

The Shareholders' Meeting and Corporate Governance

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Abstract

The scope of the power of the shareholders' meeting depends on the adoption of director primacy or shareholder primacy. However, no matter which one prevails, the shareholders' meeting should have certain functions under the policy. Practical experience shows that convening a meeting, setting its agenda and conducting the meeting are all subjected to the manipulation of the board of directors. Accordingly, the function of the shareholders' meeting is diminished. When faced with this difficulty, there are not many remedies available under the current legislation.

Delaware's courts have endeavored to develop a set of standards to delineate the boundary between law and equity and have thus provided relief for the aggrieved shareholders. Nonetheless, by believing in director primacy, Delaware's courts insist on the passivity of shareholders' proposals.

For decades, the board of directors in Taiwan has been inclined to manipulate the procedure of the shareholders' meeting. The alteration of the articles of incorporation provides a good example of this scenario. Unfortunately, such manipulation has been well supported by the courts due to the misunderstanding of the true meaning of "setting the agenda".

The *ex post* remedies are often too late to repair any damage. Therefore, rules related to shareholder proposals and shareholder director nominations have been introduced into the Company Act to mitigate this situation. However, the law does not give shareholders teeth with which to bite when the rules are breached.

All these issues are related to the way in which power is allocated between

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the board of directors and the shareholders' meeting. Only after this has been done, can the functions of the shareholders' meeting be ascertained and the rules restructured to put things in order.

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