Article

# Minority Controlling Shareholders: An Analytical Framework and Its Application to Taiwan

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## I. INTRODUCTION

Controlling shareholder structures are prevalent in both Europe and East Asia,[1] and entail agency costs of expropriation by the controlling shareholder. This not only impacts the company through expropriation and mismanagement; such unfettered expropriation could lead to disinclination to invest and result in poorly developed capital markets.

Empirical studies have shown that Taiwan also suffers from controlling shareholder structures accompanied by a sharp separation of control and cash-flow rights (controlling minority structure) that characterize much of East Asia. As the legal tools and approaches of Taiwanese corporate law toward many issues display parallels with many East Asian countries, especially Korea and Japan, a case study of Taiwan and discussion of possible reforms could provide lessons for countries in the region.

This article will first elaborate on a proper understanding of the controlling shareholder structure and provide the analytical framework for regulation. Part III presents the current situation of Taiwan, a country characterized by controlling-minority shareholder structures and poor shareholder protection. It highlights the novel approach of Taiwanese law in seeking to deal with the issue by mandatory ownership concentration. Part IV seeks to discuss the avenues of regulation derived from our analytical framework. Part V concludes.

## II. THE CONTROLLING SHAREHOLDER STRUCTURE

### A. *The Costs and Benefits of the Controlling Shareholder Structure*

As mentioned, under controlling shareholder structures, the primary agency problem is the expropriation of the controlling shareholder. Theory suggests the incentives to expropriate decrease with cash flow rights and increase with the deviation between cash flow rights and control rights and has been confirmed in empirical research.[2] Conditional on maintaining control, the deviation between ownership and control has

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1. *See, e.g.*, Stijn Claessens, Simeon Djankov & Larry H. P. Lang, *The Separation of Ownership and Control in East Asian Corporations*, 58 J. FIN. ECON. 81 (2000); Mara Faccio & Larry H. P. Lang, *The Ultimate Ownership of Western European Corporations*, 65 J. FIN. ECON. 365 (2002); Rafael LaPorta, Florencio Lopez-De-Silanes & Andrei Shleifer, *Corporate Ownership Around the World*, 54 J. FIN. 471 (1999).

2. *See, e.g.*, Stijn Claessens, Simeon Djankov, Joseph P. H. Fan & Larry H. P. Lang, *Disentangling the Incentive and Entrenchment Effects of Large Shareholdings*, 57 J. FIN. 2741, 2755-2756 (2002); Rafael La Porta, Florencio Lopez-Di-Silanes, Andrei Shleifer & Robert Vishny, *Investor Protection and Corporate Valuation*, 57 J. FIN. 1147 (2002); Michael L. Lemmon & Karl V. Lins, *Ownership Structure, Corporate Governance and Firm Value: Evidence From the East Asian Financial Crisis*, 58 J. FIN. 1445, 1445-1468 (2003).

been dubbed the controlling minority structure.[3]

Controlling shareholder structures mostly take this form, and the means of enhancing control in excess of cash-flow rights include primarily the use of pyramidal structures, cross-holdings and board participation. This structure also poses the most severe challenge to the protection of minority shareholders.

First, the structure of control in the hands of those who hold a small ownership stake, in itself distorts the incentives of the controlling shareholders concerning economic decisions for the company notwithstanding the absence of tunneling or outright theft of company resources.[4] Second, the controlling shareholder would most likely control the board, management, and shareholder meetings by the number of votes, insulating it from traditional corporate governance mechanisms such as the market for corporate control. Thus, non-electoral mechanisms for shareholder protection would play a critical role.

However, it is important to note that despite the possible increased extraction of private benefits of control, controlling (minority) shareholder structures could potentially be beneficial to public shareholders and efficient depending on the tradeoff between the benefits of heightened monitoring of managers and the increased extraction of private benefits of control.[5] Additionally, the structure could have other beneficial aspects. For example, controlling shareholders could be well-suited to overcome weak enforcement of property rights in weak legal and institutional environments.[6] The reputation of controlling shareholder's reputation could also facilitate external financing. If the controlling shareholder also controls other firms, this could lead to better firm performance by pooling resources and information as well as by reducing transaction costs.[7]

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3 . Lucian Aye Bebchuk, Reinier Kraakman & George Triantis, *Stock Pyramids, Cross-Ownership and Dual Class Equity: The Mechanisms and Agency Costs of Separating Control from Cash-Flow Rights*, *in* CONCENTRATED CORPORATE OWNERSHIP, 445, 445 (Randall Morck ed., 2000), *available at* http://www.law.harvard.edu/faculty/bebchuk/pdfs/2000.Bebchuk-Kraakman-Triantis.Stock.Pyramids.pdf.

4 . *Id.* at 453-458; Randall Morck, Daniel Wolfenzon & Bernard Yeung, *Corporate Governance, Economic Entrenchment and Growth* 21-22 (Nat'l Bureau of Econ. Research, Working Paper No. 10692, 2004).

5. Ronald J. Gilson & Jeffrey N. Gordon, *Controlling Controlling Shareholders*, 152 U. PA. L. REV. 785, 785 (2003); Ronald J. Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, 119 HARV. L. REV. 1641, 1650-1652 (2006); Harold Demsetz & Kenneth Lehn, *The Structure of Corporate Ownership: Causes and Consequences*, 93 J. POL. ECON. 1155,1159 (1985).

6. *See* Stijn Claessens & Joseph P.H. Fan, *Corporate Governance in Asia: A Survey*, 3 INT'L. REV. FIN. 71, 75 (2002).

7. II Chong Nam, Yeongjae Kang & Joon-Kyung Kim, Comparative Corporate Governance Trends in Asia, Conference on Corporate Governance Trends in Asia: A Comparative Perspective 2 (1999), Organization for Economic Co-operation and Development [OECD], *available at* http://www.oecd.org/dataoecd/7/37/1931556.pdf.; Morck et al., *supra* note 4, at 17-18; Khanna,

## B. *Determinants of Ownership Structure*

Theory posits that the eventual prevalence of controlling shareholder structures is based upon the empirical evidence in extensive law and finance literature demonsting the positive association of controlling shareholder structures with poor legal minority shareholder protection.[8] This literature argues that ownership concentration is a consequence of poor legal protection of minority shareholders and the consequent high level of private benefits of control.[9] The reason is that poor protection of minority shareholders with its corresponding high private benefits of control encourages control and prevents the dissipation of control once acquired due to fear of exploitation and loss of private benefits of control.[10] Additionally, controlling shareholders who amass control over vast resources would in turn have the incentives and ability to lobby politicians more effectively to serve their interests, thus locking in the state of poor protection.[11]

Further research has demonstrated however, the existence of controlling shareholder structures in countries with good shareholder protection, most notably Sweden, and dramatically differing levels of private benefits of control among controlling shareholder structures.[12] Thus, the ultimate empirical finding seems to be that countries with poor minority shareholder protection and corresponding high levels of private benefit extraction are invariably characterized by prevalence of controlling shareholder structures. Good shareholder protection, on the other hand, gives rise to both controlling and diffused ownership structures, most notably Sweden and the United States respectively.

