

Developments in the Law in 2018: Corporate Law and Securities Exchange Act

Ching-Ping Shao*

Abstract

In July 2018, the Legislative Yuan passed the amendment to the Taiwan Company Law (“Company Law”). The legislative process dragged on for more than two years and resulted in an overhaul in which the number of provisions affected is up to 148. De-regulation is one important feature of this amendment. To meet this end, this amendment borrows from the rules on Close Corporation which were put into the Company Law in 2015. The advantages and disadvantages of this approach are discussed. In addition, this author has argued elsewhere that Taiwan Company Law is better understood as a blockholder-centric model. We can use this model to shed light on two most controversial provisions, among others, in the draft amendment. One is the new-enacted Article 173-1, which gives the majority shareholders the right to call a shareholder meeting. The other is regarding the directors’ right to information. This rule was in the draft as Article 193-1 and sent to the Legislative Yuan. However, due to fierce opposition from industrial communities, it was finally turned down by lawmakers across the aisle.

Other legal milestones taking place in 2018 in the field of corporate law and securities regulations can also be analyzed in the context of their interrelationship with the development of the Company Law. Grand justices of the Judicial Yuan issued the J.Y. Interpretation No. 770 in November 2018. The focus of the interpretation is on the constitutionality of provisions in the Business Mergers and Acquisitions Act applying to the scenarios of cash-out mergers. The Business Mergers and Acquisitions Act was enacted in 2002 for the purpose of avoiding the

* Professor of Law, College of Law, National Taiwan University.
E-mail: cpshao@ntu.edu.tw

more stringent rules in the Company Law. In this light, it would be hard to find a better solution without revisiting the Company Law. Moreover, in the supreme court judgement, no. 2420 in 2017, the Supreme Court affirmed the lower courts' rulings and denied that the Securities Investor and Futures Trader Protection Center could bring a derivative suit on behalf of a corporation against its former directors and supervisors according to Article 10-1 of the Securities Investor and Futures Trader Protection Act. The authorities have started the process of revising this Article 10-1 to change the rule on derivative suits since this judgment was handed down. In retrospect, one should wonder why this issue had never been brought to attention to the lawmakers and the authorities when the Company Law amendment was in deliberation. Lastly, the Securities Exchange Act underwent three revisions in 2018. This paper briefly discusses two new rules which are related to the Company Law. One is on the reinforcement of the independent directors' powers and the other is on the disclosure of the average amount of all employees' salaries.

Keywords: blockholder-centric model, close corporation, cash-out merger, derivative suit, independent director