

DISSENTING OPINIONS OF INDEPENDENT DIRECTORS IN TAIWAN: AN EMPIRICAL STUDY

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I. INTRODUCTION

In 2006, Taiwan officially adopted the independent director mechanism for the purpose of promoting corporate governance and improving corporate health.¹ More than ten years have passed since this change to the Securities Exchange Act (“SEA”) and yet some doubts still persist in public at large regarding the roles and functions of independent directors. Paragraph 1, Article 14-2 of the SEA provides that:

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¹ The introduction of independent directors in Taiwan intends to resolve statutory supervisors’ failure and effectively monitor board of directors. For relevant discussions on introduction of independent directors in Taiwan, please see Hsin-Ti Chang, Yu-Hsin Lin & Ying-Hsin Tsai, *From Double Board to Unitary Board System—Independent Directors and Corporate Governance Reform in Taiwan*, in *INDEPENDENT DIRECTOR IN ASIA—A HISTORICAL, CONTEXTUAL AND COMPARATIVE APPROACH* 241-245 (Dan W. Puchniak, Harald Baum & Luke Nottage eds., 2017).

[a] company that has issued stock in accordance with this Act may appoint independent directors in accordance with its articles of incorporation. The Competent Authority, however, shall, as necessary, in view of the company's scale, shareholder structure, type of operations, and other essential factors, require it to appoint independent directors, not less than two in number and not less than one-fifth of the total number of directors.²

The competent authority, Financial Supervisory Commission ("FSC"), compulsorily requires all non-financial Taiwan Stock Exchange ("TWSE")-Listed and Taipei Exchange ("TPEX")-Listed companies along with firms in the financial industry to appoint independent directors at a number of no fewer than two or a ratio of not less than one-fifth the total number of directors on the board.³ For traded companies on the non-financial Emerging Stock Board ("ESB"),⁴ such compulsory appointment of independent directors shall be applied no later than January 1st, 2020.⁵

A 2017 study reveals that as of October 2014, 35.87% of all companies among TWSE/TPEX-Listed companies had two independent directors on their boards and 29.43% had three independent directors.⁶ The SEA requires that boards of public companies in Taiwan have a minimum of five directors.⁷ Therefore,

² Paragraph 1, Article 14-2 of the Securities Exchange Act. *See* SEC. EXCHANGE ACT (June 21, 2019) (Taiwan), FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [Laws and Regulations Database of the Republic of China], <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400001> [<https://perma.cc/J5QS-CR4P>].

³ TPEX-Listed companies are originally known as Over-The-Counter-Traded companies in Taiwan.

⁴ In addition to the Main Board, Taipei Exchange (the OTC market) established an Emerging Stock Board in 2013. For more details about the Emerging Stock Board, *see* TAIPEI EXCHANGE, LISTING REQUIREMENTS AND PROCEDURES, https://www.tpex.org.tw/web/service/sotck_info/feature/promote_issuer.php?l=en-us [<https://perma.cc/MC88-T9AS>] (last visited Jan. 28, 2019).

⁵ FIN. SUPERVISORY COMMISSION, ORDER NO. FINANCIAL-SUPERVISOR-SECURITIES-I-1070345233 (Dec. 19, 2018), <https://eng.selaw.com.tw/LetterContent.aspx?SoId=177> [<https://perma.cc/HRU3-46RT>].

⁶ CHANG, LIN & TSAI, *supra* note 1, at 251.

⁷ Article 26-3 of the Securities Exchange Act provides that "The board of directors of a company that has issued stock in accordance with the Act may not number less than five persons . . ." *See* SEC. EXCHANGE ACT, *supra* note 2, at art. 26-3.

based on the above numbers, we can estimate that of all the companies listed on the TWSE/TPEX, few of the boards have a majority of independent directors. In fact, according to the information disclosed on the Market Observation Post System (“MOPS”) of the TWSE, as of December 2017, out of a group of 919 TWSE-Listed companies indicating two or more independent directors on their boards, 31 of them had four independent directors, five had five independent directors, and only two had six independent directors.⁸ For those companies with more than four independent directors, only 11 of them had a majority of independent directors on the board,⁹ which is a mere 1.2% of all TWSE-Listed companies. Therefore, the crux of the matter is how independent directors in Taiwan, who are in the minority on most boards, can perform their tasks well in this challenging environment and achieve the aim of promoting corporate governance and improving corporate health.

Randy J. Holland, former Justice of Delaware Supreme Court, has pointed out that independent directors have two major functions: to make inquiries and to veto.¹⁰ Under the current independent director mechanism in Taiwan, despite the difficulties faced by independent directors for taking the lead in directing or channeling the results of board decisions, they can still play an important role in monitoring activities and delivering outside independent opinions. The performance of these activities, however, is under pressure from additional challenges facing independent directors—Namely, independent directors are subject to limited information and restraints on time, along with an excessive dependence on the provision of information by company management. This reliance on information controlled by company management has led some to speculate that outside directors merely receive selective information that would support management’s desired position on any given matter. As a result, instead of acting as a check against potential managerial indiscretion, “[o]utside directors may see major issues confronting the corporation through

⁸ <https://mops.twse.com.tw/mops/web/index> [https://perma.cc/5WK2-8H3G] (Market Observation Post System 公開資訊觀測站, Chinese).

⁹ <https://mops.twse.com.tw/mops/web/t93sb05> [https://perma.cc/UZU4-MY4P] (Market Observation Post System 公開資訊觀測站, Chinese).

¹⁰ Randy J. Holland spoke at the meeting of Taiwan Academy of Banking and Finance on December 3rd, 2008.

management's eyes.”¹¹ Therefore, if they are to fulfill their fiduciary duties, then independent directors need to make inquiries, deliver contrary opinions, assert reservations, or act as a veto on the board.

In order to evaluate the effectiveness of the monitoring activity provided for by independent directors in Taiwan, this study reviews dissenting opinions delivered by independent directors. Dissenting opinion for the purposes of this paper means an opinion of reservation or a veto delivered by an independent director on the board or committee and disclosed on the MOPS in accordance to the relevant laws and regulations. This empirical study analyzes the following issues: (1) the number and distribution of dissenting opinions delivered by independent directors; (2) the reasons for such dissenting opinions; (3) the responses by boards for which independent directors delivered dissenting opinions; and, (4) the possible correlation between the delivery of dissenting opinions by independent directors and their re-elections.

There exists, however, certain unavoidable limitations to this empirical study. First, in practice, it is common practice in Taiwan to have an “informal meeting” to exchange opinions before the formal board meeting, but such informal meetings will not have formal minutes and are not required by law to publish dissenting opinions, if any, by independent directors. Second, under the existing laws and regulations, dissenting opinions delivered on an audit committee are not subject to the disclosure requirement. Hence, the dissenting opinions collected in this paper are limited to those disclosed on the MOPS, and thus, there will likely be fewer dissenting opinions delivered by independent directors reviewed in this paper than those that may have actually been delivered on various occasions.

The remaining parts of this paper are as follows: Part II introduces the relevant laws and regulations governing the disclosure of dissenting opinions delivered by independent directors in Taiwan. Part III presents the results derived from this empirical study. Part IV assesses certain implications garnered from the results of this empirical study, including insufficiencies with respect to information or disclosures. Part V provides concluding remarks.

¹¹ Laura Lin, *The Effectiveness of Outside Directors as a Corporate Governance Mechanism: Theories and Evidence*, 90 NW. U. L. REV. 898, 914 (1995-1996).

II. RELEVANT REGULATIONS IN TAIWAN ON THE DISSENTING OPINIONS OF INDEPENDENT DIRECTORS

Under current Taiwanese law, independent directors are seated on company boards and audit committees, but their seats on remuneration committees are, to an extent, optional. Article 193 of *The Company Act* provides that:

[(Paragraph 1) t]he Board of Directors, in conducting business, shall act in accordance with laws and ordinances, the Articles of Incorporation, and the resolutions adopted at the meetings of shareholders. [Paragraph 2] Where any resolution adopted by the Board of Directors contravenes the preceding Paragraph, thereby causing loss or damage to the company, all directors taking part in the adoption of such resolution shall be liable to compensate the company for such loss or damage; however, those directors whose dissenting opinion appears on record or is expressed in writing shall be exempted from liability.¹²

Accordingly, for an independent director to be exempted from liability, his/her dissenting opinion should either be expressed in writing or appear on record. In addition, Paragraph 1, Article 14-3 of the SEA sets forth that when a company has selected independent directors, certain matters, such as the adoption or amendment of an internal control system; the adoption or amendment of procedures for handling financial or operational actions of material significance; a matter bearing on the personal interest of a director or supervisor; a material asset or derivatives transaction; a material monetary loans, endorsements or provisions of guarantee; the offerings, issuance, or private placements of any equity-type security; the hiring or dismissal of an attesting CPA, the compensation given thereto; and, the appointment or discharge of a

¹² Article 193 of the Company Act. See COMPANY ACT art. 193 (Aug. 1, 2018) (Taiwan), FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [Laws and Regulations Database of the Republic of China], <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0080001> [<https://perma.cc/HJ2H-5HZ8>] [*hereinafter* Audit Committee Regulations]

financial, accounting, or internal auditing officer, etc. shall be submitted to the board of directors for approval by resolution unless approval has already been obtained from the FSC. When an independent director has a dissenting opinion on any such matters, it shall be noted in the minutes of the directors meeting.¹³

Moreover, every independent director on the board automatically becomes a member of the audit committee under the SEA (namely, the audit committee shall be composed of the entire number of independent directors).¹⁴ However, the authority of the audit committee on critical issues is weak as a result of the board's ability to, in most cases, usurp its authority. Specifically, in most cases, a board has the power to overrule decisions of an audit committee by passage of a resolution supported by two-thirds or more of all directors.¹⁵ In such cases, where an audit committee's decision has been essentially disregarded, the only option available to the committee is to record the board's reversal of its decision in the board-meeting minutes with the hope that public scrutiny will offer some sanction.¹⁶ Paragraph 1, Article 10 of the *Regulations Governing the Exercise of Powers by Audit Committees of Public Companies* provides that:

[d]iscussion at an audit committee meeting shall be included in the meeting minutes, which shall faithfully record the following: . . . 7. Agenda items:

¹³ Article 14-3 of the SEA provides that "When a company has selected independent directors as set forth in paragraph 1 of the preceding article, then the following matters shall be submitted to the board of directors for approval by resolution unless approval has been obtained from the Competent Authority; and when an independent director has a dissenting opinion or reservation opinion, it shall be noted in the minutes of the directors meeting: 1. Adoption or amendment of an internal control system pursuant to Article 14-1; 2. Adoption or amendment, pursuant to Article 36-1, of handling procedures for financial or operational actions of material significance, such as acquisition or disposal of assets, derivatives trading, extension of monetary loans to others, or endorsements or guarantees for others; 3. A matter bearing on the personal interest of a director or supervisor; 4. A material asset or derivatives transaction; 5. A material monetary loan, endorsement, or provision of guarantee; 6. The offering, issuance, or private placement of any equity-type securities; 7. The hiring or dismissal of an attesting CPA, or the compensation given thereto; 8. The appointment or discharge of a financial, accounting, or internal auditing officer; 9. Any other material matter so required by the Competent Authority." See SEC. EXCHANGE ACT, *supra* note 2, at art. 14-3.

¹⁴ SEC. EXCHANGE ACT, *supra* note 2, at art. 14-4.

¹⁵ SEC. EXCHANGE ACT, *supra* note 2, at art. 14-5.