Thus under bad legal protection, benefits from expropriation are extremely large and lead inevitably to the assembling and maintenance of control. Conversely, under good legal protection of minority shareholders, there is no such overriding factor, which allows for a variety of ownership structures to arise.

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Tarun & Krishan Palepu, *Is Group Affiliation Profitable In Emerging Markets? An Analysis of Diversified Indian Business Groups*, 55 J. FIN. 867-891 (2000).

8. LaPorta et al., *supra* note 1, at 471.

9. *Id.* at 511; Rafael LaPorta, Florencio Lopez-De-Silanes, Andrei Shleifer & Robert Vishny., *Investor Protection and Corporate Governance*, 58 J. FIN. ECON. 3, 13-15 (2000); Alexander Dyck & Luigi Zingales, *Private Benefits of Control: An International Comparison*, 59 J. FIN. 537, 538 (2004).

10. *See* Bebchuk et al., *supra* note 3, at 473-474; LaPorta et al., *supra* note 1, at 473; Luigi Zingales, *Insider Ownership and the Decision to Go Public*, 62 REVIEW OF ECONOMIC STUDIES 425 (1995); Lucian Arye Bebchuk, *A Rent Protection Theory of Corporate Ownership and Control* (Nat'l Bureau of Econ. Research, Working Paper No. 7203,1999), *available at* SSRN: http://ssrn.com/abstract=168990.

11. Morck et al., *supra* note 4, at 37-47.

12. Dyck & Zingales, *supra* note 9; Tatiana Nenova, *The Value of Corporate Voting Rights and Control: A Cross-Country Analysis*, 68 J. FIN. ECON. 325 (2003).

We can infer from the above that conditional on good shareholder protection, controlling shareholder structures are not undesirable or economically inefficient in themselves.[13] Correspondingly, empirical research of U.S. firms does not indicate a link between ownership structure (diffused or concentrated) and firm performance.[14] The dichotomy is between good and bad shareholder protection, i.e., low and high levels of expropriation.

C. *Analytical Framework for Regulation*

The above analysis leaves us with the conclusion that while controlling shareholder structures could arise under both countries that provide good protection and bad protection for minority shareholders, there is a crucial distinction: in the former, the ownership structure the most economically efficient (i.e., brings the most value to the company) would to an extent prevail; in the latter, controlling shareholder structures would always prevail, as high private benefits of control would prevent dissipation of control regardless of the impact on the company and the economy.

It thus follows that only when the level of private benefits of control is lowered can market forces operate to choose the most value-producing ownership structure. Moreover, the deviation of control and cash-flow rights affects the incentive to extract private benefits of control. The prominent role of such deviation in distorting and preventing the efficient choice of ownership structures has been documented in recent studies.[15]

The most straightforward and uncontroversial approach would be to lower the private benefits of control that arise from expropriation of minority shareholders and the company through heightened monitoring and enforcement. Not only would this encourage the competition of ownership structures, it would also protect company value and minority shareholders. On the other hand, private benefits of control that arise from other sources, such as political, social standing and synergies with existing businesses should not be regulated. This is primarily because their amount is not likely to be large and will often not prevail against substantial efficiency concerns, making their regulation unnecessary. Moreover, their value is also highly subjective and abstract, making them nearly impossible to coherently regulate.

Another approach is to regulate the ability to leverage cash-flow

13. Gilson & Gordon, *supra* note 5, at 1652-1660.
14. Demsetz & Lehn, *supra* note 5, at 1179; Morck et al., *supra* note 4, at 15.
15. *See* Bebchuk et al., *supra* note 3; Ok-Rial Song, *The Legacy of Controlling Minority Structure: A Kaleidoscope of Corporate Governance Reform in Korean Chaebol*, 34 LAW & POL'Y INT'L BUS. 183, 233-236 (2002).

rights into incommensurate control. Nevertheless, this entails more complications because it actively decreases the desirability of a controlling (minority) shareholder structure and thus implies the judgment that generally its benefits are insufficient to offset its drawbacks. This gives us pause because as noted, while controlling (minority) structures inherently pose serious incentive issues, they can also have economic benefits, especially when corporate governance mechanisms are adequate.

Despite these concerns, we propose that the ability to leverage cash-flow rights into incommensurate control should be limited. We speculate that in most countries beyond the primary development stage of economic development, the benefits of controlling minority structures are outweighed by its drawbacks. Nevertheless, before more conclusive findings, we think it appropriate to first focus on aspects of the separation of cash-flow rights and control rights that are more problematic. For the time being, we do not comment on the appropriateness of measures that seek to specifically discourage separation of ownership and control, such as prohibiting or imposing additional taxes on pyramids.[16]

## III. THE CASE OF TAIWAN

### A. *Controlling Minority Structure and Poor Protection of Minority Shareholders*

Extensive financial research has indicated that the ownership structures of Taiwanese firms are characterized by the widespread presence of controlling shareholders and separation of ownership and control.[17] Empirical findings indicate that 70% of 251 Taiwanese listed companies in 1998 had controlling shareholders and 58.2% of the Taiwanese listed companies were controlled by families.[18] Deviation of cash-flow rights and control rights is common and especially severe under family control.[19] The means of enhancing control are primarily pyramidal structures, cross-holdings and participation in management or board.[20] The latter two mechanisms are associated with discounts on corporate

16. To take another example, we believe that the mandatory bid rule that forces the controlling shareholder to offer to purchase the shares of minority shareholders implies a judgment for the undesirability of a controlling minority structures.

17. *See, e.g.*, Claessens et al., *supra* note 1; Claessens et al., *supra* note 2; Yin-Hua Yeh, Tsun-Siou Lee & Tracie Woidtke, *Family Control and Corporate Governance: Evidence from Taiwan,* 2 INT'L REV. FIN. 21 (2001).

