	Normally – Shareholders shall be granted reasonable time to deliberate each proposal and afforded an appropriate opportunity to make statements.
3. Must company transactions with its insiders be on a non-preferential basis?	X		CGC	Normally – Listed companies that have transactions with related parties must be on a reasonable and fair basis, and tunneling of profits is strictly prohibited.
4. Is a super majority vote required for major company acts affecting shareholder rights?	X		CL	Normally – According to Company Act article 185, super majority vote is required for major company acts affecting shareholder rights.
COMPOSITION AND ROLE OF BOARDS OF DIRECTORS				
5. Must boards have independent directors? What percentage?	X		SL SLR	Normally – 1) Public financial holding companies, their subsidiary securities firms, banks, bills dealers, insurance companies, all listed securities firms and non-financial companies with their capital size over NT\$50 billion are required to have at least two independent directors and be no less than one-fifth of the board. Other companies are encouraged to elect the independent directors. (2) Companies that would like to become listed need to have at least two independent directors.
6. Do independent directors have significant influence over (a)internal and external audit and (b)executive compensation?	X		SL CGC CL	Normally – Such matters need to be determined by Board and when an independent director has a dissenting opinion or qualified opinion, it shall be noted in the minutes of the directors meeting and be disclosed on the Market Observation Post System within two days.
7. Do independent directors decide what information the board receives from management?		X		Independent directors receive the same information from management.
8. Are the chairman of the board and chief executive officer different persons in the majority of listed companies?	X		CGC	Normally – There are around 82% of the listed companies having different person as its chairman and CEO.
9. Are all board members elected annually?		X	CL	The term of office of a director can be as long as three years according to the Company Law.
10. Does the board oversee enforcement of a company code of conduct?		X	CGC	Employee are encouraged to report to supervisor or head of internal auditor if discover violating code of conduct case.
TRANSPARENCY AND DISCLOSURE OF INFORMATION				
11. Do financial statements comply with IFRS?		X		FSC announced that the listed company will need to convert from TW GAAP to IFRS beginning 2013.
12. Are the identities of the five largest shareholders disclosed?	X		SL	Normally – A listed company is required to disclose the company's 10 largest shareholders in its annual report.
13. Is compensation of company executive officers disclosed?	X		SL	Normally – Listed companies have to disclose compensation of their CEO & vice-CEO in their annual report.
14. Are extraordinary corporate events disclosed?	X		SL	Normally – Company need to disclosed the information that are material to shareholders' right or

Element	Yes	No	Source(s) of Rule	Comments
				stock market price
15. Are risk factors disclosed in securities offering materials?	X		SL	Normally – Companies are required to disclose risk in public offering prospectuses.
16. Are transactions of a company with its insiders disclosed?	X		SL	Normally – Listed companies have to disclose transactions with insiders in their financial report. If the transactions related to real property, companies are required to disclose on Market Observation Post System within two days. The system also provided the Related Party District for companies to disclose such information.

Note: CL – company law; SL – securities law; CGC – corporate governance code; SLR – stock exchange listing requirement, GP – general practice but not obligatory