¹⁶ CHANG, LIN & TSAI, *supra* note 1, at 257-258.

resolution method and result of each proposal; summary of the comments made by the independent director members on the audit committee . . . ; the name of any independent director member possibly having an interest relationship . . . ; and any objections or reservations expressed at the meeting.¹⁷

Independent director membership on remuneration committees, under Taiwan laws, is not fully compulsory. Paragraph 3, Article 8 of 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* (“Remuneration Committee Regulations”) provides that:

[w]hen a company has selected independent directors in accordance with the SEA, at least one independent director shall participate on the remuneration committee, although other qualified independent experts might also be the members of remuneration committee, and the entire membership shall unanimously elect the independent director to serve as the convener and meeting chair.”¹⁸

¹⁷ See Gongkai Faxing Gongsì Shenji Weiyuanhui Xingshi Zhiquan Banfa (公開發行公司審計委員會行使職權辦法) [Regulations Governing the Exercise of Powers by Audit Committees of Public Companies] art. 10 (promulgated by Fin. Supervisory Commission, R.O.C (Taiwan), Mar. 28, 2006, effective Jan. 1, 2007; rev'd by Fin. Supervisory Commission, R.O.C (Taiwan), July 28, 2017), <https://law.fsc.gov.tw/law/EngLawContent.aspx?lan=E&id=2072> [<https://perma.cc/H3B4-MFD7>]

¹⁸ The qualifications for independent experts on the remuneration committee are exactly the same as those for independent directors set forth in the Articles 2 and 3 of the Regulations Governing Appointment of Independent Directors and Compliance Matters for Public Companies. See 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 (股票上市或於證券商營業處所買賣公司薪資報酬委員會設置及行使職權辦法) art. 5 & art 6 (Aug. 27, 2015) (Taiwan), FAWUBU FAGUI ZILIAOKU (全國法規資料庫) [Laws and Regulations Database of the Republic of China], <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400149> [<https://perma.cc/KU8K-3B5E>] [*hereinafter* Remuneration Committee Regulations].

General practice for most TWSE/TPEX-Listed companies is for all independent directors to be members of the remuneration committee.

Decisions of remuneration committees, like those of audit committees, cannot be considered final as they are subject to being overruled by the board via the consent of a majority of the directors in attendance at a meeting attended by two-thirds or more of the entire board.¹⁹ If the remuneration decisions passed by the board of directors exceed a recommendation by the remuneration committee, then the circumstances and causes for the difference shall be specified in the board meeting minutes, and shall be publicly announced and reported on the information reporting website designated by the competent authority within two days from the date of passage by the board of directors.²⁰ Furthermore, Article 10 of the Remuneration Committee Regulations sets forth that:

[m]inutes shall be prepared of the discussions at the remuneration committee, and the minutes shall record the matters listed below in a detailed and accurate manner: . . . 7. Agenda items: the resolution method and outcome of each motion, and any objections or reservations expressed by any committee member . . . If with respect to any resolution of the remuneration committee, any member has a dissenting or reservation opinion that is on record or stated in a written statement, the opinion shall be stated in the meeting minutes, and additionally, within two days counting inclusively from the date of occurrence, shall be publicly disclosed and reported on the information reporting website designated by the competent authority.²¹

To sum up, under Taiwan's existing laws and regulations, only the dissenting opinions delivered by independent directors on the board and/or by independent experts on the remuneration committee must be reported and disclosed on the MOPS. The dissenting opinions delivered on the audit committee are not subject

¹⁹ *Id.*

²⁰ REMUNERATION COMMITTEE REGULATIONS, *supra* note 18, at art. 7 §§5-6.

²¹ REMUNERATION COMMITTEE REGULATIONS, *supra* note 18, at art. 10.

to such a disclosure requirement due to the high sensitivity and confidential nature of matters of audit committee meetings. In light of this condition, the dissenting opinions delivered by independent directors or independent experts on company boards and/or remuneration committees are selected as the focus for this empirical study.

III. THE RESULTS OF THIS EMPIRICAL STUDY

This empirical study surveys the dissenting opinions delivered by independent directors of all TWSE and TPEX-Listed, including ESB-Traded companies, and disclosed on the MOPS for a five-year period, from 2013 to 2017. Since there is no category for dissenting opinions of independent directors on the MOPS, this study employed keywords (“independent director”, “dissenting opinion”, “reservation opinion”, “veto”, or “different opinion”) to capture the relevant data on the MOPS website. For purposes of calculation in this study, it should be noted that multiple opinions delivered by the same independent director in a single board meeting could be assessed as separate instances, such as an independent director being counted as delivering two dissenting opinions for a single board meeting when these opinions were for two separate agenda items. Similarly, two individual independent directors that have dissenting opinions for the same agenda item at the same board meeting will also be counted as having two dissenting opinions, and so on. Additionally, dissenting opinions delivered by independent experts were also included in the count due to the fact that the legal qualifications for an independent expert on a remuneration committee are exactly the same as those of an independent director.

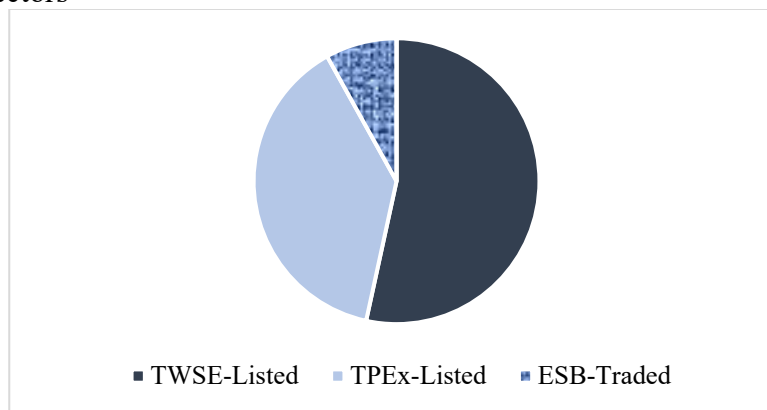
A. Number of Independent Director Dissenting Opinions

During the five-year period of this study from 2013 to 2017, there are 86 dissenting opinions delivered by independent directors for TWSE-Listed Companies, 62 for TPEX-Listed companies, and 13 for ESB-Traded companies. The distribution by different years and types of companies is indicated by Table 1 and Chart 1 below.

Table 1: The Number and Distribution of Dissenting Opinions of Independent Directors

Year	TWSE-Listed	TPEX-Listed	ESB-Traded	Total
	No. of dissenting opinions of ID/ total no. of TWSE-Listed companies ²²	No. of dissenting opinions of ID/ total no. of TPEX-Listed companies ²³	No. of dissenting opinions of ID/ total no. of ESB-Traded companies ²⁴	
2013	6 / 838	10 / 658	0 / 261	16
2014	0 / 854	6 / 685	1 / 284	7
2015	12 / 874	2 / 712	5 / 284	19
2016	22 / 892	19 / 732	3 / 271	44
2017	46 / 907	25 / 744	4 / 274	75
Total	86	62	13	161

Chart 1: The Distribution of Dissenting Opinions of Independent Directors



²² TAIWAN STOCK EXCHANGE, SUMMARY DATA OF STOCK MARKET (BY YEAR) ANNUAL STATISTICS,

<https://www.twse.com.tw/en/statistics/statisticsList?type=07&subType=232>
[<https://perma.cc/T4XA-NYV9>] (last visited Apr. 26, 2018).

²³ TAIPEI EXCHANGE, HISTORICAL DATA AND STATISTICS FOR TPEX LISTED STOCKS, https://www.tpex.org.tw/web/stock/statistics/monthly/monthly_rpt_mkt_info_02.php?l=en-us [<https://perma.cc/CK9T-BQAX>] (last visited Apr. 26, 2018).

²⁴ TAIPEI EXCHANGE, INDICATORS OF TPEX, <https://www.tpex.org.tw/web/bulletin/statistics/statistics.php?l=en-us> [<https://perma.cc/J3J8-MLU3>] (last visited Apr. 26, 2018).

First, with respect to the numeric data, the number of dissenting opinions over the five-year period was distributed across 50 different companies.²⁵ Among these 50 companies, 23 were TWSE-Listed, 18 TPEX-Listed, and 9 ESB-Traded.²⁶

Second, with respect to the diachronic data as illustrated by the timeline for Figure 1, the incidence of dissenting opinions delivered by independent directors went up in each ensuing year (except for 2014) for all TWSE/TPEX-Listed and ESB-Traded companies, with dramatic upticks in both 2016 and 2017 for TWSE/TPEX-Listed companies. This increase could be indicative of increased awareness by independent directors of their fiduciary duty as well as their liabilities therefrom.

Third, with respect to company type, independent directors in the TPEX-Listed companies delivered more dissenting opinions than in the TWSE-Listed companies at the early stage of the five-year period, such as 2013 and 2014. This can be explained by the practice for multiple independent directors in a TPEX-Listed company to usually deliver their dissenting opinions in collective actions, for example, three independent directors registering opposition to the same single agenda item would count for three different dissent opinions, making the overall number of dissenting opinions statistically higher. In recent years, however, the dissenting opinions for independent directors of TWSE-Listed Companies were more than those of TPEX-Listed companies both in terms of instance and ratio. For example, as illustrated in Table 1, the ratio between the number of dissenting opinions of independent directors and the total number of TWSE-Listed companies was 2.5% (22/892) in 2016 and 5% (46/907) in 2017 respectively; while such ratio was 2.5% (19/732) and 3.4% (25/744) for TPEX-Listed companies and 1.1% (3/271) and 1.5% (4/274) for ESB-Traded companies. Therefore, we can infer that independent directors in the TWSE-Listed companies became more active in delivering their dissenting opinions in recent years.

²⁵ The average number of all TWSE/TPEX-Listed and ESB-Traded companies during the five-year period was 1855.

²⁶ See *infra* Appendix pp. 26-49.

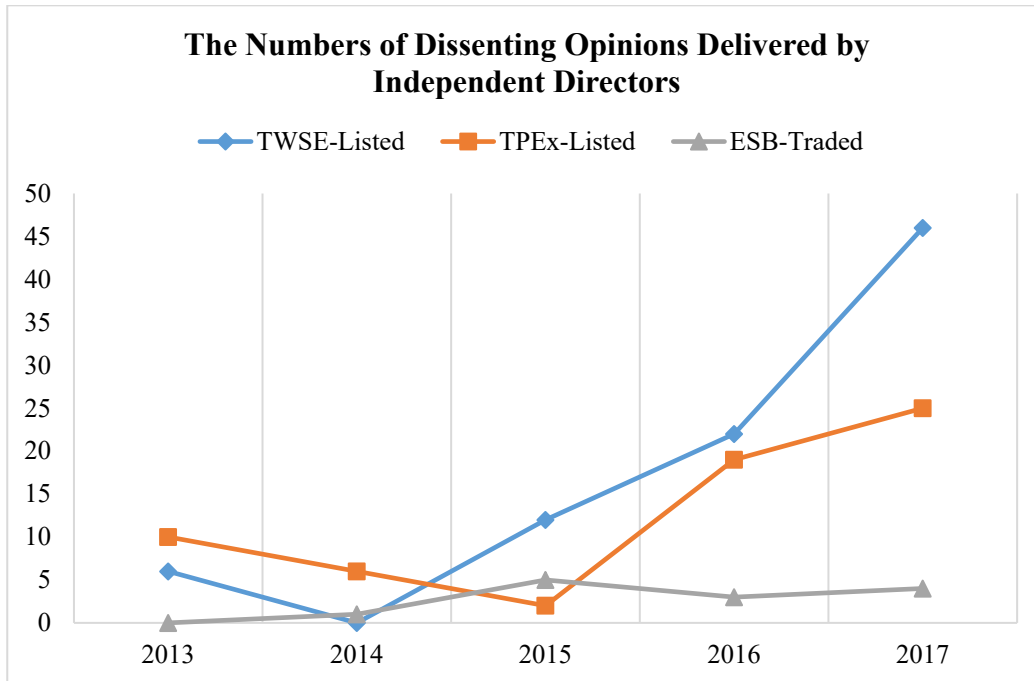


Figure 1: The Number of Dissenting Opinions Delivered by Independent Directors.

Lastly, the report of the Budget Center of Taiwan's Legislative Yuan indicated that as of July 2017 there was a total of 2391 independent directors for all TWSE-Listed and 1832 independent directors for all TPEX-Listed companies.²⁷ Among the total 4223 independent directors in both TWSE/TPEX-Listed companies, only 48 independent directors accounted for the 71 dissenting opinions delivered in 2017.²⁸ That makes for a ratio of 1.1% (48/4223), which means that for every 100 independent directors only 1.1 delivered dissenting opinions. Based on this data, the delivery of a dissenting opinion by an independent director in Taiwan can still be considered a novelty.

²⁷ Lin Tengyao (林騰鵬), *Xieren Zhengwuguan Buyi Ren Dudong* (卸任政務官不宜任獨董) [Retired Board Directors Shall Not Be Independent Directors], CHINATIMES.COM (中時電子報) (Apr. 9, 2018, 04:11 AM), <https://www.chinatimes.com/cn/newspapers/20180409000630-260109?chdtv> [https://perma.cc/D55Q-6C6X].

