Protecting Minority Investors in Taiwan, China

****Reforms that affect minority investor protection and enter into force between June 1, 2016 and June 1, 2017 are listed as below:**

Name of the legislation	Date of adoption	Date of entry into force	Link to electronic copy	Description
The regulator, Financial Supervisory Commission order	January 18, 2017	January 1, 2018	http://www.sfb.gov.tw/ch/home.jsp?id=88&parentpath=0,3&mcustomize=lawnews_view.jsp&dataserno=201701180001	From 2018, the scope of mandatory e-voting requirements is expanded to include listed companies with paid-in capital of TWD 2 billion or more and less than 10,000 shareholders, and listed companies with paid-in capital less than TWD 2 billion. That is, In 2018, all listed companies shall adopt e-voting at their shareholders meetings.
Taiwan Stock Exchange Corporate Governance Best-Practice Principles	September 30, 2016	September 30, 2016	http://market-regulation.twse.com.tw/ENG/EN/law/DAT0201.aspx?FLCODE=FL020553	To echo the third principle of the 2015 G20/OECD Principles of Corporate Governance, the TWSE added a new subchapter to recommend listed companies maintain an appropriate dialogue and interaction with shareholders. To enhance board functions and independence, listed companies are recommended to appoint a company secretary or an exclusive personnel in charge of CG affairs. At least one INED is advised to attend shareholder meetings. A listed company is advised to limit the numbers of executive directors. To enhance shareholder rights, simultaneous release of Chinese/English shareholder meeting materials are recommended. A listed company adopt e-voting is advised to adopt the director nomination system and release the director candidate lists in advance of the shareholders meetings.
Stewardship Principles for Institutional Investors	June 30, 2016	June 30, 2016	http://cgc.twse.com.tw/frontEN/stewardship	The Stewardship Principles for Institutional Investors are adopted on a "comply or explain" basis. Institutional investors are advised to have clear policies on managing conflicts of interest, voting and stewardship as a whole, so that institutional investors conduct due diligence activities according to these policies. Based on the policies, institutional investors are encouraged to monitor, communicate and interact with investee companies to reach consensus of long-term value creation. Last but not least, institutional investors are advised to disclose to voting results and their status of fulfillment of stewardship responsibilities. As of February 2017, there are 36 signatories of the Stewardship Principles.

I. Private limited companies

In the following questions, please assume that Buyer Co. ("**Buyer**") is a manufacturing company. It is incorporated as a **private limited company** or its functional equivalent. Its shares cannot be listed on a stock exchange. Examples include the Private Limited Company (Ltd), the Limited Liability Company (LLC), the Sociedad de Responsabilidad Limitada (SRL), Gesellschaft mit beschränkter Haftung (GmbH) and the Société à responsabilité limitée (SARL).

	Last year	This year	*Last year law*	Applicable Law	Comment
New question **Do all members have the right to inspect and copy any record maintained by the company regarding the company's activities, financial condition, and other circumstances that are relevant to their rights and duties?**	-	Yes	-	Article 48, 118, 210, and 229 of the Company Act	(as below)

Comment:
Shareholders in accordance with the preceding Company Act are entitled to inspect or copy specific records maintained by the company.

	Last year	This year	*Last year law*	Applicable Law	Comment
Does the sale of 51% or more of Buyer's assets require the consent of the majority of its members? (whether such sale occurred in a single transaction or several transactions taking place within 1 year from the date of the first transaction)	*Yes*	Yes	*Article 185 of Company Act; Article 28 of Business Mergers And Acquisitions Act*	Article 185 of the Company Act	(as below)

Comment:
In accordance with Article 185 of the Company Act, (1)Transferring the whole or any essential part of a company's business or assets requires approval of shareholders.(2)For a company which has had its share certificates publicly issued, if the total number of shares represented by the shareholders present at shareholders' meeting is not sufficient to meet the criteria specified in the preceding paragraph, the resolution to be made thereto may be adopted by two-thirds or more of the attending shareholders who represent a majority of the total number of its outstanding shares. (3)Where stricter criteria for the total number of attending shareholders and for the number of votes required to adopt a resolution at a shareholders' meeting referred to in the preceding two paragraphs are specified in the Articles of Incorporation of the company, such stricter criteria shall govern.