18. Yin-Hua Yeh, *Do Controlling Shareholders Enhance Corporate Value?*, 13 CORPORATE GOVERNANCE: AN INTERNATIONAL REVIEW 313,315 (2005), *available at* EBSCO Host, *AN 16370749.*

19. Yin-Hua Yeh, *Corporate Ownership and Control: New Evidence From Taiwan*, 1 CORPORATE OWNERSHIP & CONTROL 87, 92-96 (2003), *available at* EBSCO Host, *AN 12614790.*

20. Claessens et al., *supra* note 1, at 92; *Id.* at 93, 97; Yeh, *supra* note 18, at 317.

value.[21]

From the above, we can surmise Taiwanese firms are exemplary of the controlling minority structure. The question that subsequently arises is whether this prevalence is largely formed and chosen by market forces for economic efficiency or by poor protection of minority shareholders with its attendant high private benefits of control?

As noted earlier, empirical studies and theory suggest that a high prevalence of the controlling minority structure compared to widely-held firms often goes hand in hand with bad shareholder protection. Another piece of intriguing evidence is that Taiwanese family-controlled firms that have low levels of excess control have lower relative performance than both family-controlled firms with high levels of excess control and widely held firms.[22] Family firms also exhibit economically significant incentive effects of cash-flow ownership and entrenchment effects of deviation of voting from cash flow rights as indicated through firm valuation.[23] This is consistent with the fact that controlling shareholders can and do significantly expropriate from minority shareholders when it serves their own interests. This signals clearly the existence of poor minority shareholder protection.[24]

From the reasons set out above and close up observations of the author, the view of this paper is that the predominance of controlling minority structures in Taiwan is predominantly the result of bad shareholder protection. We do not rule out the probable considerations of tax concerns and evasion of regulatory oversights but believe these are secondary in importance.[25]

### B. *Current Taiwanese Approach–Mandatory Ownership Concentration*

The stance of Taiwan's legal system on ownership structure and the separation of ownership and control is at first glance somewhat ambiguous.[26] However, Article 26 of the Securities and Exchange Act is clear in mandating a minimum degree of integration between ownership and control, and provides that directors and supervisors of publicly issued companies must collectively hold a fixed percentage of the company's shares.

The assumption of the Article is that a fixed minimum degree of

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21. Yeh, *supra* note 18, at 322.
22. Yeh et al., *supra* note 17, at 37, 46.
23. Yeh, *supra* note 18, at 318-322; Yeh, *supra* note 19, at 99.
24. La Porta et al., *supra* note 2, at 1163.
25. Under the Taiwanese Securities and Exchange Law, shareholders with more than ten percent of all issued shares are subject to regulatory scrutiny, *see* Article 22, 25, 157, 157-1 of the Taiwanese Company Law.
26. *See* Article 192, 216 v.s. 197, 227 of the Company Law.

ownership concentration in the hands of those in control would be beneficial to all companies. The fixed percentage varies with the amount of capitalization,[27] but otherwise seems to lack clear basis. This mandatory minimum level of ownership concentration is novel in that it intervenes directly in the ownership structure of companies and warrants the below considerations.

First, we can examine the empirical evidence on the relationship between shareholdings of those in control and firm performance. A study of Taiwanese firms finds that firm performance increases with family ownership when it is below a firm's critical control level, but then decreases with family ownership when it crosses the critical control level until excess control becomes high.[28] This suggests that once control is established, excess holdings are necessary to converge the interests of the controller and the firm. Accordingly, it seems that holdings just below insulation or in high excess of control would be most effective in limiting expropriation of the controller. It is questionable, however, whether the Article contributes to this aim. As the critical control level of each individual firm varies,[29] where the mandatory holdings set each firm on the continuum is uncertain.

The second angle is from a broader efficiency perspective and concerns the very fundamental issue of the choice between ownership structures. Article 26 explicitly endorses and requires a degree of ownership concentration in the hands of the controller. This sits uneasily with the point made earlier that whether diffused ownership is preferable to the controlling shareholder structure or vice versa, depends primarily on the tradeoff between heightened monitoring and extraction of private benefits of control, which varies with the circumstances of each company and industry. The point is that each ownership structure has its associated costs and benefits, and individual companies could efficiently make different choices. This Article is in effect precluding the option of diffusion beyond its fixed percentage of controller holdings. A specific company, for example, could prefer more diffused ownership when the market for corporate control, product market competition, alignment of incentives…etc., are sufficient to counteract the separation of ownership and control, making increased holdings of those in control and unnecessary or inefficient.

From the above we can conclude that at best, Article 26 is ineffective, and at worst, inefficient and detracts from firm performance. It is also

27. Rules and Review Procedures for Director and Supervisor Share Ownership Ratios at Public Companies, Article 2.

28. *See* Yeh et al., *supra* note 17, at 39.

29. *See* Yeh et al., *supra* note 17, at 29 (stating that ownership concentration affects the critical level of control and changes over time).

problematic to limit the property rights of citizens without adequate regulatory basis.

As seen, the regulatory approach in mandating a minimum level ownership concentration in the hands of those in control seems to be misguided. However, when taking the poor minority shareholder protection and prevalence of controlling shareholder structures as givens, decreasing the deviation of control from ownership will directly lower the incentive to expropriate, and could be useful before fundamental reform.

Of course, this could harm companies that have effective corporate governance mechanisms and do not need to incur the additional costs of ownership concentration or a controlling shareholder structure. Thus, it seems the regulatory approach of Article 26 while probably useful in the short run, is also inherently blunt and imprecise. Ultimately, choice of ownership structure should be left to the individual company.

On a side note, Article 26 also gives rise to problems with enforcement.[30] The first issue is that when the total holdings of directors or supervisors fall below the mandated level, all directors or all supervisors, regardless of whether their actions contributed to the decrease in holdings, are under the obligation to make up for the gap. This unreasonable outcome is exacerbated in the event that the amount sold by a director exceeds half of his holdings at the time of his election, thus triggering his automatic discharge under Article 197 of the Company Law. This would effectively exempt him from the above obligation and possible ensuing fines.

