

17 February 2023

Financial Supervisory Commission
Securities and Futures Bureau
No. 85, Section 1, Xincheng South Road
Taipei City, Taiwan

Proposal to Amend Article 44-9 and Article 44-21 of "Regulations Governing the Administration of Shareholder Services of Public Companies"

Dear Sir/Madam,

We are writing in response to the call for public comment on the "Proposal to Amend Article 44-9 and Article 44-21 of the 'Regulations Governing the Administration of Shareholder Services of Public Companies'" issued by the Financial Supervisory Commission on 18 January 2023. Thank you for the opportunity to provide comment.

The Asian Corporate Governance Association (ACGA) is a non-profit membership association founded in 1999. We conduct research on corporate governance and ESG in 12 markets in Asia-Pacific and advocate at the regulatory and corporate level across the region to improve standards and practices. ACGA is entirely funded by a network of 113 member firms, of which 70% are institutional investors with more than US\$40 trillion in assets under management globally.

The primary topic in the proposed amendments is shareholders' meetings with videoconferencing (ie hybrid or virtual meetings). While the rules under consultation are straightforward with only a small number of changes proposed, the underlying infrastructure and mechanisms are complex and the ramifications are far-reaching. These implications are not discussed in the consultation documents. In this letter, we address these broader issues, and bring attention to the fact that in their current state, the rules and the infrastructure create unnecessary loopholes, as well as the conditions for unequal treatment of certain kinds of shareholders, particularly foreign investors. We ask that the regulators remedy the situation as soon as possible.

Background

Chapter II-2 Shareholders' Meetings With Video Conferencing, Articles 44-9 to 44-23 were added to the regulations on 04 March 2022. The rules allow for hybrid and virtual meetings on a standing basis after amending a company's Articles of Incorporation. We would like to briefly offer feedback on those changes. As mentioned in our October 2022 article on the amendments (<https://www.acga-asia.org/blog-detail.php?id=60>), ACGA believes fully virtual meetings should only be held in exceptional circumstances, such as a health emergency when group gatherings are not permitted, and that virtual meetings

should not become a substitute for in-person meetings. While we do support hybrid meetings as a standing option if the proper safeguards are in place ensuring fully equal treatment of all shareholders in terms of participation, asking questions and receiving answers, and voting, we do not support the amendment allowing fully virtual meetings in the absence of extenuating circumstances.

The regulator has attempted to limit the risk that virtual meetings may pose by setting limitations in Article 44-11 on the content of meeting proposals. For example, proposals on director elections and director discharges are forbidden in both hybrid and virtual-only meetings, and merger and acquisition proposals are forbidden in fully virtual meetings, but not hybrid. This attempt at risk management runs counter to the approach taken by other markets which limit the context in which meetings can be held, but not the content. Furthermore, details are lacking on what an issuer should do in the context of a force majeure event when a physical meeting is not possible but election or discharge proposals are necessary.

Another attempt at limiting risk appears in Article 44-9, which requires board approval to hold hybrid or virtual meetings. The proposed amendments under the present consultation aim to strengthen this provision by requiring the attendance of two-thirds of the board. However, this means that such a resolution can still pass with only one-third of the board agreeing to it. This is scant protection, all the more so given the Taiwan context where legal entity directors can be swapped at will, changing management control of a company in seconds. Furthermore, as of this writing, the rules in Taiwan still allow independent directors to single-handedly call an extraordinary meeting and it is not immediately clear from the rules whether they are able to call a hybrid or virtual meeting as well. In short, ACGA is not convinced that the limitations in the rules offer shareholders the necessary protection.

Infrastructure and Voting

Taiwan has an advanced e-voting infrastructure that ranks among the best in Asia. However, it is not designed to offer real-time voting to overseas investors. Overhauling it to do so will take some effort. Among the obstacles are:

- Foreign investors tend to vote electronically via platforms such as ISS that use batch processing and do not offer real-time voting options for international voting
- Foreign-owned shares are often pooled together in omnibus sub-custodian accounts that do not identify the holdings of individual shareholders
- This limits visibility on the details of beneficial owners and their holdings, hampering efforts to determine how many votes they are entitled to in real time

Article 44-16 of the regulations state that if a shareholder has already exercised voting rights in writing or electronically before the meeting, as most foreign investors will have done, they may not, with the exception of extemporary proposals, propose amendments

or further exercise any voting rights on the original proposals including voting on amendments to original proposals. However, because of the limitations of the technical infrastructure, foreign investors are then not able to exercise this right to vote on extemporary proposals. Such limitations do not exist for domestic investors. This creates the conditions for unequal treatment among various types of shareholders and attendees as outlined in the table below and must be resolved.