	Last year	This year	*Last year law*	Applicable Law	Comment
Can members who represent 10% of Buyer's capital call for a meeting?	*Yes*	Yes	*Article 173 of Company Act*	Article 173 of the Company Act	(as below)

Comments :

1. Any or a plural number of shareholder(s) of a company who has (have) continuously held 3% or more of the total number of outstanding shares for a period of one year or a longer time may, by filing a written proposal setting forth therein the subjects for discussion and the reasons, request the board of directors to call a special meeting of shareholders.
2. If the board of directors fails to give a notice for convening a special meeting of shareholders within 15 days after the filing of the request under the preceding Paragraph, the proposing shareholder(s) may, after obtaining an approval from the competent authority, convene a special meeting of shareholders on his/their own.
3. A special meeting of shareholders convened in accordance with the provisions set out in the

preceding two Paragraphs may appoint an inspector to examine the business and financial condition of the company.

4. When the board of directors fails or cannot convene a shareholders' meeting on account of share transfer or any other causes, the shareholder(s) holding 3% or more of the total number of outstanding shares of the company may, after obtaining an approval from the competent authority, convene a shareholders' meeting.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must all members of Buyer consent to add a new member?	*No*	No	*Article 266 and Article 267 paragraph 8 and 9 of Company Act*	Article 106 of the Company Act	(as below)

Comments :
According to Paragraph 1 of Article 106 of Company Act, increase of the amount of capital stock of a limited company shall be concurred in by a majority of all shareholders.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must a member of Buyer first offer to sell his or her interest to the existing members before selling to a non-member?	*Yes*	Yes	*Article 267 of Company Act; Article 8 of Business Mergers And Acquisitions Act*	Article 111 of the Company Act	(as below)

Comments :
According to Paragraph 1 and Paragraph 2 of Article 111 of Company Act, a shareholder shall not, without the consent of a majority of all other shareholders, transfer all or part of his contribution to the capital of the company to another person or persons; the shareholders who disagree with the transfer as mentioned in the preceding paragraph, shall have priority to accept such transfer. If they do not accept the transfer, it shall be deemed that their consent has been given for the transfer and to amend the Articles of Incorporation in regard to matters relating to the shareholders and the amount of their contribution to the capital of the company.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must Buyer have a management deadlock breaking mechanism such as a member exit buyout in case of disagreement?	*Yes*	Yes	*Article 199 of Company Act*	Article 111 of the Company Act	(as below)

Comments :
According to Paragraph 3, Article 111 of the Company Act, the directors shall not, without the unanimous consent of all other shareholders, transfer all or part of their contribution to the capital of the company to another person or persons.

	Last year	This year	*Last year law*	Applicable Law	Comment
Is there a percentage of acquired capital that requires a new member to make a tender offer to all remaining members of Buyer? If yes, please specify what percentage.	*No*	No	*Article 43-1 of the Securities and Exchange Act; the Directions of Financial Supervisory Commission Article 11 of*	-	(as below)

			Regulations Governing Public Tender Offers for Securities of Public Companies.		

Comments :
Current laws and regulations do not require new members of private limited companies to make a tender offer to all remaining members.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must Buyer distribute profits or pay dividends at the latest one year from the declaration date?	*No*	No	*Article 46, paragraph 9, of the Operating Rules of the Taiwan Stock Exchange Corporation; Article 10, paragraph 8, of the Taipei Exchange Rules Governing Securities Trading on the Taipei Exchange; and the ruling of the Ministry of the Economic Affairs; Paragraph 2 of Article 82 of Enforcement Rules of the Income Tax Act*	-	(as below)

Comments :
Private limited companies are not mandated to distribute profits or pay dividends at the latest one year from the declaration date by current laws and regulations.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must members of Buyer meet once a year?	*Yes*	Yes	*Article 170, 172 and 177-3 of the Company Act; Article 5 of the Regulations Governing Content and Compliance Requirements for Shareholders' Meeting Agenda Handbooks of*	Article 170 of the Company Act	(as below)