²⁸ See *infra* Appendix.

B. Reasons for Independent Director Dissenting Opinions

The empirical data assessed in this study demonstrates a diverse variety of reasons for dissenting opinions delivered by independent directors as a result of the array of complicated company management and supervision structures. Evidence for this came, for example, from dissenting opinions surrounding issues such as a proposal to increase the distribution of cash dividends, a proposal to establish a nomination committee, and a vote against certain investments associated with high risks, to name a few. Nevertheless, this study revealed that among the various reasons for dissenting opinions delivered by independent directors, the most common ones centered around “insufficient information” and others of a similar nature, including “the company did not provide directors with relevant materials”; “the meeting was arranged with short notice and directors did not have sufficient time and opportunity to study the pros and cons of this project”; “the decision was made in haste without comprehensive discussion”; “some items needed to be further audited”; “there was no evaluation and no feasibility study for the investment project”; “the proposal needs the assistance of other professionals”; “the professional person should be present and make a report in the board meeting”; and so on. This study finds that such “insufficient information” or similar reasons accounted for 16.8% out of all the dissenting opinions delivered by independent directors (Please see Table 2).

Table 2: “Insufficient Information” as the Reason for Dissenting Opinions Delivered by Independent Directors

	TWSE- Listed	TPEX- Listed	ESB- Traded	Total
Insufficient information	15/86 (17.4%)	7/62 (11.3%)	5/13 (38.5%)	27/161 (16.8%)

This 16.8% number corresponds closely to the result from an August 2009 questionnaire-based survey conducted by Professor Len-Yu Liu. Liu’s study sent out 585 questionnaires to independent directors of TWSE-Listed companies and got back 276 replies. Based on the replies received, 18% of the independent directors thought that the key factor having the most negative influence on

the performance of their duties was “the obstacle of access to information”, which ranked second overall among the negative factors listed.²⁹ The percentage for TWSE-Listed companies in the present study was 17.4% as shown in Table 2, which is even closer to the above 18% result of Liu’s questionnaire. Data suggest that in the ten-year period following the 2009 questionnaire, there was little to no improvement in the problem of insufficient information for independent directors. The implication of this points to the necessity of ensuring access by independent directors to sufficient and adequate information; and, to work on ways to strengthen their rights to secure information and the inspection of company records, both of which should form the cornerstone for the effective performance of the duties envisioned by the independent director mechanism.

Companies’ lack of disclosure or explanation for the reasons of independent director’s dissenting opinion is another matter of note. Many companies simply neglect to fill-in the “Reason Item” required on the MOPS. Lax enforcement of disclosure requirements leads to incomplete market information as well as a lack of precision for investors trying to analyze and interpret the basis of any dissenting opinions, defeating the objective of full disclosure for public oversight. Regrettably, failures to elaborate and explain have been all too common, as indicated by Table 3 where 22.4% of all dissenting opinions delivered by independent directors in this study neglected to provide any reasons or explanations.

²⁹ The question is “Based on your experience as an independent director, which of the followings do you think is the key factor that has negative influence on performing your duties as an independent director? (A) obstacle of access to information (18%); (B) personal relationship (10%); (C) insufficient remuneration, no incentive (7%); (D) insufficient time to devote (28%); (E) lack of professional ability, no effective monitoring (7%); (F) insufficient monitoring due to expectation of re-election (1%); (G) no problem at all (57%).” Len-Yu Liu (劉連煜), *Duli Dongshi Shi Shaoshu Gudong Zhi Shouhushen?—Taiwan Shangshi Shanggui Gongsi Duli Dongshi Zhidu Zhi Jiantao Yu Jianyi* (獨立董事是少數股東之守護神? —台灣上市上櫃公司獨立董事制度之檢討與建議) [Is the Independent Director a Patron Saint of Minority Shareholders? A Review and Proposal of the Independent Director Mechanism in TWSE/TPEX-Listed Companies in Taiwan], 26 CROSS-STRAIT L. REV. (月旦民商法雜誌) 29, 36-37 (2009).

Table 3: No Explanation for Reasons Associated with the Dissenting Opinions Delivered by Independent Directors

	TWSE- Listed	TPEX- Listed	ESB- Traded	Total
No Explanation	17/86 (19.8%)	13/62 (21%)	6/13 (46.2%)	36/161 (22.4%)

The findings shown in Table 3 illustrate how ESB-Traded companies appear to be the most serious violators of the requirement to post explanations: 46.2% of ESB-Traded companies failed to disclose the reasons for the dissenting opinions of their independent directors. This points to the substantial room for improvement needed in the enforcement of full disclosure by the competent authority.

C. Responses to Independent Director Dissenting Opinions

The issue underpinning this study is the extent to which dissenting opinions impact the decisions of the board and whether they can even affect the outcomes of board resolutions. An important index for both measuring the effectiveness of dissenting opinions and evaluating the functioning of the independent director mechanism in Taiwan is the reaction to them by boards, that is to say the board response elicited by the dissenting opinions of their independent directors.

Based on the data collected on the MOPS, this study classifies board meeting responses, for example, the positions a company takes in reaction to dissenting opinions delivered by independent directors, into five categories: (1) the board meeting passes the resolution in spite of the dissenting opinion;³⁰ (2) the company publishes the dissenting opinion in compliance with material information disclosure laws;³¹ (3) the board meeting accepts and follows the dissenting opinion; (4) no explanation; and

³⁰ For purposes of calculation in this study, company disclosures on the MOPS stated as “Handled per the board’s resolution and material information published in accordance with the law”, will be counted as a Category (1) response: “the board meeting passes the resolution in spite of the dissenting opinion.”

³¹ This category includes the simple disclosure of “material information published in accordance with the law” without any other explanations.

(5) others. The results from this empirical study are shown in Table 4.

Table 4: The Response to Dissenting Opinions Delivered by Independent Directors

	TWSE-Listed	TPEX-Listed	ESB-Traded	Total
Pass the Resolution	10/86 (11.6%)	10/62(16.1%)	2/13 (15.4%)	22/161 (13.7%)
Publish as Material Information	46/86 (53.5%)	11/62 (17.7%)	0/13 (0%)	57/161 (35.4%)
Follow ID's Opinions	16/86 (18.6%)	11/62 (17.7%)	0/13 (0%)	27/161 (16.8%)
No Explanation	13/86 (15.1%)	27/62 (43.5%)	11/13 (84.6%)	51/161 (31.7%)
Others	1/86 (1.2%) ³²	3/62 (4.9%) ³³	0/13 (0%)	4/161 (2.5%)

As indicated in Table 4, 16.8% of the boards accepted and followed the dissenting opinions of their independent directors. This is not considered to be a high percentage. In addition, TWSE-Listed companies indicated a slightly greater level of respect toward the dissenting opinions of their independent directors, accepting and following 18.6%. As for ESB-Traded companies, there was not even a single case in which the board accepted and went along with a dissenting opinion issued by an independent director.

Strictly speaking, except for category (3), where by the board accepts and follows a dissenting opinion delivered by independent directors, all other responses were the equivalent of

³² The disclosure of the company was “The company was in full accordance with the Company Act and the resolution of the 2014 first special shareholders meeting.” See *infra* Appendix p.34 (showing the dissenting opinion of (TWSE 2) on Mar. 24, 2017).

³³ The responses of the three companies in this category were “[e]ntered into reporting items for shareholders meeting at the request of the independent director”, “[p]er attorney: changing the company seal is not a major issue” and “[p]er attorney: the special shareholders meeting convened by supervisor is against the law.” See *infra* Appendix pp.42-44 (showing dissenting opinions of (TPEX6) on Mar. 24, 2015, (TPEX 9) on Sept. 18, 2016 and (TPEX 9) on Sept. 20, 2016, respectively).

disregard for the dissenting opinions through the passage of resolutions by the prevailing board members followed by disclosure of the requisite material information as a routine legal procedure. The remaining responses constituted 80.8% of the surveyed events and demonstrated the rarity of independent directors exerting any substantial influence on the decisions of their boards, much less effecting a change to the result.

Note that disclosure laws require only that companies make known and publish on the MOPS only those opinions of independent directors that are in dissent; if, on the other hand, an independent director has a different opinion on certain agenda and his/her opinion is accepted at the close of the board meeting, there will be no disclosure or publication of such case.³⁴ Therefore, data for such cases could not be found on the MOPS and were not available as a parameter for a more nuanced evaluation of independent director influence.

It is worth noting that out of the 16 accept-and-follow responses for boards of TWSE-Listed companies, 14 were delivered by two or three independent directors in a collective action, and only 2 were delivered by a single director.³⁵ This result infers that acts of solidarity by independent directors have a greater impact and higher chance for effecting change on board decisions. In other words, the ability of independent directors to communicate and discuss their dissent amongst each other and reach consensus prior to a board meeting, as well as the opportunity to deliver their opinions together, has a direct impact on the level of respect companies confer upon their dissenting opinions and how seriously they treat them. This has obvious bearing on the aim of enhancing corporate governance through the independent director mechanism and the ability to achieve it.

Finally, 31.7% of the responses to dissenting opinions of independent directors disclosed on the MOPS were relegated to the category of “No Explanation.” As discussed in the above Section III.B, such insufficient and incomplete disclosure undermines the ability to publicly evaluate the efficacy of the role played by independent directors.

³⁴ See *supra* notes 13 & 21.

³⁵ See *infra* Appendix pp. 32-33, 38, 40 (showing dissenting opinions of (TWSE12) on Jan. 13, 2017, (TWSE13) on Feb. 9, 2017, (TWSE13) on July 25, 2017, (TWSE20) Aug. 9, 2017, and (TWSE23) Nov. 10, 2017, respectively).

D. Correlation between Independent Director Dissenting Opinions and Re-elections

Professor Lucian A. Bebchuk and Professor Assaf Hamdani assert in their recent paper that:

[t]he existing director-election regime significantly undermines the ability of independent directors to effectively perform their oversight role. Both the election and retention of independent directors normally depend on the controlling shareholders. As a result, these directors have incentives to go along with controllers' wishes, or, at least, have inadequate incentives to protect public investors.³⁶

Taiwan's situation is the same if not worse, since corporate ownership in Taiwan's public companies is characterized by a tendency for the concentration of shares amongst a few holders and family-domination, as well as by the prevalence of business groups.³⁷ A leading scholar in Taiwan observes that "[t]he virtue of an independent director is his/her independence from the control of management and/or major shareholders. However, under existing Taiwanese laws, the election of independent directors is heavily dependent on the support of major shareholders/management. The independence of independent directors might be even less than that of supervisors."³⁸ Therefore, an independent director who makes inquiries, reservations, or votes against resolutions might be cast as a "trouble-maker" by the controlling shareholder/management of a company.

This study explores an interesting and intriguing question: Whether an independent director who delivers dissenting opinions can garner support from controlling shareholders and still retain his/her seat on the board as an independent director for a subsequent term(s).

³⁶ Lucian A. Bebchuk & Assaf Hamdani, *Independent Directors and Controlling Shareholders*, 165 U. PA. L. REV. 1271, 1272 (2017).

³⁷ Yin-Hua Yeh, Tsun-Siou Lee & Tracie Woidtke, *Family Control and Corporate Governance: Evidence from Taiwan*, 2 INT'L REV. OF FINANCE, 21 (2001). See also CHANG, LIN & TSAI, *supra* note 1, at 259.

³⁸ IN-JAW LAI (賴英照), *THE NEWEST ANALYSIS OF SECURITIES AND EXCHANGE ACT (最新證券交易法解析：股市遊戲規則)* 204 (2014).

This study finds 35, 35, and 13 independent directors on boards of TWSE-Listed, TPEX-Listed and ESB-Traded companies, respectively, delivered dissenting opinions during the 5-year period (2013-2017). The websites of the Ministry of Economic Affairs (“MOEA”)³⁹ and MOPS were then checked to ascertain whether such independent directors were still registered as independent directors on the date of July 28, 2018. This investigation reveal that out of the aforementioned independent directors, 23, 16, and 7, respectively, remained registered as an independent director per Table 5.