Another problem involves the election of representatives of juridical shareholders as directors or supervisors. As will be mentioned in detail later, Article 27 of the Company Law permits juridical shareholders to appoint natural person representatives to be elected in their own capacity. The Rules and Review Procedures for Director and Supervisor Share Ownership Ratios at Public Companies affirmed by the Highest Administrative Court, provide that in this situation, the subject of fines is the electee. However, this is manifestly unfair as the juridical shareholder remains free to replace its representatives, and consequently retains control over the exercise of the directors' or supervisors' duties. Therefore, it is the alteration of the holdings of the juridical shareholder that is relevant to the regulatory goal. Neither is the representative responsible for the alteration in holdings. Consequently, the imposition of fines on the electee instead of the juridical shareholder is problematic and unfair.

30. *See* In Jaw Lai, *Is Risk to Investors Lower with Higher Shareholdings of Directors and Supervisors?*, 1(1) REVIEW OF FINANCIAL RISK MANAGEMENT 87, 95-101 (2005).

## IV. CURRENT REGULATION AND PROSPECTIVE REFORM IN TAIWAN

### A. *Overview of the Corporate Legal System*

Under Taiwanese Company Law, the company limited by shares is the standard model for large companies with a large number of shareholders. Companies limited by shares are also the only ones that may publicly issue securities. Therefore, publicly issued companies limited by shares most intimately concern large amounts of capital and the interests of the investing public. Correspondingly the bulk of the Company Law and securities laws in are devoted to its regulation. The discussion of this article also focuses on this subset of corporations.

The organizational structure of a company limited by shares consists of three organs: the shareholders meeting, the board of directors and the supervisor. The current directors/supervisors system can be categorized as a type of binary system, where supervisors serve to monitor the performance of the board of directors externally on an ex post basis.

Concerning the delineation between the shareholders meeting and the board of directors, the latter is charged with the carrying out of business operations, with management as an auxiliary, when not explicitly otherwise provided for in the Company Law or company charter.[31] The law provides that certain important issues must be passed by shareholder meeting resolution, but in practice the shareholder meeting has failed to play an active role. This is in part due to collective action problems and low, inactive institutional ownership. Another reason was that prior to the 2005 amendment, shareholders could not raise proposals for the shareholder meeting and were thus restricted to voting yes or no to proposals raised by the board of directors.

The dominance of the board is further reinforced by the weak supervisor system. Supervisors are elected by the same method as directors, and thus must have the support of the large shareholders who also elect the directors. This coupled with the paucity of eligibility qualifications and clear authority, have unsurprisingly caused the failure of the supervisor as a monitoring mechanism.

At the same time, the board is also extremely vulnerable to the influence of large shareholders. This is most likely caused by large shareholders entrenching themselves through deviation of voting rights and cash-flow rights, collective action problems, and that prior to the 2005 amendment; only the board could nominate candidates for director

31. The 2005 addition of shareholder proposal rights raises the issue of the extent of the proposal right, specifically the precise delineation of the power of the board of directors and the shareholder meeting.

or supervisor positions. This enabled a self-perpetuating cycle of incumbents and their supporters monopolizing the positions indefinitely. Additionally, Article 27 of the Company Law permits juridical shareholders to assume or control a plural number of director and supervisor seats.

B. *Review of Current Regulatory Measures and Future Prospects*

Against this general introduction of the Taiwanese corporate system, we now seek to highlight possible avenues for reform.

Concerning the magnification of control in excess of cash-flow rights, we will discuss current rules of ownership structure disclosure and cross-holdings. The former concerns the opacity of the ownership structure and the absence of market scrutiny and thus should be given priority. The latter is not only a relatively opaque measure to leverage equity into control compared to pyramidal structures, but also entail capital inflation and capital maintenance concerns.

Concerning the expropriation of minority shareholders, we will discuss the incorporation of the concept of control, related-party transactions and the independent director system.

Lastly, we will examine Article 27, a feature of Taiwanese law that permits juridical shareholders or their authorized representatives to be elected directors or supervisors. This Article gives rise to varied problems of corporate governance and touches upon both of the two dimensions highlighted above.

1. *Disclosure Rules and the Concept of Beneficial Ownership*

As noted above, the ownership structure affects agency costs and should be of interest to investors, and thus the capital market can potentially play a significant monitoring role. Market pressure would raise the capital costs of controlling shareholder structures without adequate internal control mechanisms, and this would correspondingly factor in the equation of benefits and drawbacks of maintaining a controlling position.

An important precondition for the capital market to monitor the ownership structure of a company is the disclosure of the shareholdings of those in control and ultimate shareholders. Under Article 25 of the Securities and Exchange Law, directors, supervisors, officers and large shareholders in possession of more than ten percent of all shares of a publicly issued company must report and disclose their holdings. They must also report any change of their shares. The calculation of shares held by shareholders includes those shares held under the names of their spouses, minor children, and those held under the name of other parties.[32] In the event that the juridical shareholder or its authorized representatives are directors or supervisors under Article 27, shares of them both are calculated.

To further facilitate the identification of the ultimate shareholders, publicly issuing companies must list their ten largest shareholders and also shareholders with over five percent of total shares in the prospectus.[33] Furthermore, in the case that directors or supervisors are juridical shareholders or their representatives, the juridical shareholder in question must disclose its ownership structure.[34] The disclosure to the public stops at the first level, regardless of whether the primary shareholders are also juridical persons. In practice, companies also voluntarily disclose the ownership structure of all juridical shareholders.

There are two problematic issues in the above framework. First, the level of disclosure of ultimate controlling shareholders is incomplete and may halt at the level of a juridical person, which could impart little information on the ultimate controller. Second, the criteria for calculating shares possessed are too inflexible and narrow. Taiwan has not adopted the comprehensive and broad definition of the concept of beneficial ownership under American law. To take an example, the shares owned by the holding company would not be attributed to its controlling shareholder in calculating the possession of the shares by the controlling shareholder for the purposes of disclosure. This case can not be covered by the phrase "nominee".

### 2. *Cross-holdings*

#### a. *Overview*

Generally speaking, cross-holdings are structures in which firms own blocks of each others' stocks. In discussing cross-holdings and their effect on control however, relevant financial literature has been narrower in scope, in which cross-holdings are defined as when the firm has both an ultimate owner and owns shares in its ultimate owner or in a firm that belongs to her chain of control.[35] This kind of cross-holdings easily allows controlling shareholders to magnify control in relation to equity investment, which can result in large deviations between ownership and

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32. Securities and Exchange Law Article 22-2III; Securities and Exchange Law Enforcement Rules Article 2.
33. Criteria Governing Information to be Published in Public Offering and Issuance Prospectuses, Article 11.
34. *Id.* at Article 10(1) iv.
35. LaPorta et al., *supra* note 1; Yeh, *supra* note 19, at 92-93.

control.[36] Empirical studies indicate that controlling shareholders in Taiwan commonly utilize this cross-holdings mechanism to enhance their company control rights.[37]

However, cross-holdings falling outside this narrow scope can also enhance control to a certain extent, as insiders in otherwise unrelated corporations tend to vote for the incumbents. Therefore, both the narrower and more general forms of cross-holdings are important to constructing and maintaining a controlling minority ownership structure.