Shareholder/Resolution	Extemporary proposal	Propose amendment	Vote on amended proposal
In-person attendee, voting in person	Can vote	Can propose	Can vote
Domestic, virtual attendee, previously cast e-votes	Can vote	Cannot propose	Cannot vote
Foreign, virtual attendee, previously cast e-votes	Cannot vote	Cannot propose	Cannot vote

We appreciate the effort the regulator and the Taiwan Depository and Clearing Corporation are putting into establishing a certification system for foreign investors to attend virtual and hybrid meetings and to raise questions. We recognise the challenges in establishing mechanisms for foreign investors to vote their shares in real time. We encourage the parties involved to resolve these issues as soon as possible. However, we are disappointed that these problems were not identified ahead of time and solved before the rules were changed to allow such meetings as a standing option.

Additional concerns

Availability of English – Article 44-17 states that questions on individual proposals cannot exceed 200 words. However, this “200 words” is assumed to be in Chinese, while 200 characters in English is not enough to form a coherent question because it is only about 35 English words. To form 200 words in English requires roughly 1250 characters. We hope this unfair discrepancy can be addressed. We also hope that the user interface in the virtual meeting platform can be fully available in English.

Two-way communication – We request that the regulator ensure that the virtual meeting platform allow for verbal questions, the opportunity for shareholders to interact verbally with management and the board, and offer visibility on who is attending and what questions have been asked in real time. We note that the current platform gives the issuer complete power to screen shareholder questions. We ask that this mechanism be revised to allow for greater fairness and transparency.

Change in convening method – Proposed amendments to Article 44-9 state that the company may change the convening method of the meeting after the shareholder meeting convening notice has been sent and announce the change on the regulator website. This implies a company can not only change an in-person meeting to a virtual meeting, but also a virtual meeting to a hybrid meeting. This would imply that merger and acquisition proposals can perhaps be added to a hybrid meeting after a meeting notice has been sent. It is also unclear who has the right to change the convening method.

Meeting continuity – The current Article 44-20 states that in the event of “a natural disaster, unforeseen event, or other force majeure event”, a meeting will still continue if quorum requirements can be met without the shares attending virtually. This implies the physical meeting will carry on in person without the participation of those attending virtually. The term “unforeseen event” is vague and undefined. In its current form, it implies it may include the sudden loss of network connection if an ill-intentioned person turned the power off.

The Article also states that in such cases shares attending virtually will still be counted toward the number of shares in attendance, but “they shall be deemed to have waived their voting rights on all proposals at that shareholders' meeting”. The term “all proposals” implies e-votes cast before the meeting will also be nullified, which hardly seems fair.

Thought experiment

Taken altogether, and with the memory of the extraordinary lengths to which some participants in proxy battles in Taiwan have been known to go, we can imagine a multitude of problematic scenarios ripe for exploitation. For example:

- A minority faction representing one-third of the board passes a resolution to hold a virtual-only meeting. The meeting notice goes out after which they change the meeting to hybrid. By changing the meeting to hybrid, merger and acquisition proposals can be on the agenda.
- During a hybrid meeting, a faction brings up an unexpected and problematic extemporaneous proposal or amendment to an original proposal. Foreign investors are unable to vote on the proposal or amendment because of infrastructure limitations. Regulations also prevent domestic investors who cast e-votes from voting on the amended proposal.
- “An unforeseen event” occurs during a hybrid meeting and all of the previously submitted votes on “all proposals” for anyone domestic and international who voted electronically are no longer counted. These shares are considered to have “waived their voting rights”, but still count as having attended the meeting. A

minority faction becomes able to block a popular proposal while virtual attendees are powerless to do anything about it.

In conclusion, we appreciate the opportunity to share our thoughts on the direction of travel of the proposals in this consultation and our many concerns. We ask regulators to fully resolve these issues and we welcome further discussion with you on any of the points in our letter.

With respect,

A handwritten signature in black ink that reads 'NEESHA WOLF' with a stylized flourish underneath.

Neesha Wolf
Research Director – Taiwan and Malaysia
Supporting Research Director – Japan
Lead ISSB Advocacy