Table 5: Independent Directors Delivering Dissenting Opinions Remain on the Boards

	TWSE-Listed	TPEX-Listed	ESB-Traded	Total
No. of IDs having delivered dissenting opinions remaining on boards/ Total No. of IDs Delivering Dissenting Opinions	23/35 (66%)	16/35 (46%)	7/13 (54%)	46/83 (55%)

Table 5 shows that the average percentage of independent directors who delivered dissenting opinions and remained on aboard was 55% for the combined sum of TWSE/TPEX-Listed and ESB-Traded companies. This retention rate was highest for TWSE-Listed companies at about 66%, but lowest for TPEX-Listed companies at about 46%. Certain limitations, however, do require consideration as to their impact on this correlational study.

First, reasons resulting in a change to the status quo include resignations, discharges, term limits, deaths, or new-elections. A company is required to disclose a status change on the MOPS when an independent director resigns or relinquishes his/her seat before a

³⁹ DEP’T OF COMMERCE BUS. REGISTRATION INQUIRY SERV. (經濟部商業司商工登記公示資料查詢服務), <http://findbiz.nat.gov.tw> [<https://perma.cc/UM8D-U5B3>].

term's end. This study aims to uncover the reasons for an independent director's resignation or in-term relinquishment. Unsurprisingly, explanations given on the MOPS have a high degree of both similarity and ambiguity, such as "personal reasons", "busy at work", "personal career plan" or "health condition". Such explanations offer very little information regarding the correlation between the relinquishment of an independent director's seat and his/her delivery of dissenting opinions. Second, discerning from the above-listed ambiguous reasons disclosed on the MOPS as to whether the relinquishment of a seat by an independent director was a passive or active act is a near impossibility.⁴⁰ Third, this study investigated a five-year period but the terms for independent directors last three years, and companies are not required to give reasons why former independent directors were not re-nominated or re-elected at the end of their terms when disclosing newly elected independent directors on the MOPS.⁴¹ In addition, director terms are, of course, not synchronized amongst the various companies, so the election timing varies; thus, an independent director no longer registered on the website of MOEA as of July 28, 2018 might just be due to the expiry of his/her term. Fourth, this study can neither exclude the possibility of other factors nor surmise their influence on the decisions of independent directors to stay or leave, such as remuneration standards,⁴² exposure to liabilities,⁴³ enterprise

⁴⁰ For example, the controlling shareholder or management hints to the independent director that it is no longer suitable for him/her to remain in office.

⁴¹ COMPANY ACT, *supra* note 12, at art. 195. (providing that "[t]he term of office of a director shall not exceed three years; but he/she may be eligible for re-election"). In practice, the term of office of a director, including an independent director, is three years in almost all companies.

⁴² A 2007 study indicates that remuneration for independent directors at a TWSE-Listed company averaged about one million NTD per year; while at a TWSE-Listed company with an audit committee, the average remuneration of each independent director was about 400 million NTD per year. On the other hand, a TPEX-Listed company with independent directors averaged remuneration of about 0.3 million NTD per year for independent directors; while a TPEX-Listed company with an audit committee, the average remuneration of each independent director stayed around 0.3 million per year as well. Len-Yu Liu (劉連煜), *Xianxing Shangshi Shanggui Gongsi Duli Dongshi Zhidu Zhi Jiantao Ji Gaijin Fangan—Cong Shizheng Mian Chufa* (現行上市上櫃公司獨立董事制度之檢討暨改進方案—從實證面出發) [A Study of the Regime of Independent Directors of Listed Companies in Taiwan—Approach], 114 CHENG-CHI L. REV. (政大法學評論) 53, 117-118 (2010).

⁴³ Starting from 2014, the number of independent director resignations has been increasing every year in Taiwan. Fifty-five independent directors resigned in 2014; 71 independent directors resigned in 2015; 93 independent directors resigned in 2016; 53

cultures, or working environments, etc. Fifth, this study focused on independent directors who had delivered dissenting opinions that were recorded on the MOPS during the designated five-year period. To understand the correlation between the delivery of dissenting opinions and the re-election of independent directors more clearly, an empirical study of a comparative group, for example, the re-election of those independent directors who never delivered dissenting opinions, should also be undertaken. However, an empirical study of such large-scale was beyond the capacity of this study and, furthermore, would have entailed a degree of complexity beyond the scope of this preliminary investigation. For example, this study traced 83 independent directors who delivered dissenting opinions during the five-year period to ascertain whether they had remained on their respective boards, which was within the handling capacity of this study. However, those independent directors who have never delivered a dissenting opinion is of much greater magnitude. For the single year of 2017, there were about 4223 independent directors for all TWSE/TPEX-Listed companies, and only 48 had ever delivered a dissenting opinion.⁴⁴ It means that this study would have had to track 4175 independent directors who had never delivered a dissenting opinion to check whether they had remained on their boards as independent directors. Adding to the degree of difficulty was the fact that this study consisted of a five-year survey; and, as such, resignations, discharges, deaths, re-elections or term expiries for independent directors were made that much more difficult to clearly and accurately trace.

Due to the aforementioned limitations, venturing to claim that there is a positive and direct correlation between the delivery of dissenting opinions by independent directors and their re-elections may overstate the case; nevertheless, the findings do shed light on the issue and point to the strong likelihood of a correlation. The 45%

independent directors resigned in the first half of 2017. In total, 272 independent directors have resigned over this three-and-a-half-year period. It is claimed that there is a crisis for corporate governance in Taiwan because independent directors choose to jump ship (leave the board). Yen-Wen Wang (王妍文), *Dulidongshi Fenfen Qingci, 3.5Nian272Tiaochuan—Nianxinqianwan, Daodi shi Zhuanhenda haishi Zuogongde* (獨立董事紛紛請辭, 3.5年272人跳船—年薪千萬, 到底是賺很大還是做功德?) [The Resignation of Independent Directors: For Good or For Worse, 272 Persons Committed Suicides by Jumping out of Boats in 3.5 years?], GLOBAL VIEWS MONTHLY (遠見) (Dec. 26, 2017), <https://www.gvm.com.tw/article.html?id=41680> [<https://perma.cc/G4VL-KUR3>].

⁴⁴ See *infra* Appendix pp. 32-34, 44-47.

result shown for independent directors who delivered dissenting opinions as not being re-elected carries a certain amount of weight and merits further study.

If an independent director considers the re-nomination and re-election of the next term a very important goal, he/she might consciously choose to avoid confrontation with the controlling shareholder or management by not delivering dissenting opinions when performing his/her fiduciary duties. This would most certainly have a negative impact on the soundness of the independent director mechanism and its aim to improve corporate governance.

IV. SOME IMPLICATIONS FROM THE RESULTS OF THIS EMPIRICAL STUDY

Scholars have identified the lack of information as the core of gatekeeper failure to have an impact on corporate governance.⁴⁵ This has highlighted a fundamental paradox, namely, that *Independence Actually Creates Dependency*, since independent directors must then rely on company insiders to obtain information.⁴⁶ This study, thus, illustrates how the cornerstone for an effective independent director mechanism is *Sufficient Information or Access to Information*: For example, no information equates to no monitoring.⁴⁷ With sufficient information, independent directors can have a solid foundation on which to base their support, modifications, reservations or objections to resolutions. Without sufficient information, on the other hand, the only recourse that independent directors have when delivering dissenting opinions, including reservations and vetoes, is to rely on the protections afforded them under existing Taiwanese laws.

⁴⁵ Merritt B. Fox, *Gatekeeper Failure: Why Important, What to Do*, 106 MICH. L. REV. 1089, 1091 (2008); JOHN C. COFFEE, JR., GATEKEEPER-THE PROFESSIONS AND CORPORATE GOVERNANCE 8 (2006).

⁴⁶ J. N. Druey, *Unabhaegigkeitals Gebot des allgemeinen Unternehmensrechts*, in Festschrift Peter Doralt 163, 169 (S. Kalss, C. Nowotny & M. Schauer (eds), Manz, 2004) (citing INDEPENDENT DIRECTORS IN ASIA - A HISTORICAL, CONTEXTUAL AND COMPARATIVE APPROACH 27 (Dan W. Puchniak, Harald Baum & Luke Nottage eds., 2017)).

⁴⁷ Len-Yu Liu (劉連煜), I-Ching Tu (杜怡靜), Yu-Hsin Lin (林郁馨) & Christopher Chen Chao-Hung (陳肇鴻), XUANREN DULI DONGSHI YU GONGSI ZHILI (選任獨立董事與公司治理) [ELECTION OF INDEPENDENT DIRECTORS AND CORPORATE GOVERNANCE] 16 (2013).

Moreover, boards with a majority of independent directors are rare in Taiwan, so independent directors, being in the minority, need to act collectively if they want to have their opinions respected and accepted by the board. To reach this goal, independent directors need to be able to communicate with each other and discuss information amongst themselves prior to board meetings. The issue of sufficient information or access to information before a board meeting is crucial to effective coordination and cooperation amongst independent directors.

On April 25, 2018, Paragraph 3, Article 14-2 was added to Taiwan's SEA. It provides that:

[t]he company may not impede, refuse, or evade the actions of the independent directors in the performance of their duties. As the independent directors deem necessary to the performance of their duties, they may request the board of directors to appoint relevant personnel, or may at their own discretion hire professionals to provide assistance. The related expenses will be borne by the company.

The legislative impetus behind this amendment was that:

[a]lthough the laws require certain professional background of an independent director, it is hard to expect that an independent director will have the professions of accounting, law and corporate governance at the same time. In addition, the past court decisions set a higher standard of conduct for independent directors to perform their duties, sometimes even higher than that of certified public accountants or lawyers, which is inconsistent and disproportionate with the powers of independent directors. Therefore, if an independent director would like to responsibly perform his/her duties as well as make an independent and objective judgment, it is better to have professionals to provide him/her with assistance so that such an independent director can effectively monitor the operation of the company

and protect the rights and interests of shareholders . . .

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This type of amendment has been widely praised as a corrective response with respect to the importance of sufficient information for independent directors. It specifies that the company may not impede, refuse, or evade the actions of the independent directors in the performance of their duties and entitles an independent director with the right to obtain the assistance of professionals.

Article 218 of the Company Act also sets forth that:

[s]upervisors shall supervise the execution of business operations of the company, and may at any time or from time to time investigate the business and financial conditions of the company, inspect, transcribe or make copies of the accounting books and documents, and request the board of directors or managerial personnel to make reports thereon.

This right to inspection and relevant information granted to supervisors is also applied *mutatis mutandis* to an independent director.⁴⁹

Based on the above laws, independent directors have, in theory, the right to sufficient information for the performance of their duties. However, in practice, whether independent directors exercise such rights and the manner in which companies implement these laws still requires further observation.

Ironically, the draft 2017 Amendment to the Company Act, submitted to the Legislative Yuan by the Executive Yuan, includes a newly-added Article 193-1 that specifically provides directors with both the right to information and protection against company impediments: “[f]or the purpose of performing their duties, directors may at any time or from time to time inspect, transcribe or make copies of the business and financial condition as well as accounting

⁴⁸ Legislative Yuan, *Yidong Tiaowen ji Liyou: Zhengquan Jiaoyi Fa* (異動條文及理由: 證券交易法)

[Changed Clauses and Reasons: Securities Exchange Law], LIFA YUAN FALV XITONG (立法院法律系統) [LEGISLATIVE YUAN LEGAL SYSTEM], <https://lis.ly.gov.tw/lglawc/lglawkm> [<https://perma.cc/5HAW-GC47>].