Cross-holdings have various recognized beneficial and detrimental effects. However, its negative effects are exacerbated in the case of subordinate companies holding the shares of the controlling company or other companies along the chain of control. Conversely, the benefits of strategic alliances and risk dispersal seem muted in this situation. Thus the balance of benefits and drawbacks is different in the two situations, and should be regulated separately.

b. *Legislative Development*

Prior to the 2001 enactment of Article 167 III and IV, only Article 369-10 of the Company Law dealt with inter-corporate cross-holdings. It regulates only cases of mutual investment companies, i.e. where a company and another company have invested in each other to the extent that one third or more of the total number of the voting shares or the total amount of the capital stock of each companies are held or contributed by the other. The requirements are twofold: notification to the target company and disclosure of holdings once they reach the one-third threshold, and the limitation of voting power to one third of all votes when criteria for mutual investment companies are met. This alleviates the entrenchment of control.

However as noted, cross-holdings between companies along the chain of control, should be subject to enhanced regulatory scrutiny. The case is even more strengthened by the fact that under Article 167I, subject to limited exceptions, a company is prohibited from buying back its own shares. To be consistent, a company should at the same time to be prohibited from engaging in such conduct through the conduit of its subordinate companies. Yet only Article 369-10 regulated cross-holdings and cross-holdings between companies along the chain of control would fall outside its scope when the subordinate company does not hold that many shares of its controlling company.

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36. *See, e.g.,* Bebchuck et al., *supra* note 3, at 457.

37. *See* Yeh, *supra* note 19, at 93 (finding that 40.1% of companies in the sample utilized the cross-holding mechanism).

The deficiency of the above framework prompted the 2001 enactment of Article 167III and IV, which explicitly prohibit the subordinate company from purchasing or accepting as a security in pledge, shares of the controlling company and shares of companies along the chain of control. This Article was not retroactive and previous purchases by the subordinate company were still valid. This was a cause for concern because many subordinate companies had already completed purchases of the controlling company or companies along the chain of control before the amendment. This was further dealt with by the 2005 amendment of Article 179, which stripped such shares of their voting rights. Article 167III and Article 179 override Article 369-10 in the event of overlap.

Thus Taiwanese law now rightly provides for separate frameworks for regulating cross-holdings along a chain of control and otherwise. An important remaining loophole is that the concept of "control" under Article 167 and Article 179 is still determined by the formalistic criteria of majority of the total number of outstanding voting shares or of the total amount of the capital stock which allows entrenchment through companies substantively subordinate companies. This differs from the Chapter of Affiliated Enterprise which adopts a substantive concept of control. Nevertheless, these amendments have raised the difficulty of magnifying control through cross-holdings and will rein in the most flagrant abuses. Another similar concern is whether the one-third threshold for mutual investment companies is set too high as one-third of shares are normally sufficient to exercise control.

3. *Incorporating the Concept of Control*

a. *Present Framework*

The concept of substantive control entailing accountability is relatively unfamiliar under Taiwanese law. Article 8 of the Company Law focuses solely on the official positions in defining the responsible persons of a company. Article 27 in providing that representatives of juridical shareholders elected as directors or supervisors in their personal capacity could be replaced on the whim of the juridical shareholder, further contributed to the disconnect between control and accountability.

Prior to the 1997 enactment of the Chapter on Affiliated Enterprises, under Article 8, official position within the company was necessary for the establishment of legal liability under Taiwanese corporate law.[38] While controlling shareholders could theoretically be civilly liable under tort law for injury done intentionally in a manner against the rules of

38. Taiwanese Company Law Article 8, 23.

morals, the abstract concepts of tort law were too indefinite and difficult to prove in practice.

A reason for this neglect was perhaps because Article 178 of the Company Law already prohibits the voting of interested shareholders that may impair the company's interests. This could in theory pose a potential barrier to abuse of control by controlling shareholders, but its application in practice has proved otherwise. The first difficulty is that any shareholder resolution inherently affects the company and its shareholders, and thus the concept of "interested" shareholder needs further clarification. To date, the standard provided has been whether the shareholder in question would gain legal rights or incur legal obligations from the resolution,[39] but this standard is still somewhat abstract and inadequate to prevent abuse by controlling shareholders. Second, this prohibition would seem to run counter to the normal economic goals of holding shares. Third and most relevantly, this Article does not apply to the election of directors and supervisors. Thus this Article does not prevent the controlling shareholder from exerting control through the designation of directors and supervisors and thus cannot avoid the need for accountability for controlling shareholders. Article 369-4[40] under the Chapter of Affiliated Enterprises is the only article under Taiwanese law that deals specifically with the responsibility of controlling shareholders outside official capacity. The definition of control in this Chapter is quite comprehensive and covers the concept of substantive control.[41] A few observations should be highlighted:

The scope of this Article is limited to the case where both the controller and subordinate are companies. While the responsible person of the controlling company may be jointly liable with the controlling company,[42] this is still extremely easy to evade as the ultimate controller would only have to avoid this position in the controlling company. The original draft sought to regulate to some extent the control of non-corporate entities (e.g. head coordinating office) but this was deleted from the final version.

The second significant feature of Article 369-4 is that rights toward the controlling company belong to the subordinate company, not the minority shareholders or creditors; minority shareholders or creditors may only bring derivative suits on behalf of the subordinate company.

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39. DaliYuan Tong Zi No. 1766.

40. Article 369-4 of the Company Law: "In case a controlling company has caused its subordinate company to conduct any business which is contrary to normal business practice or not profitable, but fails to pay an appropriate compensation upon the end of the fiscal year involved, and thus causing the subordinate company to suffer damages, the controlling company shall be liable for such damages."

41. Taiwanese Company Law Article 369-2, 369-3.

42. Taiwanese Company Law Article 369-4 II.

Third, this Article is significant in that it attempts for the first time to delimit the duty of the controlling shareholder. As seen, the controlling company does owe a duty, albeit exclusively to the subordinate company.

