

**On Taiwan's Corporate Governance Rules from a Perspective
of the International Regulatory Trend of Internal Controls and
Risk Management (with Notes on the Legal Transplant of
Directors' Duty to Monitor)**

Chang-Hsien Tsai^{*}

Abstract

The Taiwan Corporate Governance White Paper published by Asian Corporate Governance Association (“ACGA”) in February, 2011 indicated that one of the crucial issues in terms of corporate governance that Taiwan would need to address currently is board effectiveness. Although Taiwan has written laws governing internal controls, compliance with law and even risk management, various corporate scandals due to internal control failure broke out, which might be attributed to board ineffectiveness in oversight. In addition to the efforts of Taiwan's legislature focused primarily on changing board composition (e.g., advancing board independence) and structure (e.g., establishing board committees such as the compensation committee), improving the enforcement of laws governing internal controls and compliance with law through strengthening director liability for breaching the duty to monitor should also be an imminent issue. In other words, in contrast to policymaking efforts focused merely on changing composition and structure, what should meanwhile be done could be to identify decision-making and, more importantly, the processes that inform the board's decisions as the core of the board's monitoring function. Put differently, we should seriously consider how to effectively advance board members' incentives to monitor management during the decision-making process, through moderately tightening legal liability for breaching fiduciary duties of oversight.

^{*} Assistant Professor, Institute of Law for Science and Technology, National Tsing Hua University. LL.B., LL.M., National Taiwan University; LL.M. in Corporate Law, New York University; J.S.D., University of Illinois at Urbana-Champaign. E-mail: chtsai@mx.nthu.edu.tw

In sum, carrying out board reforms of composition, structure and process of oversight altogether might be a better way to fortify the board's monitoring function in Taiwan. With board efficacy built up, Taiwan's corporate governance can thus be bettered.

Keywords: independent director, directors' duty to monitor (duty of oversight), internal control systems, risk management, compliance with law, board reform of decision-making process, board structural reform, board compositional reform, corporate governance rules, legal transplant