⁴⁹ SEC. EXCHANGE ACT, *supra* note 2, at art. 14-4. 4.

books and documents of the company, and the company may not evade, impede or refuse such action.” The legislative purpose behind this proposed amendment can be inferred to be an intent to expand director rights:

Article 8 and Article 23 of the Company Act set forth that a director is the responsible person of a limited-by-share company, and he/she shall have the loyalty and shall exercise the due care of a good administrator in conducting the business operation of the company; and if he/she has acted contrary to this provision, shall be liable for the damages to be sustained by the company there from. For performing their duties, directors shall have the right to inspect, transcribe and make copies of the Articles of Incorporation, accounting books and documents as provided in Article 210 and the company may not refuse such action. Therefore, taking reference from the Article 218 regarding the scope of inspection right of supervisors, this amendment expands the scope of director’s inspection right.⁵⁰

Despite this implied necessity, the proposed amendment was deleted by the Legislative Yuan on July 6, 2018 out of concerns having to do with investors from China, conflicts over corporate control and protections of trade secrets.⁵¹ Without rights to

⁵⁰ Executive Yuan, *Xingzheyuan Hui Tongguo “Gongsi Fa” Bufen Tiaowen Xiuzheng Caoan* (行政院會通過「公司法」部分條文修正草案) [Executive Yuan Conference Passed Draft Amendments on Part of the Clauses of “Company Act”], <https://www.ey.gov.tw/Page/9277F759E41CCD91/7d24c7d1-11ec-4edb-88d5-e7512506814e> [<https://perma.cc/W5MF-XXPC>] (Dec. 21, 2017). Shareholders have the right to inspect, transcribe and make copies of the Articles of Incorporation, the minutes of every shareholders’ meeting, financial statements, the shareholders roster and the counterfoil of corporate bonds issued by the company as provided in Article 210. Also, supervisors have the right to inspect, transcribe or make copies of the accounting books and documents, and request the board of directors or managerial personnel to make reports thereon as provided in Article 218. However, there is no article explicitly empowering directors the right of inspection in the Company Act. In addition, the court decisions are split regarding whether directors have the same inspection rights as supervisors. Therefore, this proposed amendment is inferred to be an intent to expand director’s inspection right.

⁵¹ The main reason for such deletion is the concern that investors from China can easily copy the trade secrets of Taiwanese companies as long as they manage to get elected to the board. In addition, if there is a fight for corporate control between an incumbent

inspection and proper access to information, the ability of directors to perform their fiduciary duties and efforts to improve the quality of corporate governance are severely hampered, in particular, companies might recklessly refuse requests by directors to inspect their records.⁵² Such a deletion with direct implications on director rights to inspection should be subject to further review and deliberation.

Other measures to improve the rights to information for independent directors, in addition to those reviewed above, should also be considered. First, a mechanism to facilitate independent director meetings with internal auditors and certified public accountants, without management present, should be actively pursued and established.⁵³ Paragraph 4, Article 7 of the Regulations Governing the Exercise of Powers by Audit Committees of Public Companies provides that:

The audit committee may by resolution request relevant department officers, internal auditors, certified public accountants, legal counsels, or other personnel to attend the meeting as nonvoting participants and provide pertinent and necessary information; provided, they shall leave the meeting when discussion and voting take place.⁵⁴

group and an acquiring group, and if the acquiring group has a seat on the board, it can use this right of inspection granted to directors to inspect trade secrets and other documents of the target company. See Wan-Hsin Peng (彭琬馨), *Chaoye Jiaofeng, Puxuan Chayue Quan Wei Guo* (朝野交鋒, 普董查閱權未過) [*Debate in Legislative Yuan, Deletion of Director's Inspection Right*], LIBERTY TIMES NET (自由時報) (July 7, 2018), <http://news.ltn.com.tw/news/focus/paper/1214753> [<https://perma.cc/W8FX-848V>].

⁵² Wallace Wen-Yu Wang (王文宇), *Gongsi Fa Ren You Gaijin Kongjian* (公司法仍有改進空間) [*There Are Some Rooms for Improvement of the Company Act*], JINGJI RIBAO (經濟日報) [ECONOMIC DAILY NEWS] (July 10, 2018), <https://money.udn.com/money/story/5629/3243724> [<https://perma.cc/8KNN-KMTE>].

⁵³ *Qianghua Duli Dongshi Zhineng Luoshi Gongsi Zhili*, (強化獨立董事職能 落實公司治理) [Strengthening the Function of Independent Directors and Implementing the Corporate Governance], CHINATIMES.COM (中時電子報) (Oct. 28, 2016, 04:11 AM), <http://www.chinatimes.com/newspapers/20161028000095-260210> [<https://perma.cc/X2L2-RBDJ>].

⁵⁴ AUDIT COMMITTEE REGULATIONS, *supra* note 17, at art. 7. (showing that the amendment adopted on July 28, 2017 was to strengthen the corporate governance and avoid the presence of non-voting participants as an influencing factor on the discussions and votes of the audit committee).

Also, Paragraph 2, Article 3 of the Corporate Governance Best Practice Principles for TWSE/TPEX Listed Companies provides that:

TWSE/TPEX Listed companies are advised to establish channels and mechanisms of communication between their independent directors, audit committees or supervisors, and chief internal auditors, and the convener of the audit committee or supervisors shall report their communication with the independent directors and chief internal auditors at the shareholders' meeting.⁵⁵

This type of best practice has also become one of the indicators for the Corporate Governance Evaluation System of the TWSE.⁵⁶

Second, the corporate secretary mechanism should be instituted since the corporate secretary has the duty to provide all directors with the full information regarding the business of the company.⁵⁷ In the draft of the 2017 Amendment to Company Act submitted to the Legislative Yuan by the Executive Yuan, the proposed Article 215-1 sets forth that “[t]he company may establish a corporate governance professional to assist directors and supervisors to perform the duty of loyalty and the due care of a good administrator in conducting the business operation of the company.”⁵⁸ This corporate governance professional has a role highly similar to that of a corporate secretary. However, this

⁵⁵ Shangshi Shanggui Gongsi Zhili Shiwu Shouze (上市上櫃公司治理實務守則) [Corporate Governance Best Practice Principles for TWSE/TPEX Listed Companies] (promulgated by TWSE, Dec. 12, 2018, effective Dec. 12, 2018), <http://eng.selow.com.tw/LawArticle.aspx?LawID=FL020553&ModifyDate=1071212> [<https://perma.cc/Z5PW-C9BE>].

⁵⁶ TAIWAN STOCK EXCHANGE CORPORATE GOVERNANCE CENTER, THE 2019 CORPORATE GOVERNANCE EVALUATION INDICATOR 2.15 (Jan. 2019), <http://cgc.twse.com.tw/evaluationCorp/listEn> [perma.cc/7TEX-7MCK].

⁵⁷ Wan-Ru Tseng(曾宛如) & Christopher Chen Chao-Hung (陳肇鴻), Jianli Gongsi Mishu Zhidu zhi Chuyi (建立公司秘書制度之芻議) [The Proposal to Establish the Corporate Secretary Mechanism], 226 TAIWAN L. REV. (月旦法學雜誌) 106, 118 (2014).

⁵⁸ Executive Yuan, *Xingzheyuan Hui Tongguo “Gongsi Fa” Bufen Tiaowen Xiuzheng Caoan* (行政院會通過「公司法」部分條文修正草案) [Executive Yuan Conference Passed Draft Amendments on Part of the Clauses of “Company Act”], <https://www.ey.gov.tw/Page/9277F759E41CCD91/7d24c7d1-11ec-4edb-88d5-e7512506814e> [<https://perma.cc/W5MF-XXPC>] (Dec. 21, 2017).

proposal was deleted by the Legislative Yuan in the final version of the 2018 Company Act.

The FSC realizes the importance of the corporate secretary mechanism for promoting corporate governance and has adopted the corporate governance professional mechanism in its *Corporate Governance Roadmap (2018-2020)*. The FSC will implement such mechanism in two phases: starting from 2019 (Phase I), companies in the financial industry and TWSE/TPEX-Listed non-financial companies with paid-in capital of NTD 10 billion or more should establish at least one such professional; and, starting from 2021 (Phase II), TWSE/TPEX Listed non-financial companies with paid-in capital not less than NTD 2 billion but less than TWD 10 billion should establish at least one such professional.⁵⁹

Third, independent directors should have greater power with respect to internal and external auditing. Audit committees shall have the direct and final decisions on the appointment, discharge, performance evaluation and remuneration of the chief internal auditor and certified public accountant, and as such, internal and external auditors should not be subject to simply obeying the CEO or general manager.⁶⁰ Under the existing Article 14-5 of the SEA in Taiwan, “the hiring or dismissal of an attesting CPA, or the compensation given thereto” and “the appointment or discharge of a financial, accounting, or internal auditing officer” are within the authority of the audit committee.⁶¹

A notable example of reducing the “information gap” that exists between management and the board is that of Netflix, which is implemented as a novel board practice. The Netflix approach has incorporated two highly unique practices: (1) Board members periodically attend (in an observing capacity only) monthly and quarterly senior management meetings, and (2) board communications are structured as approximately 30-page online

⁵⁹ FIN. SUPERVISORY COMMISSION, R.O.C (TAIWAN) SECURITIES AND FUTURES BUREAU, CORPORATE GOVERNANCE ROADMAP (2018-2020) (May 10, 2018), <https://www.sfb.gov.tw/en/home.jsp?id=106&parentpath=0,8,105> [<https://perma.cc/W6U7-SEG5>].

⁶⁰ Chang-Hsien Tsai (蔡昌憲), *Xingsi Gongsì Zhili Xia Zhi Neibu Jiandu Jizhi—Yi Duli Zixun Guandao de Qianghua wei Hexin* (省思公司治理下之內部監督機制——以獨立資訊管道的強化為核心) [Rethinking Internal Monitoring Mechanisms of Corporate Governance: An Approach to Strengthening Independent Information Channels], 141 CHENGCHI L. REV. (政大法學評論) 197, 258-259 (2015).

⁶¹ SEC. EXCHANGE ACT, *supra* note 2, at art. 14-5.

memos in narrative form that not only include links to supporting analyses but also allow open access to all data and information on the company's internal shared systems, including the ability to ask clarifying questions from the subject authors. This quarterly memo is written by and shared with the top 90 executives as well as the board.⁶² Such practice might be a worthwhile reference for some Taiwanese companies.

Finally, from the perspective of disclosure, in the process of collecting information, this study has found that some of the required items or explanations in public disclosures of dissenting opinions delivered by independent directors are either left blank or filled-in with incomplete or ambiguous descriptions: Specifically, the disclosure items for "the reason for dissenting opinions," "the response to the dissenting opinions" and "the reason for leaving the office as an independent director" are yet to be completed. The competent authority, FSC, should strengthen their enforcement on the implementation of disclosure. Otherwise, such insufficient disclosures will fail to provide investors and markets with complete information for bettering understanding as per one of the functions of independent directors, as well as hinder evaluations concerning a company's corporate governance.

V. CONCLUSION

Several important results from this empirical study contribute to the field of corporate governance. First, the number of incidents for the delivery of dissenting opinions by independent directors has been shown to increase sharply in recent years for companies in all three areas (TWSE, TPEX, and ESB). Nonetheless, the number of independent directors delivering dissenting opinions remains comparatively small as indicated, for example, by the 1.1% ratio (48 dissensions out of a total of 4223 independent directors) for 2017.⁶³ In general, the percentage of independent directors delivering dissenting opinions in Taiwan, as indicated by this study, is quite low.

⁶² David F. Larcker & Brian Tayan, *Netflix Approach to Governance: Genuine Transparency with the Board* (May 10, 2018), <https://corpgov.law.harvard.edu/2018/05/10/netflix-approach-to-governance-genuine-transparency-with-the-board> [<https://perma.cc/R2B3-QYW6>].

⁶³ *See supra* note 28.

Second, the reasons given for dissenting opinions by independent directors are rather diverse. Nevertheless, this study finds the reason of insufficient information, and those of a similar nature, to be relatively common. This result indicates that for the independent director mechanism to function more effectively, the issue of information asymmetry with respect to independent directors is urgent in Taiwan.

Third, from the perspective of whether dissenting opinions delivered by independent directors actually impact or change board decisions, this study has revealed that only 16.8% of the dissenting opinions delivered by independent directors, during the 5-year period reviewed, has been accepted and followed by the board. TWSE-Listed companies showed the highest percentage of acceptance for dissenting opinions, which is 18.6%. In addition, this study points to collective action as a positive factor in the delivery of dissenting opinions by independent directors, since the probability of board-meeting acceptance and adherence increased in such cases.

Fourth, the average percentage of independent directors remaining in office as independent directors after delivering dissenting opinions was 55% as of July 28, 2018. Due to some limitations to this research, a positive and direct correlation between an independent director's dissenting opinion and his/her re-election could not be definitively reached. Nevertheless, this result sheds light on the possibility of a very pertinent correlation in Taiwan.

Furthermore, this study strongly implies the foundational importance of sufficient information as a cornerstone to the performance of the independent director role and discusses some measures to improve its function in Taiwan.