The determination of the detrimental nature of business or transaction is made by reference to the standard of an independent company.[43] This makes clear that Taiwanese law holds inter-group arrangements to the same standard of business between unrelated companies. The only leeway granted to controlled/subordinate companies is that appropriate compensation at year end may preclude liability, and represents an acknowledgment, by Taiwanese corporate law of the existence and importance of affiliated enterprises as an economic entity, a departure from the traditional viewpoint of individual companies as the regulatory unit. The content of this duty merits the discussion set out below.

First, as noted above, actions that are carried out for the interest of the corporate group would still fall under the term "contrary to normal business practice" and the only leeway allowed is that appropriate compensation can preclude liability. This regime is extremely hard to implement in practice as demonstrated through the German experience.[44] Difficulties such as determining and quantifying detrimental transactions aside, an important difficulty concerns the artificial projection of autonomous interests of the subordinate company in the context of comprehensive corporate group strategy.[45] This gives rise to the fundamental issue of the content of the duty of controlling shareholders and permeates the entire corporate governance framework. It is worth rethinking under the integrated operation of a corporate group, whether a member company may appropriately pursue not the company's individual benefit, but the benefit of the corporate group as a whole.[46]

Second, the purpose of granting the reprieve of year-end appropriate compensation was to accommodate intra-group arrangements economically beneficial to the corporate group as a whole. Yet this Article on its face permits the utilization of this mechanism for any arrangements regardless of their purpose. It remains a question under Taiwanese law

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43. Kai Lin Faung, *Legal Issues on the Regulation of the Chapter of Affiliated Enterprises of Abuse of Control Part I*, 63 CHENGCHI LAW REVIEW 271, 303 (2000).

44. Gerard Hertig & Hideki Kanda, *Related Party Transactions*, *in* THE ANATOMY OF CORPORATE LAW, A COMPARATIVE AND FUNCTIONAL APPROACH 102, 124-126 (Reinier H. Kraakman et al. eds., 2004).

45. JOSE ENGRACIA ANTUNES, LIABILITY OF CORPORATE GROUPS, AUTONOMY AND CONTROL IN PARENT-SUBSIDIARY RELATIONSHIPS IN US, GERMAN AND EU LAW: AN INTERNATIONAL AND COMPARATIVE PERSPECTIVE 350-358 (1994).

46. *See* Hertig & Kanda, *supra* note 44, at 125 (discussing the well-know French *Rozenblum* case which held that a French corporate parent may legitimately divert value from one of its subsidiaries if three conditions are met: the structure of the group is stable, the parent is implementing a coherent group policy, and there is an equitable intra-group distribution of costs and revenues overall.)

whether a transaction improperly arranged for the personal benefit of the controller of the controlling company is covered by this Article and could avail itself of the reprieve of year-end appropriate compensation. If so, it would run counter to the objective of facilitating economically beneficial intra-corporate groups arrangements and accord too much discretion to controlling shareholders.[47] Moreover, in that case, the Article could paradoxically lower the duty of the controlling company under tort law.[48] The Article adds failing to pay appropriate compensation at the year end as a prerequisite of liability, which is not required under tort law.

It seems that this Article should be correctly interpreted as only applying to arrangements carried out for the economic benefit of the corporate group as a whole. However this conclusion would mean that the sole Article dealing with the liability of controlling shareholder does not impose any further responsibility, but only seeks to accommodate the economic reality of corporate groups.[49] Its ultimate result is only to clarify the ambiguity concerning whether actions carried out for the benefit of the corporate group as a whole could be legitimate. It does not regulate the egregious violations such as the tunneling of resources for the controlling shareholder's personal benefit that is currently the more pressing issue of corporate governance.

Moreover, this Article is difficult to enforce as minority shareholders or creditors still bear the burden of proving general and abstract terms. Controlled/subordinate companies' business may be highly interconnected and may carry out innumerable transactions amongst themselves, and to pinpoint the disadvantage of specific transactions is extremely difficult. Coupled with the high enforcement costs and litigation risks of the derivative suit, the enforcement mechanism under Article 369-4 is extremely weak.

Third, the wording of Article 369-4 is ambiguous on the whether the company would be liable for negligence toward the subordinate company.[50] As both controlling companies and directors exert control and should be held accountable, it is arguable that their duty toward the subordinate company should be the same as directors and include, inter alia, the duty of care.

b. *Future Reform*

When seeking to regulate the responsibility of controlling

47. Faung, *supra* note 43, at 295.
48. *Id.*
49. *Id.*
50. Ming Jye Huang, *Reflections upon the Shareholder Limited Liability Regime*, *in* LEGAL FRAMEWORK FOR PUBLICLY ISSUING COMPANIES AND CORPORATE GOVERNANCE 69, 111-118.

shareholders, the guiding principle should be the overlap of control and accountability. Many countries such as the United Kingdom and Korea have sought to resolve the issue of control and accountability by introducing the concept of "shadow director" or "de facto director". The extent of the application of the concept of substantive control can vary. For example, under the Korean version, the de factor director does not assume the duty of directors for the purposes of applying the provisions on self-dealing.[51]

Article 369-4 takes another approach by providing a separate regulation of conflicted shareholder transactions. However, most aspects of a controlling shareholder's duty remain governed solely by tort law. A more simple and comprehensive approach would be perhaps to adopt the concept of shadow director and provide that those who directly or indirectly exert control over a company's personnel, financial or operational matters assume the same duties as the company's directors. This would encompass the ultimate controller regardless of its form and automatically extend the duty of directors to the company or third parties.

Nevertheless, the rights accrue to the subordinate company under this approach. Therefore, the problems of high enforcement costs and derivate suits remain. A possible resolution would be to confer direct rights on creditors and minority shareholders toward the controlling shareholder and an inversion of the burden of proof to the defendant. Another lingering issue is the precise content of the controller's or director's fiduciary duty in the context of the pursuit of benefit to the corporate group as a whole.

#### 4. *Related-party Transactions*

Controlling shareholders expropriate resources through their control of company organs, primarily the board. Thus, besides regulating the controlling shareholder directly, this expropriation could also be limited through procedural protections and liability imposed on directors of the controlled company.