			Public Companies		

Comments :
According to Paragraph 1, Article 170 of Company Act, regular meeting of shareholders should be held at least once every year.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must annual financial statements of Buyer be audited by an external auditor?	*No*	Yes	*Article 36 of the Securities and Exchange Act; Article 2 of the Regulations Governing Approval of Certified Public Accountants to Audit and Attest to the Financial Reports of Public Companies; Article 20 of the Company Act; the ruling of the Ministry of Economic Affairs.*	Article 20, paragraph 2 of the Company Act; Ruling of Ministry of Economy	(as below)

Comments :
According to Paragraph 2 of Article 20 of the Company Act and relevant ruling, where the amount of equity capital of a company exceeds NTD30,000,000, the company shall first have its financial statements audited and certified by a certified public accountant pursuant to the auditing and certification rules as prescribed by the central competent authority.

II. Listed companies

In the following questions, please assume that Buyer is a **publicly traded listed corporation** or its functional equivalent in Taiwan, China. It is not state-owned and has issued stock that is publicly traded and is listed on your country's largest stock exchange. Examples include the Joint Stock Company (JSC), Public Limited Company (PLC), C Corporation, Societas Europaea (SE), Aktiengesellschaft (AG) and Société Anonyme/Sociedad Anónima (SA).

It has not adopted specific bylaws or articles of association that differ from default corporate law or securities regulations. It does not follow any code of corporate governance, model charter, or code of good practice, unless it is mandatory.

If there is no stock exchange or if there are fewer than 10 firms actively traded on the stock exchange, please assume that Buyer is a joint-stock company with a large number of shareholders.

	Last year	This year	*Last year law*	Applicable Law	Comment
Does the sale of 51% or more of Buyer's assets require shareholder approval? (whether such sale occurred in a single transaction or several transactions taking place within 1 year from the date of the first transaction)	*Yes*	Yes	*Article 185 of Company Act; Article 28 of Business Mergers And Acquisitions Act*	Article 185 of the Company Act	(as below)

Comment:

In accordance with Article 185 of the Company Act, (1)Transferring the whole or any essential part of a company's business or assets requires approval of shareholders.(2)For a company which has had its share certificates publicly issued, if the total number of shares represented by the shareholders present at shareholders' meeting is not sufficient to meet the criteria specified in the preceding paragraph, the resolution to be made thereto may be adopted by two-thirds or more of the attending shareholders who represent a majority of the total number of its outstanding shares. (3)Where stricter criteria for the total number of attending shareholders and for the number of votes required to adopt a resolution at a shareholders' meeting referred to in the preceding two paragraphs are specified in the Articles of Incorporation of the company, such stricter criteria shall govern.

	Last year	This year	*Last year law*	Applicable Law	Comment
Can shareholders who hold 10% of Buyer's share capital call for an extraordinary meeting?	*Yes*	Yes	*Article 173 of Company Act*	Article 173 of the Company Act	(as below)

Comments :

1. Any or a plural number of shareholder(s) of a company who has (have) continuously held 3% or more of the total number of outstanding shares for a period of one year or a longer time may, by filing a written proposal setting forth therein the subjects for discussion and the reasons, request the board of directors to call a special meeting of shareholders.
2. If the board of directors fails to give a notice for convening a special meeting of shareholders within 15 days after the filing of the request under the preceding Paragraph, the proposing shareholder(s) may, after obtaining an approval from the competent authority, convene a special meeting of shareholders on his/their own.
3. A special meeting of shareholders convened in accordance with the provisions set out in the preceding two Paragraphs may appoint an inspector to examine the business and financial condition of the company.
4. When the board of directors fails or cannot convene a shareholders' meeting on account of share transfer or any other causes, the shareholder(s) holding 3% or more of the total number of outstanding shares of the company may, after obtaining an approval from the competent authority, convene a shareholders' meeting.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must Buyer obtain shareholder approval to issue unissued share up to its authorized share capital?	*No*	Yes	*Article 266 and Article 267 paragraph 8 and 9 of Company Act*	Article 240, 266 and Article 267 paragraph 8 and 9 of the Company Act; Article 28-1 and 43-6 of the Securities and Exchange Act	(as below)