Finally, to more fully evaluate the effectiveness of the independent director mechanism in Taiwan, more complete and clear disclosure on the MOPS should be enforced.

**[APPENDIX] CHART OF INDEPENDENT DIRECTOR
DISSENTING OPINIONS (2013-2017)**

Explanation:

1. Independent director dissenting opinions assessed in this study covered the time period from 1/1/2013 to 12/31/2017.
2. Collection of data on the circumstances for a director's vacancy of his/her seat was discontinued after 7/28/2018. In determining whether an independent director was still registered as such as of 7/28/2018, this study relied upon data publicly available on the website of the Department of Commerce of Taiwan's Ministry of Economic Affairs as well as information disclosed on the Market Observation Post System (MOPS) of the Taiwan Stock Exchange Corporation. An asterisk (*) by a director's name indicates a director's continued status as an independent director, whereas the absence of an asterisk without any other explanation is indicative of a departure. Additionally, for the purposes of this study, members of remuneration committees who did not originally have independent director status, regardless of whether or not they were later elected as independent directors, were still considered in the tally of independent directors who stayed or left as of 7/28/2018.

TWSE-listed Companies

Year	Company	Date	Subject	Incident & Causes	Reason	Company Response and Action(s) Taken
2013	(TWSE 1)	10 APR 2013	(TWSE ID1) ⁶⁴ (Remuneration committee)	Review of compensation and methods of assessment for supervisors & managers.	[Veto] TWSE ID1 expressed that the proposed amendment of Article 7.11.3.1 (Group chairman, general manager, dual-serving executive director & deputy GM, . . .) was unnecessary, and should retain the original wording of the Article (Group chairman, GM and deputy GM, . . .).	Revised article passed with majority vote in favor.
	(TWSE 2)	01 JUL 2013	(TWSE ID2)*	Item on “the company’s merger with company A; the company to be maintained, whereas company A to be dissolved” being brought before the meeting of managing directors for review.	[Veto] Not within the scope of authority for a managing directors’ meeting.	
	(TWSE 2)	05 JUL 2013	(TWSE ID2)	Item on “the members and authority of the company’s merger investigatory task force,” being brought before the meeting of managing directors for review.	[Veto] Not within the scope of authority for a managing directors’ meeting.	
	(TWSE 3)	26 JUL 2013	(TWSE ID3)*	Revision to the company’s operational plan.	[Reservation] The administrative act of the National Communications Commission (NCC), requiring that the company’s news channels should be changed into non-news channels in the completed operation plan, is not entirely fair. The company, as a publicly traded entity, should be dealt with from a position of neutrality by the NCC, which should avoid influencing the operational policies and corporate governance of publicly traded companies. The company’s	

⁶⁴ Subject TWSE 1 was not yet an independent director when this opinion was delivered (the company did not yet have an independent director as of the date in 2013 when TWSE 1 viewed the revised by-laws).

					passive cooperation with this demand of the administrative act of the NCC would create an inequity for the company's shareholders.	
	(TWSE 2)	05 AUG 2013	(TWSE ID2) (TWSE ID4)	Proposal to the board of directors to pass resolutions on regular board meeting reported matters, discussion items, matters of routine reporting, deliberations on the sale of bad debt, deliberations on granting credit, and other such issues.	[Veto] (1) (TWSE ID2): reiterated opposition on the two matters concerning the merger, "the case of the company's merger with company A" and "the establishment of an investigative committee on the company's merger with company A," with a request that these dissenting opinions be entered into the board minutes. (2) (TESE ID4): opposition to the two matters concerning the merger, "the case of the company's merger with company A" and "the establishment of an investigative committee on the company's merger with company A."	
2015	(TWSE 4)	06 JAN 2015	(TWSE ID5)	Consideration of equipment replacement; and, operational and cooperative business relationships in the purchase of machinery and equipment.	[Veto] Concerns about financial liabilities and impacts to company interests.	
	(TWSE 5)	23 APR 2015	(TWSE ID6)*	Rectification of all resolutions and matters from 2012 shareholders meetings; and, rectification of one board member and supervisor selected in the 7 th term by-election as well as such matters as their behavior over an entire term.	[Veto]	
	(TWSE 2)	04 MAY 2015	(TWSE ID7)*	Distributions of surplus earnings for FY2013 and said distribution in the form of new shares.	[Veto] Suggest to raise the ratio for cash dividend distributions.	
	(TWSE 6)	12 AUG 2015	(TWSE ID8)	On planned application to Bank B for a continuation of the short-term credit limit and period. On planned application to Bank C for a continuation of short-term credit limit and period.	[Veto] (1) Agree to delete Paragraph 1, (regarding company's operational plan) and Paragraph 2 (regarding yearly financial statement) of Article 3 in the "Rule concerning the Responsibilities and Regulations of Independent Directors", but other matters, which, in accordance with relevant	Material information published in accordance with the Law.

				<p>On planned application to Bank D for a continuation of short-term credit limit and period.</p> <p>On plan to appoint remuneration committee for the third term.</p> <p>On plan to stipulate the responsibilities and regulations for independent directors.</p> <p>On plan to stipulate the exercise of authority and method of remuneration for board-hired consultants.</p>	<p>ordinances and the rules of the Articles of Incorporation, are resolved by a shareholders meeting or a board of directors meeting or by the competent authority in the case of material items, should still be recorded and stated clearly in the meeting minutes of the board, if independent directors have dissenting opinions.</p> <p>(2) Suggest that there be a board resolution on consultant remuneration.</p> <p>(3) In consideration of the monitoring duties of the board, it would be inappropriate for the company to nominate a director of an unprofitable subsidiary to return as a consultant to the subsidiary.</p>	
	(TWSE 6)	10 NOV 2015	(TWSE ID8)	<p>On planned application to Bank E for a continuation of short-term credit limit and period.</p> <p>Proposal of FY105 Audit Plan.</p> <p>On the issue of the proposal by Company F (commissioned by the company) to retain Company G to carry out the integration of urban renewal projects.</p>	[Veto]	Material information published in accordance with the Law.
2016	(TWSE 2)	18 MAR 2016	(TWSE ID7)	On the revision of some articles in the company's Articles of Incorporation needed in order to align the company's business developments with relevant laws and regulations.	[Veto] Opposed to the raising of the company's authorized capital from NTD90 billion to NTD110 billion. Based on the company's capital adequacy indicators, the company has sufficient capital for FY2016 to meet the standard, therefore, for the present there is no clear urgency to carry out the revision.	
	(TWSE 7)	21 APR 2016	(TWSE ID9)	Nomination of independent director candidates for the eighth board term.	[Veto] (1) One would expect that independent director candidates nominated by a large shareholder are qualified based on international corporate governance standards; there remains some doubt with regards to the list of nominees presented here by the board and their fields of specialization. (2) It was proposed that the board hire an	Material information published in accordance with the Law.

					unbiased outsider to take on the task of setting up, in an organized manner, an investigatory committee. Upon completion of the report looking into the issues raised, the matter should be brought before the board again for discussion and resolution. (3) Recommended that the company should immediately revise the Articles of Incorporation and a nomination committee be set up under the board of directors, so as to improve corporate governance.	
(TWSE 6)	02 JUN 2016	(TWSE ID8)	On the drafting of the Management's Report on Internal Controls for FY2015.	[Veto]	Material information published in accordance with the Law.	
			On the consolidated financial statements and individual financial statements for FY2015.	Complete data was not included in the notice to convene; relevant data for the impairment of assets item not yet provided.		
			On the issue of making-up for surpluses and losses	[Veto]		
			On the issue of the 2015 Annual Business Report.	Complete data was not included in the notice to convene		
			Rectifying a supervisor to represent the company in the criminal case against A for damages to reputation.	Board member A's statement should fall within the scope of freedom of speech.		
			On revisions to some articles of the Articles of Incorporation.	[Veto]		
			On the drafting of the plans for the 2016 shareholder meeting concerning time, location and relevant agenda and reporting items.	[Veto]		

(TWSE 8)	08 AUG 2016	(TWSE ID10)	On the issue of overseas subsidiary H plans to purchase from a related person the 24.98% stake in company I and indirectly hold 100% shareholding of the Mainland China investment firm, J company.	[Reservation] Insufficient information to determine a reasonable price for the transaction.	Material information published in accordance with the Law.
(TWSE 6)	24 OCT 2016	(TWSE ID8)	Revision of some parts of the Articles of Incorporation.	Revision to the Articles of Incorporation is not required under Taiwan corporate law since the issuance of employee stock warrants is within the authorized capital limits.	Material information published in accordance with the Law.
			On revision to part of the “Methods for the Election of Directors and Supervisors.”	Error in the wording of the revision.	
			Plans for convening a special shareholders meeting for a full re-election of the company directors and supervisors.	Insufficient Information.	
			On plan to cancel the non-competition limitations for directors and their representatives	[Veto]	
			On drafting the time, location, relevant reports, and independent director nominations for the first special shareholders meeting of 2016.	[Veto]	
(TWSE 6)	24 OCT 2016	(TWSE ID11)	Plans for convening a special shareholders meeting for a full re-election of the company’s directors and supervisors.	[Veto]	Material information published in accordance with the Law.
(TWSE 9)	10 NOV 2016	(TWSE ID12)	On the matter of a loan to reinvest in company K for company K’s factory construction capital of	[Veto]	Material information published in accordance with

				NTD250 million.		the Law.
	(TWSE 6)	11 NOV 2016	(TWSE ID8)	FY2017 audit plan. Deliberations on standards for the provision of manager annual bonuses.	Audit plan still needs adjusting. Attachment on allocation standards lacking.	Material information published in accordance with the Law.
	(TWSE 10)	23 DEC 2016	(TWSE ID13)* (TWSE ID14)* (TWSE ID15)*	On the matter of subscription for a capital increase in the form of cash for subsidiary L.	The general manager continues to discuss and investigate with counterparts in the joint venture about methods to improve operations.	To be handled by board resolution.
2017	(TWSE 11)	13 JAN 2017	(TWSE ID16)	On the matter of the stop-loss point for the Suzhou investment or financing; and, motion to loan company N RMB2.95 million from subsidiary M's newly increased capital.	[Reservation]	
	(TWSE 12)	13 JAN 2017	(TWSE ID17)* (TWSE ID18)*	On the matter of re-investment to set-up "Company O".	[Reservation] This matter passed after board discussion. However, the research submitted to the board is not complete in terms of data on the competitive market for the investment and situational analyses, such as levels of sensitivity, along with minutes from internal assessment meetings and other relevant material.	Management, in accordance with board's opinion, to provide supplementary information for board's deliberation.
	(TWSE 2)	24 JAN 2017	(TWSE ID7)	Proposal for board deliberations about agreement to terminate the shareholder service agent agreement of company P, and the switch to company Q as agent for shareholder services.	[Veto] The resolution process in this matter violated rules on the avoidance of conflicts of interest, and the resultant resolution violated relevant laws and corporate governance. The directors taking part in the resolution should bear joint and several liabilities in accordance with Article 193 of the Company Act.	
	(TWSE 13)	09 FEB 2017	(TWSE ID19)*	On the matter of handling-fee payments for financial guarantees made to guarantors.	[Reservation] Suggest to draft up relevant rules and present at shareholders meeting for approval.	A relevant rule will be drafted based on the independent director's opinion and will be presented at the shareholders meeting after board approval.