##### a. *Present Legal Framework*

As discussed earlier, potential responsibility of the controlling shareholder regardless of his lack of official position is restricted to Article 369-4. Other law on related-party transactions all hinge on the

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51. Kon Sik Kim & Seung-Wook Jeong, *Controlling the Controlling Shareholders: Conduct, Structure, and Market*, *in* RECENT TRANSFORMATIONS IN KOREAN LAW AND SOCIETY 153, 164 (Dae Kyu Yoon ed., 2000).

official position of the actor.

The departure point of the Company Law is the generally applicable rule Article 206, which applying mutatis mutandis the provisions of Article 178 on interested shareholders, prohibits interested directors from voting or voting on behalf of other directors on the matter in question if the company's interests may be impaired. This provision seems on its face quite restrictive as the concept of "interested" seems broad, and the transaction in theory must be approved by disinterested directors. This in practice has proved a very weak constraint, but the framers of the Company Law presumably considered this mechanism adequate in most conflict of interest situations. Consequently, they only provided for further protection under Article 223 in very limited circumstances.

Article 223 of the Company Law provides that in the case that a director of a company conducts any legal act with the company on his own account or for any other person, the supervisor (not the directors as is usual) should act as the representative of the company. To further combat the prevalence of related-party transactions, Article 171 of the Securities and Exchange Act was amended in 2004. It imposes criminal liability on directors, supervisors, managers and employees of publicly issued companies who directly or indirectly cause the company to undertake disadvantageous and abnormal transactions, to the significant detriment to the company, and directors, supervisors, and managers who, with intent to procure a benefit for himself/herself or for a third person, acts contrary to his/her duties or misappropriates company assets.

#### b. *Analysis of Present Legal Framework*

Article 223 is the only article that deals specifically with self-dealing by directors, but its ambit is limited to when a director is the other party to the transaction or its representative. Thus, it seems that the regulation of most related-party transactions would depend on how the board reaches its decisions. Article 206 regulates this matter but has proved ineffective. The reasons include the lack of rules mandating disclosure of interest and the time and ability constraints of most directors. Also, most directors would be reluctant to give offense to their colleagues in absence of flagrant conflict of interest. Another critical reason is that the interpretation of the concept of "interested" is unclear. If the above-mentioned interpretation of Article 178 is followed, it seems that the ambit of Article 206 would be too limited. For example, in a case where the director is elected in the capacity as a representative of a juridical shareholder and the transaction involves the ultimate controlling shareholder of the juridical person shareholder, no legal rights are gained nor legal obligations incurred for the director. Moreover, despite the fact such a juridical shareholder of a publicly issued company would normally disclose its ownership structure; the level of disclosure can stop at first layer of holdings. This contributes to the opaqueness and difficulty of determining conflict of interest.

Compliance with Article 223 and 206 exempts transactions from judicial review of their validity under the context of conflict of interest. The only recourse remaining is a damages remedy which is limited to the general provisions of fiduciary duty and civil law torts. The vague terms are ill-suited to the complexities of related-party transactions and the situation is further exacerbated by the placing of the burden of proof on the plaintiff.

Article 171 of the Securities and Exchange Act seeks to address the issue through the imposition of criminal liabilities, but as provisions of criminal liability are strictly interpreted to ensure foreseeability, its indefinite terms are hard to establish in practice.[52] Moreover, related-party transactions concern monetary damages and the imposition of civil liability should arguably be the preferable way to compensate the company. In reality however, related-party transactions are mostly resolved through criminal procedure, due to the aforesaid weakness of the civil liability framework.

The most fundamental and effective way to regulate related-party transactions is to establish effective procedural mechanisms that enable disclosure and independent and impartial parties to review the transaction. As noted above, it is doubtful that supervisors under Article 223 and "disinterested" directors under Article 206 are able to discharge this duty. The most pressing issue currently is perhaps to establish a truly impartial organ within the corporate governance structure, which could take the form of either independent directors or improved supervisors.

Moreover, regardless of whether the procedural safeguards are followed, it should remain possible for the company to claim damages from the directors in question and prove that the transaction was manifestly unfair to the corporation to enable the courts to revoke the transaction. Concerning transactions that have not followed the prescribed procedures, it would probably be best to maintain the original approach of making the approval mechanism mandatory. Absent procedural compliance, the legal effect of the transaction would depend on the company's (independent directors or supervisor) ratification. Another worthy reform would be to place the burden of proof on the alleged interested directors engaging in related-party transaction who have better access to relevant information and evidence. This would encourage the company or shareholders on its behalf to bring suit.

52. Wallace Wen Yeu Wang, *The Delineation of Civil, Commercial and Criminal Law: From the Perspective of Illegal Corporate Actions*, 103 THE TAIWAN L. REV. 49, 52 (2003).

### 5. *Independent Directors*

Findings have indicated that boards of Taiwanese corporations are populated with insiders. Studies show that the largest shareholder in listed companies provide less than 20% of the capital but hold more than half of board seats.[53] Moreover, board affiliation with controlling shareholders is higher when controlling shareholder voting rights substantially exceed cash flow rights of the firms. As controlling owners' cash-flow rights increases, however, the likelihood of family members on boards decreases, suggesting that the insider dominant board structure is attributable to agency problems from separation between control and cash flow rights.[54] Studies have also shown that in the presence of family control, a positive valuation effect exists when controlling families hold less than 50% of board seats.[55]

The above suggest that boards are used to establish the control of a controlling minority shareholder, and that board composition does play an important role in corporate governance in Taiwan.

#### a. *Current Legal Framework*

The concurrent regulation of independent directors and independent supervisors applies at the stage of application for public issuance.[56] However, these rules only apply to companies applying initially for listing or trading on the over-the-counter market and take the form of contract entered into by the Stock Exchange or the GreTai (in the case of over-the counter market) with the issuing company. As a result, the Stock Exchange and the GreTai have had trouble with companies that do not reelect independent directors after successful public issuances. Besides this, the only other avenue open to the regulatory authorities is administrative guidance.

The independence[57] of and the minimum seats reserved for independent directors (two) are still inadequate. Furthermore, as the sanction affect constitutional rights, their dependence on rules issued by the securities authorities on their own initiative give rise to concerns of

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53. YIN HUA YEH, THE DISAPPEARING STOCK KING 252 (2005).

54. *See* Claessens & Fan, *supra* note 6, at 82; Yin Hua Yeh & Tracie Woidtke, *Commitment or Entrenchment?: Controlling Shareholders and Board Composition*, 29 JOURNAL OF BANKING & FINANCE 1858 (2005); Yeh, *supra* note 19, at 87, 99.

