

Taiwan Policy – Director and Supervisor Elections – Board Independence & Disclosure

Background and Overview

ISS' Taiwan Policy for boardroom elections in Taiwan-listed companies does not currently consider the level of board independence or assess the criteria of non-independent director and supervisor candidates. Owing to the poor or non-existent disclosures under the non-nomination system¹, only company-classified independent director nominees in this market could previously be assessed against independence and board performance criteria.

Board independence:

Pursuant to regulation, all listed companies in Taiwan must have at least two independent directors and boards must be at least 20 percent independent, which falls below the one-third independence requirement of other markets in the region (e.g. China, Hong Kong and Singapore). All listed companies with at least TWD 2 billion paid-in capital must establish an audit committee composed of at least three independent directors by 2019 while the others with smaller capital sizes are required to complete such establishment by 2022. This widespread establishment of audit committees is expected to raise overall board independence levels.

A focus on raising board independence levels was previously put on hold in order to concentrate on the more significant concerns raised by the “non-nomination” system in Taiwan. New regulations released in 2018 required all listed companies to adopt a nomination system for the election of directors and supervisors beginning in 2021. Amidst such regulatory initiatives regarding nomination system and audit committee, an upward trend in the independence levels of Taiwanese boards has been seen in recent years. During 2018 proxy season, the average independence level reached 35 percent for companies under ISS coverage. Therefore, a more stringent set of standards is now considered appropriate.

Statutory directors and supervisors:

In Taiwan, legal entities, such as governmental organizations and corporations, can also serve as non-independent directors or supervisors, often referred to as a "statutory director" or a "statutory supervisor." These legal entities can either appoint individuals as candidates or run for election themselves and appoint representatives to perform their fiduciary duties after the election without shareholder approval. As such, it is not uncommon to see only the name of the legal entity being nominated for a board seat on the ballot and not the identity of the representative. This disclosure gap limits shareholders' ability to assess the quality of these candidates.

Key Changes Under Consideration

ISS proposes to update its Taiwan policy for director and supervisor elections by introducing a minimum board independence level and requirement on the disclosure of statutory director and supervisor representatives as factors.

The policy language is proposed to be updated by adding the following:

¹ Currently, only independent directors are required to be elected via the nomination system, where disclosure of nominees' profile must be made available to all shareholders in advance of the general meeting. This is in contrast to the non-nomination system, which applies to non-independent directors and supervisors, where no disclosure is required in advance of the general meeting. As of the end of June 2018, approximately 33 percent of all Taiwan listed companies were still using the non-nomination system for non-independent director election.

- When the company employs the nomination system, generally vote for all non-independent director candidates, unless:
 - The board is less than one-third independent under ISS classification of directors; and/or
 - The names and background of representatives of statutory director candidates are not disclosed.
- Generally vote for all supervisor candidates when the company employs the nomination system, unless the names and background of representatives of statutory supervisor candidates are not disclosed.

Intent and Impact

The proposed introduction of the minimum independence level and requirement on the disclosure of statutory director and supervisor candidate representatives in the director and supervisor elections in Taiwan would generally align the ISS Taiwan policy with the viewpoints expressed by institutional investors during the ISS' 2018 policy development process. This proposed policy will be applied only to non-independent director and supervisor elections through the nomination system.

Based on a sample of 353 Taiwanese companies covered by ISS during the first half of 2018, under the existing policy, 29 percent of the sample companies received a negative vote recommendation for all of their non-independent director candidates due to the adoption of a non-nomination system. Under the proposed new approach, 59 percent of the companies will receive a negative vote recommendation on all of their non-independent director candidates assuming status quo. In view of the regulatory environment, the impact of the new approach under the assumption of a full adoption of nomination system is also examined. Under such assumptions and the new approach, the percentage of companies receiving a negative vote recommendation on all of their non-independent director candidates will decrease to 46 percent.

Under the current policy, a positive vote recommendation is issued on all statutory director candidates and all statutory supervisor candidates as long as a nomination system is adopted in the election. Based on the new proposed approach, 21 percent of the companies which proposed elections of statutory directors and 20 percent of the companies which proposed elections of statutory supervisors, without disclosing the identities of representatives at the moment of election will receive negative vote recommendations.

Request for Comment

While we will appreciate any comments on this topic, ISS specifically seeks feedback on the following:

- Does your organization agree that ISS should consider the level of board independence in evaluating director elections at Taiwanese companies? If yes, should the proposed policy be implemented after a one-year transition period?
- Should ISS issue negative vote recommendations on the statutory director and/or supervisor candidates when the identities of their representatives are not disclosed at the moment of election beginning with the 2019 proxy season or after a transition period (please specify the beginning year)?