(TWSE 14)	09 MAR 2017	(TWSE ID20)*	On revisions to Laos investment.	(1) Suggest to hire a corporate attorney and CPA to provide professional opinion following on-site investigation; and, the investment sum should be remitted to an escrow account as opposed to direct remittance to Party B's account. (2) Financial controls should be strengthened in the joint venture and a management mechanism to protect funds should be considered.	Material information published in accordance with the Law.
(TWSE 15)	15 MAR 2017	(TWSE ID21)*	On the distribution of capital reserve in the form of cash.	[Veto]	Handled per the board's resolution and material information published in accordance with the Law.
(TWSE 2)	24 MAR 2017	(TWSE ID7)	On the election of directors for the 25 th term (including independent directors).	[Veto] Director terms should be in full accordance with the Company Act and the resolution of the 2014 first special shareholders meeting.	The company was in full accordance with the Company Act and the resolution of the 2014 first special shareholders meeting.
(TWSE 9)	13 APR 2017	(TWSE ID12)	On capital reduction in the form of cash.	[Veto] Objection with respect to most participating directors and supervisors having only received notice of the meeting one day before in the afternoon; and, the resolution on capital reduction having been rushed through without directors being given the opportunity to more fully discuss the matter after having been able to look into its advantages and disadvantages or gains and losses.	Material information published in accordance with the Law.
(TWSE 5)	25 APR 2017	(TWSE ID6)	On the revision of some parts of the Articles of Incorporation.	[Veto] Audit Committee: This proposal should be first sent to the internal management committee; the proposal is not sufficiently exhaustive; dividend payments for preferred shares are still too high; obvious infringements on the rights of the company and individual shareholders. Recommend this case be sent back to the management committee for reconsideration.	(1) After thorough discussion, the proposal passed the audit committee at a ratio of 2:1 (all three members of the committee present, 2 ayes

					<p>Board: This case has not yet been first presented to the internal management committee; there are conflicts of interest to be avoided and the original financial situation and conditions since the issuance of preferred shares has changed. The aforementioned proposal is not equitable to individual shareholders; an opinion of dissent has been expressed against this case.</p>	<p>and 1 nay). The final resolution was completely different from the opinion expressed by the independent director (TWSE ID6). (2) After thorough discussion, the proposal passed the board at a ratio of 6:5 (all eleven board members were present, 6 ayes and 5 nays). The final resolution was completely different from the opinion expressed by the independent director (TWSE ID6).</p>
(TWSE 16)	27 APR 2017	(TWSE ID22)	March 2017 audit report by Audit Office.	[Reservation] Please reference the written issues of 27 APR 2017 raised by supervisor B, especially that concerning a more detailed audit of the subsidiary(s).		
(TWSE 17)	12 MAY 2017	(TWSE ID23)*	On the matter of Company chairman C being a consultant to the subsidiary.	[Reservation]	Material information published in accordance with the Law.	
(TWSE 16)	23 MAY 2017	(TWSE ID22)	April 2017 audit report by Audit Office.	[Reservation] According to this specialized report, suggest a review of the details regarding the accounts receivable and build-up of inventory in the subsidiary.		
(TWSE 9)	08 JUN 2017	(TWSE ID12)	On the re-appointment of directors & supervisors in Subsidiary R.	[Veto] More than 75% of the company's assets are accounted for by company R, therefore the seating of directors and supervisors for both	Material information published in accordance with	

				companies should correspond; object to re-appointment.	the Law.
			Subsidiary R should combine the land of the adjacent company and jointly develop it.	[Veto] There is no reason to prohibit a parent company to supervise or manage the matter of handling the development of assets of the 100% owned subsidiary; request for the subsidiary to provide all relevant information, such as comparison of pros and cons to the board for understanding and discussion. If the board were, today, to make a resolution that the board cannot supervise or manage such matter, I cannot agree.	
(TWSE 5)	15 JUN 2017	(TWSE ID6)	Plan to keep the scheduled agenda for the 16 JUN 2017 shareholders meeting and the special preferred shareholders meeting.	[Veto] Recommended to cancel the proposal to revise the Articles of Incorporation through a shareholders proposal in the shareholders meetings, and suggest a more appropriate solution that meets with the approval of authorities; and, also propose that during the vote to pay attention to the avoidance of conflicts of interest.	After thorough discussion, the resolution passed on a 6:5 vote (all 11 members of the board were present with 6 ayes and 5 nays). The final resolution was completely different from the opinion expressed by the independent director (TWSE ID6).
(TWSE 14)	19 JUN 2017	(TWSE ID20)	On continued investment Laos.	(1) Disparity exists between the company's business and this investment in land and property. (2) Investment in the assets of company T has not yet gone through the process of evaluation. (3) No feasibility analysis for this investment project; opportunities and risks are not clear.	Material information published in accordance with the Law.
(TWSE 9)	30 JUN 2017	(TWSE ID12)	Extemporary motion from the 22 nd term's first board meeting is null and void; convening of special board meeting on the matter of replacing company R's directors & supervisors.	[Veto] Company R is a 100% wholly-owned subsidiary of the company and set up essentially as a proxy for holding the parent company's land assets. In substance it is more than a mere specialized real estate development company with its main business activities having to do with the	Material information published in accordance with the Law.

					management and employment of profits from its land assets. Company R is, in fact, an important part of the company's division for asset management; and, as such, in compliance with the principles of corporate governance, it should be under the supervision and direction of the company and should not escape the board of directors' scope of authority. Having the same members of directors and supervisors in both parent company and its subsidiary was consistent with the principles of corporate governance, but from the point of view of replacements, the legality and legitimacy is, in fact, difficult to make out; so, I cannot agree with such replacement.	
(TWSE 18)	14 JUL 2017	(TWSE ID24)* (TWSE ID25)*	Discussions about company T shareholder advances in subsidiary company S receivables.		[Veto] (1) Relevant Personnel should avoid conflicts of interest so as to avoid giving rise to losses due to inappropriate acts. (2) This case has been going on for as long as ten years, and relevant data is probably incomplete. Recommend that the company immediately secure the materials and appoint a specialist to handle the matter. (3) Recommend for the company to proceed per board resolution and immediately appoint an attorney and send the relevant materials to an investigative body, so as to protect the interests of shareholders.	Handled per the board's resolution and material information published in accordance with the Law.
(TWSE 13)	25 JUL 2017	(TWSE ID26) ⁶⁵ (Remuneration Committee)	Deliberations on 2016 compensation allocations for directors and supervisors.		[Reservation] Significant difference between proposed director & supervisor compensation and that of the previous year; recommend assessment and adjustment.	Material information published in accordance with the Law; date chosen for the convening of the remuneration committee.
(TWSE 19)	07 AUG 2017	(TWSE ID27)*	2016 Q2 consolidated financial statements.		[Reservation] Expressed reservations about some of the item explanations in the financial statements, the relevant departments should attach supplementary explanations following the meeting.	Material information published in accordance with the Law.

⁶⁵ Not an independent director of (TWSE 13) at the time the opinion was posted.

(TWSE 20)	09 AUG 2017	(TWSE ID28)* (TWSE ID29)* (TWSE ID30)*	On the matter of company U's NT\$220 million loan.	[Veto] Audit Committee: (TWSE ID28) opposed. Board: (TWSE ID28) opposed. [Reservation] Audit Committee and the Board: (TWSE ID29), (TWSE ID30) expressed that they could agree to the loan only after the borrower, i.e. Company U, had agreed to supplemental conditions.	Request the borrower to submit all relevant materials and afterward convene again for deliberations.
(TWSE 14)	14 AUG 2017	(TWSE ID20)	Plans for continued investment in Laos.	(1) Investment projects are too concentrated, high level of risk. (2) No specialized person appointed who can manage the land investment project and apprehend local policies on land use and foreign exchange risk. (3) Emphasis should be place on the company's business and related industrial development.	Material information published in accordance with the Law.
(TWSE 9)	13 SEP 2017	(TWSE ID12)	Replacement of directors and supervisors in Subsidiary company R.	[Veto] Recommend that all directors and supervisors in the subsidiary should still match parent company's directors and supervisors.	Material information published in accordance with the Law.
(TWSE 21)	20 OCT 2017	(TWSE ID31)	Discharge of bank V senior vice-president D.	[Veto] Because the investigatory proceedings took place in the financial holding company and I, myself, did not participate therefore consent cannot be given based on the company's one-sided presentation of documents.	Material information published in accordance with the Law.
(TWSE 22)	07 NOV 2017	(TWSE ID32)*	Reinvestment in Company X.	[Veto] Owing to the present lack of clarity as to whether the prospective electric cars shall employ a method of battery replacement or battery recharge, as well as an unfavorable outlook for the time being as to the current prospects for recovery of the company's overseas investment funds, therefore objection is made.	The independent director's dissenting opinion and its reasons recorded in the board meeting minutes.
(TWSE 19)	09 NOV 2017	(TWSE ID27)	Report of 2017 Q3 consolidated financial statements.	[Reservation] Keeping the reserved-opinion with respect to losses.	Material information published in accordance with the Law.
(TWSE 9)	10 NOV 2017	(TWSE ID12)	Discussions on 2018 budget.	[Veto] Owing to on-site lack of previous years' budgets and actual disparities in implementation data, determinations cannot	Material information published in accordance with

					be made, and it is recommended to invite outside persons to facilitate judgment and adjustment in order to make improvement. For this reason, disagree on passing the budget.	the Law.
				Reconsideration of audit committee deliberations on the proposal of director E.	[Reservation] The relevant facts of the motion are not clear; recommend that explanatory information be provided.	
				Extemporaneous motion on the board's prohibition of private persons making recordings.	[Reservation] Request that the company verify the authenticity and completeness of recorded content; under the condition that directors have the authority to request the recordings from the company, I agree not to make private recordings.	
(TWSE 23)	10 NOV 2017	(TWSE ID33)* (TWSE ID34)* (TWSE ID35)*		New increase to amount of company Y's loan.	[Reservation] Request that relevant supplementary data be provided and proposal resubmitted.	Once the material has been prepared, proposal to be resubmitted.
				New increase to amount of company Z's loan.		
(TWSE 9)	04 DEC 2017	(TWSE ID12)		Reconsideration of the audit committee's submission of material asset transactions for the wholly-owned subsidiary.	[Veto] (1) Should be handled in compliance with relevant provisions on related party transactions. (2) Recommend that the letter of intent should be fully disclosed to all directors. (3) It is inadvisable to exclude any mention of favorable dealings for any potential clients; and, the best interests of the subsidiary should be taken into consideration. Recommend that the content of letters of intent to purchase from a potential client be sent to the subsidiary.	Material information published per director request.
(TWSE 21)	06 DEC 2017	(TWSE ID31)		Transfer of subsidiary General Manager F.	[Veto] General Manager F should not be transferred; doubts remain as to the qualifications of the replacement candidate. Object for these reasons.	Material information published in accordance with the Law.
(TWSE 14)	29 DEC 2017	(TWSE ID20)		Plans for continued investment in Laos.	The company's long-term funds are not sufficient and there is not specified department to handle it.	Entered into the minutes of the board meeting.

TPEX-listed Companies

Year	Company	Date	Subject	Incident & Causes	Reason	Company Response and Action(s) Taken
2013	(TPEX1)	21 JAN 2013	(TPEX ID1)*	Decision on whether to formally hire newly appointed General Manager G.	[Veto] Newly appointed GM G's inability to persuade the entire board on the operational plans for the new business unit and the necessary funds will create additional operational burdens for the company. Object to the formal hiring of GM G.	Director H to act as interim general manager.
	(TPEX2)	07 AUG 2013	(TPEX ID2) (TPEX ID3) (TPEX ID4)*	Discussions on bank A' consolidated credit limit application; supplementary conditions require two guarantors.	[Veto] With respect to bank A' application for consolidated credit limit, request the finance department undertake further investigations and discussions with the bank.	Request for the finance department to initiate further investigations and discussions with Bank A'.
	(TPEX3)	16 SEP 2013	(TPEX ID5)* (TPEX ID6) (TPEX ID7) ⁶⁶ (Remuneration Committee)	Adjustments to comparison chart on staff salaries.	[Reservation]	
	(TPEX4)	26 DEC 2013	(TPEX ID8) (TPEX ID9) (TPEX ID10)* ⁶⁷	FY2014 budget: prepared forecast of losses in consideration of industry changes.	[Veto] Object to the company's prepared forecast of losses.	Budget passed on a 6:5 final vote of the 11 directors present.
2014	(TPEX4)	01 AUG 2014	(TPEX ID8) (TPEX ID9) (TPEX ID10)	Proposed increase of 2.2% to employee base salaries from 01 AUG 2014.	Three IDs advocated that salary adjustments should be considered along with a change to the salary system from a fixed scale to a percentage increase of salary.	Proposed salary adjustments passed on a 6:5 vote of the 11 directors present.

⁶⁶ (TPEX ID5), (TPEX ID6) and (TPEX ID7) were not independent directors of (TPEX3) at the time the opinion was posted (according to the 2013 Annual Report for (TPEX3) the company had not yet set up independent directors).

⁶⁷ As of the cut-off time for data preparation (7/28/2018), according to material information published on the MOPS, (TPEX ID10) was elected as an independent director of (TPEX4) on 26 JUN 2018, and has yet to revise the information registered with the MOEA.