55. Yeh et al., *supra* note 17, at 21, 40-42.

56. *See* Taiwan Stock Exchange Corporation Criteria for Review of Securities Listings, ROC Over-the-Counter Securities Exchange Criteria Governing Review of Securities Traded on Over-the-Counter Markets, and their ancillary rules.

57. Regulations include professional skills, the absence of concurrently serving as independent directors or supervisors in over five companies and the absence of special relations with the company in which they serve.

constitutionality. Another important issue is the fact that the regulations stipulated the simultaneous existence of independent supervisors and independent directors. Notwithstanding the fact that the concept of "supervisor" connotes independence in itself, and thus the concept of "independent supervisors" is somewhat odd, this layering of monitoring mechanisms could negatively impact delineation of powers and accountability. This is further exacerbated by the fact that independent directors have no clear authority or powers by law.

b. *Reform*

The amendment articles of the Securities Exchange Law set to be promulgated in January 2007 provides companies with three possible frameworks: The first is a company that does not elect independent directors and relies solely on the supervisor system. The second is a company that elects independent directors but does not establish an auditing committee. In that case, independent directors and supervisors would exist simultaneously, but the former's function would be limited to reviewing specific resolutions of the board of directors and a record of its opposition. The third scenario is where a company both elects independent directors and establishes an auditing committee in the place of the supervisor.

The auditing committee must be composed by all independent directors, and laws concerning supervisors are to be applied mutatis mutandis. Except for resolutions concerning financial reports, the board can still pass the same resolution by special majority but the opposition of the auditing committee must be recorded. When a company opts for the binary structure of the board of directors and supervisors, however, the mechanism is that opposition or reservations of independent directors to board resolutions concerning certain important issues must be recorded.

The amendments are a step forward but seem inadequate to provide for effective monitoring. First, the amendment leaves open the possibility of structures with only supervisors or both independent directors and supervisors. The former is problematic as the supervisor system in Taiwan is still extremely weak. The latter confers too little authority on independent directors and could also bring potential overlapping and unclear power delineation between independent directors and supervisors. Second, the blurred delineation of the powers of the board, executive board, and management makes it difficult to clearly outline the duties and responsibility of independent directors, and this ambiguity could hamper effective monitoring on their part.

In theory, under the precondition of well-conceived design, both supervisors and independent directors should be able to monitor effectively. While compared to supervisors, independent directors have the advantage of actively contributing and participating in board decisions and policing on a more real-time basis,[58] the assertion of these benefits could arguably be left to an individual company's choice. Furthermore, as Taiwanese companies have already become accustomed to the binary system, the supervisor organ should not be abruptly abolished without overriding policy concerns. A preferable regulating framework would follow the Japanese example and allow for a choice between a binary system of directors and supervisors and a unitary system with the establishment of nomination, auditing and remuneration committees composed primarily of independent directors under the board of directors. Companies which provide explanations should be free to choose to maintain the binary system of supervisors. It should be emphasized that these two alternatives should be separate, comprehensive and avoid intermingling. Independent directors and supervisors should not coexist to avoid confusion over supervisory functions and powers, and the committees should be an integral part of the unitary system. The unitary system additionally necessitates the adjustment of the division of power between the board and management. The board should be recast as an organ in charge of monitoring the management and set broad policy, rather than carrying out business activities as it is currently positioned.

This framework would avoid the inevitable confusion following from the co-existence of both supervisors and independent directors. Moreover, the structural flexibility would prompt a beneficial competition between organizational structures. It follows that a company's choice of whether to adopt an independent directors system would ultimately be subject to capital market inspection and provide an additional avenue for competition among companies.

Rules on numerous details concerning the operation of the independent directors system still await issuance by the securities authorities. The prerequisites of effective monitoring include a nomination and election process insulated to an extent from those that control directors, strict qualifications for monitors, sufficient compensation, and sufficient authority in their hands.

6. *Juridical Shareholders and Their Representatives as Directors*

Article 27 permits juridical shareholders or their authorized representatives to be elected directors or supervisors. The authorized

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58. *Cf.* April Klein, *Firm Performance and Board Committee Structure*, 41 J.L. & ECON. 275 (1998) (finding a positive impact for inside directors on finance and investment committees probably due to informational advantages; we consider that independent directors also have such advantages compared to supervisors and thus contribute to firm performance ).

representatives are elected as individuals, but are under the complete control of the juridical shareholder. The juridical shareholder may replace its authorized representative at will, unilaterally displacing the original wishes of other shareholder. Additionally, a plural number of authorized representatives of the same juridical shareholder may be elected and it is permitted for the same juridical shareholder to have representatives respectively elected for directors and supervisors.

The problems that Article 27 gives rise to are many. First, juridical shareholders and their stand-ins may occupy more than one position as opposed to one for natural person shareholders. Second, the juridical shareholder maintains complete control over its authorized representative through the unilateral power of discharge. It is thus unlikely that such directors and supervisors would have the incentive or ability to carry out their duties effectively. Not only are they deprived of term protection, they also owe possibly conflicting duties to both the company and the juridical shareholder. Third, the fact that authorized representatives of the same juridical shareholders may simultaneously be elected directors and supervisors undermines the basic corporate governance mechanism that supervisors monitor the board. On this last point however, reform is already underway as the amendment of the Securities and Exchange Law set to be promulgated in January 2007 has prohibited juridical shareholders of publicly issued companies or their representatives to be simultaneously elected as directors and supervisors.

The above all increase the ease of expropriation. From another perspective, Article 27 also enhances the control of controlling shareholders and its opacity. The assumption of these posts by juridical shareholders or their representatives increases the difficulty of discerning the identity of the natural person or corporate group ultimately in control and allows complete control over plural seats.

Bearing the above in mind, a fundamental resolution should be to abolish Article 27 and allow only natural persons to assume the positions of directors or supervisors.

## V. CONCLUSION

In this article, we first note that ownership structure can be assessed from an efficiency perspective and efficiency concerns should play a role in deciding the ultimate ownership structure of each company. We then point out the distorting factors of high value of control and deviation between control and cash-flow rights.

Under these two avenues, this Article next seeks to discuss the reforms and prospects of Taiwan, a system characterized by controlling minority structures and poor shareholder protection. With this effort, this article not only seeks to provoke further discussion in Taiwanese legal literature, but also provide thought for similarly situated countries also on the path to reform.

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