	(TPEX5)	12 AUG 2014	(TPEX ID11) (TPEXID12)* (TPEX ID13) ⁶⁸ (Remuneration Committee)	The first transfer of shares of 2014 to employees through share repurchases.	[Veto] The entire remuneration committee considered it better to wait for an improved transfer system and more favorable timing to make such a proposal; this proposal should be postponed for the time being.	
2015	(TPEX4)	20 MAR 2015	(TPEX ID10)	The company did not participate in the 2014 subsidiary plans for a capital increase in the form of cash and NT\$10.6 per share for 24.61 million share transfer to company B'.	[Veto] Comprehensive discussions could not take place due to the absence of 4 directors (2 IDs).	Passed on vote of a majority of directors, 6 present, 5 in favor and 1 ID against.
	(TPEX6)	24 MAR 2015	(TPEX ID14)	Plan for NT\$2 million donation to University C' building fund.	[Veto] Donations should benefit company operations and be based on the principle of raising the corporate image.	Entered into reporting items for shareholders meeting at the request of the independent director.
2016	(TPEX7)	21 MAR 2016	(TPEX ID15) (TPEX ID16)	Planned private placement of common shares.	[Veto] Current company funds sufficient and the placement amount too high; threatens the interests of current shareholders.	
	(TPEX8)	04 MAY 2016	(TPEX ID17) (TPEX ID18)	Upon the completion of the tender offer for company D', the entire board should undergo re-election.	[Veto] The tender offer has yet to be fully implemented.	
	(TPEX7)	01 JUL 2016	(TPEX ID19)	Shareholder request to file a lawsuit against the representative supervisor of company E' (juristic person) for damages and apply to the court for provisional injunction.	[Veto] The matter is not an urgent item and there is a problem with the notice to convene. Request to deal with the matter on the basis of corporate law and reconvene.	
	(TPEX7)	21 JUL 2016	(TPEX ID19)	Changes to the place for the 2 nd special shareholders meeting of 2016 and dissemination of souvenir gifts.	[Reservation]	

⁶⁸ (TPEX ID11) and (TPEX ID12) were both independent directors of (TPEX5) at the time of posting the opinion; only (TPEX ID13) was not an independent director of (TPEX5) at the time of posting.

(TPEX7)	02 AUG 2016	(TPEX ID19)	CEO appointment.	[Veto]	
			Cancellation of non-compete restrictions for managers.		
(TPEX7)	09 SEP 2016	(TPEX ID19)	Election of board chair.	[Veto]	
			Appointment of GM.		
			CEO adjustment.		
(TPEX9)	18 SEP 2016	(TPEX ID20)*	Appointment of finance department assistant manager.	[Veto] No material attached as to assistant manager educational background and experience; extreme asymmetry of information.	(1) "Appointment of finance department assistant manager," doubt as to there being no procedural injustice. In the future, the procedural rules of the board should be examined. (2) Per attorney, "changing the company seal" is not a major issue.
			Extemporaneous motion "to change the company seal."		
(TPEX9)	20 SEP 2016	(TPEX ID20)	Convening of first special shareholders meeting.	[Veto] Company plan for holding special shareholders meeting on 04 NOV 2016. Time should match that of supervisor's convened first special shareholders meeting of 2016.	Per attorney: the special shareholders meeting convened by supervisor is against the law.
(TPEX9)	25 OCT 2016	(TPEX ID20)	Planned issue price and other relevant details for the second private placement of common shares in 2015.	[Veto] Written objection.	All present directors passed the resolution without dissent.
(TPEX9)	01 NOV 2016	(TPEX ID20)	Extension and change to the payment period and date of record for capital increase through the second private placement of common shares in 2015.	[Veto] Written objection.	All present directors passed the resolution without dissent.
(TPEX7)	07 NOV	(TPEX ID19)	On the company and current management	[Veto]	

		2016		team's receipt of false accusations and request to the board to authorize the Chair to proceed with relevant measures to litigate.	No clear opponent; dissent expressed.	
	(TPEX7)	10 NOV 2016	(TPEX ID19)	Planned investment to construct solar power generation facility.	[Veto] (1) No detailed explanation of the factory location. (2) The company does not have personnel with relevant expertise in solar power plants. (3) Request clarification on reasons for this contractor and record of past performance. (4) Is there approved bank financing? (5) What guarantees are there against solar panel degradation?	Chair to reply in writing.
	(TPEX7)	10 NOV 2016	(TPEX ID19)	Pursuit of compensation from former Chair.	[Veto] Support request for compensation; only note that it is outside the authority of the board.	
2017	(TPEX10)	13 MAR 2017	(TPEX ID21)*	Distribution of 2016 surplus earnings.	[Veto] The company should take into account the future outlook and market vicissitudes; recommend per share dividends be reduced from NT\$2.0 to NT\$1.0 and cash dividends be increased from NT\$0.5 to NT\$1.0.	Surplus earning distributions revised on the basis of the independent director's recommendation; all present directors passed the revision without dissent.
	(TPEX11)	28 APR 2017	(TPEX ID22)	Review of independent director qualifications. Review of proposals raised by holders of more than 1% of the company's issued stock.	[Reservation]	
	(TPEX11)	11 MAY 2017	(TPEX ID22)	Planned 2 nd domestic issue of secured convertible corporate bonds.	[Veto] The roll-out of the company's first issue of debt has yet to be completed, there has been no demonstrable increase in the company's business performance, and the level of relevant internal controls have yet to be clearly audited; oppose this item.	
				Invitation for legal advisor to attend the 07 JUN 2017 shareholders meeting.	[Veto] Relevant information about the attorney as well as the content of service has not yet	

				been provided.	
			Appoint law firm X to handle the provisional injunction for all civil claims by the person I' et. al.	[Veto] Relevant information about the attorney as well as the content of service has not yet been provided.	
(TPEX12)	11 MAY 2017	(TPEX ID23) (TPEX ID24)	Planned buy-back of company issued stock.	[Veto] In consideration of the challenges in the company's industry and a comparatively high ratio of debt, recommend the use of other means to incentivize employees.	
(TPEX13)	21 JUN 2017	(TPEX ID25)*	Planned handling of the exchangeable bond due date of company F'.	Company F' is untrustworthy; recommend to immediately assert the breach to the due date for debt exchange as a means to resolve the issue of repayment.	Material information published in accordance with the Law.
(TPEX14)	10 AUG 2017	(TPEX ID26)* (TPEX ID27)* (TPEX ID28)*	On subsidiary company G's attaining distributor agreement for company H's limited edition electric car.	[Reservation] Should wait for the completed content of the distribution agreement of subsidiary company G' with company H' and legal signing, and then after the company adjusts the content of its distribution contract with company G' based on the aforementioned distribution contract, re-deliberate.	Material information published in accordance with the Law.
			Subsidiary company G''s planned loan from Bank I'.	Because of its links to the aforementioned motion, this case should be deliberated together in the next board meeting.	
(TPEX15)	20 SEP 2017	(TPEX ID29)	Hong Kong subsidiary increase of capital through public markets.	[Veto] Capital increase should be raised internally.	Discussion postponed on the two motions; and, material information published in accordance with the Law.
			Supervisor remuneration	[Veto] In consideration of company finances.	
(TPEX16)	13 NOV 2017	(TPEX ID30)* (TPEX ID31)* (TPEX ID32)*	Increase to subsidiary's capital in the form of cash to secure rights for cellphone game development.	Request for supplemental data.	Hold another audit committee and board meeting to discuss.
(TPEX17)	11 DEC 2017	(TPEX ID33)*	Convening of special board meeting to discuss holding of special	[Veto] (1) Seven-day notice period not met; violation of Article 204 of the Company	Material information published in

			shareholders meeting for the purpose of protecting company benefits and shareholder interests.	Act. (2) Violation of requirements for TPEX electronic information postings. (3) Per the authority of an independent director, I, myself, announced on the 6 th of December the convening of a special shareholders meeting.	accordance with the Law.
(TPEX17)	16 DEC 2017	(TPEX ID33)	Discussions on reporting violations of the Ethical Corporate Management Best Practice Principles.	[Veto] (1) Independent director (TPEX ID34) is chief counsel of firm K' and firm K' has provided legal opinions about the legality of the company's correction to the ex-right trading date. (TPEX ID34) clearly does not meet the qualifications of an independent director and chair of the audit committee. (2) Company management has on several occasions prevented myself (TPEX ID33) from exercising my supervisory rights as an independent director.	Material information published in accordance with the Law.
(TPEX17)	29 DEC 2017	(TPEX ID34)	Fourth term of 3 rd audit committee meeting dissenting opinion of independent director.	The referenced case is being litigated and has no bearing on the motion being discussed, entering it into the meeting minutes would not be appropriate.	
(TPEX17)	29 DEC 2017	(TPEX ID33)	Concerning discussions on reporting violations of the Ethical Corporate Management Best Practice Principles, the setting up of the investigatory process and dates.	[Veto] The law already empowers independent directors with the right to exercise their duties; there is no need for further discussion on this matter.	Material information published in accordance with the Law.
(TPEX18)	29 DEC 2017	(TPEX ID35)*	2018 annual budget.	[Veto] Target(s) should be set according to the EPS 0.5 reported at last board meeting.	Material information published in accordance with the Law.

ESB-traded Companies

Year	Company	Date	Subject	Incident & Causes	Reason	Company Response and Action(s) Taken
2014	(ES 1)	13 MAR 2014	(ES ID1) ⁶⁹ (Remuneration committee)	Remuneration committee member ES ID1's review of the company's bonus system.	[Reservation]	
2015	(ES 2)	10 MAR 2015	(ES ID2)*	Integration of the company's business units and lean organizational management.	[Veto] The current company organization structure has complementarity with product development and there is no present need to consolidate product lines.	
	(ES 3)	11 AUG 2015	(ES ID3) (ES ID4)* ⁷⁰ (Remuneration committee)	Director, supervisor, and member of functional committees travel expense to attend shareholders meeting.	[Reservation]	
	(ES 4)	09 DEC 2015	(ES ID5) (ES ID6)* ⁷¹ (Remuneration Committee)	Newly hired vice president of research & development department, special assistant to the office of the chairperson, and 2016 annual salary adjustment review for key managers.	[Veto] Wait for the company to provide the salary range chart and all other relevant documents for further study and comment.	
2016	(ES 5)	14 MAR 2016	(ES ID7)	2016 annual budget.	[Reservation] Request that bimonthly audit reports be made as budget progress reports for the board.	
	(ES 5)	25 MAR 2016	(ES ID8)*	Coordinating the audit committee's set-up for revisions to some parts of the Articles of Incorporation.	[Veto] Carrying out the set-up of the audit committee without sufficient discussion is not advisable.	

⁶⁹ (ES ID1) was an independent director of (ES 1) at the time of positing the opinion.

⁷⁰ (ES ID4) was an independent director of (ES 3) at the time of posting the opinion; only (ES ID3) was not an independent director of the company at the time of posting. As of the cut-off time for data preparation (7/28/2018), (ES ID4) was still an independent director of (ES 3) according to the registration information of the MOEA.

⁷¹ (ES ID5) and (ES ID6) were both independent directors of (ES 4) at the time of posting the opinion. As of the cut-off time for data preparation (7/28/2018), (ES ID6) was still an independent director of (ES 4) according to the registration information of the MOEA.

	(ES 6)	10 AUG 2016	(ES ID9)*	Office expansion.	[Reservation]	
2017	(ES 7)	08 JUN 2017	(ES ID10)*	Authorizing the board chair to handle the television and movie investments, each within a limit of NT\$30 million.	[Reservation] Request the finance department to assess the financial situation and the percentage of sales before further discussions.	
	(ES 8)	09 AUG 2017	(ES ID11)*	Commission agreement.	[Reservation] Re-open discussion after adding explanatory supplemental materials to commission agreements.	
	(ES 9) ⁷²	01 DEC 2017	(ES ID12) (ES ID13)	Audit committee planned capital loan of US\$4.5 million for second-tier subsidiary company M.	[Reservation]	After adjusted by board to USD\$2.5 million passed with over 2/3 agreement of entire board.

⁷² On March 27th, 2018, (ES 9) announced the termination of its over-the-counter trading in the Emerging Stock Board, and all independent directors had resigned prior to the termination of its ESB trading.