Comments:

1. According to Paragraph 2 of Article 266 of the Company Act, the issue of new shares of a company shall be determined by the Board of Directors by a resolution adopted by a majority vote at a meeting attended by over two-thirds of the directors. Besides, in accordance with Paragraph 3 of Article 28-1 of Securities and Exchange Act, a public company is required to publicly offer 10% of its total shares newly issued. The above 10% requirement shall be precluded in case a higher percentage has been so determined by a resolution of the shareholders meeting.
2. However, below are several exceptions to the above, requiring resolutions adopted by shareholders pursuant to relevant laws and regulations:
   (1) According to Article 43-6 of Securities and Exchange Act, a public company may carry out private placement of securities upon adoption of a resolution by at least two-thirds of the votes of the shareholders present at a meeting of shareholders who represent a majority of the total number of issued shares.
   (2) In accordance with Article 240 of the Company Act, a company may, by a resolution adopted by a majority of the shareholders present who represent two-thirds or more of the total number of its outstanding shares of the company, have the whole or a part of the surplus profit distributable as dividends and bonuses distributed in the form of new shares to be issued by the company for such purpose.
   (3) Pursuant to Paragraph 8 and Paragraph 9 of Article 267 of the Company Act, if a company offering its shares to the public and issuing restricted stock for employees shall adopt such resolution, at a shareholders' meeting, by a majority of the shareholders present who represent two-thirds or more of the total number of its outstanding shares. In the event the total number of shares represented by the shareholders present at a shareholders' meeting of a company is less than the percentage of the total shareholdings required in the preceding Paragraph, the resolution may be adopted by two-third of the voting rights exercised by the shareholders present at the shareholders' meeting who represent a majority of the outstanding shares of the company.

	Last year	This year	*Last year law*	Applicable Law	Comment
Are shareholders automatically granted subscription (preemption) rights on new shares?	*Yes*	Yes	*Article 267 of Company Act; Article 8 of Business Mergers And Acquisitions Act*	Article 267 of the Company Act	(as below)

Comments:

1. When a company issues new shares, there shall be ten to fifteen per cent of such new shares reserved for subscription by employees of the company.
2. A company shall make public announcement and advise, by notice, its original shareholders to subscribe for, with preemptive right, the new shares, except those reserved under either of the preceding paragraph, in proportion respectively to their original shareholding and shall state in the notice that if any shareholder fails to subscribe for new shares, his right shall be forfeited. Where a fractional percentage of the original shares being held by a shareholder is insufficient to subscribe for

one new share, the fractional percentages of the original shares being held by several shareholders may be combined for joint subscription of one or more integral new shares or for subscription of new shares in the name of a single shareholder. New shares left unsubscribed by original shareholders may be open for public issuance or for subscription by specific person or persons through negotiation.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must shareholders approve the election and dismissal of the external auditor?	*No*	No	*Articles 20 and 29 of the Company Act;Paragraph 1, Subparagraph 8 and Paragraph 2 of Article 14-5 of Securities and Exchange Act*	Articles 20 and 29 of the Company Act , Paragraph 1, Subparagraph 8 and Paragraph 2 of Article 14-5 of the Securities and Exchange Act	(as below)

Comments:

1. The provisions of Paragraph 1, Article 29 of this Act shall apply, mutatis mutandis, to the appointment, discharge and remuneration of the certified public accountant set forth in the preceding Paragraph.
2 In the case of a company limited by shares, it shall be decided by a resolution to be adopted by a majority vote of the directors at a meeting of the board of directors attended by at least a majority of the entire directors of the company.
3. According to Paragraph 1, Subparagraph 8 and Paragraph 2 of Article 14-5 of Securities and Exchange Act and relevant ruling of Financial Supervisory Commission, every listed company should establish an audit committee, and the hiring, dismissal and the compensation of an attesting CPA shall be subject to the consent of one-half or more of all audit committee members and be submitted to the board of directors for a resolution. If it is not approved with the consent of one-half or more of all audit committee members, it may be undertaken upon the consent of two-thirds or more of all directors, and the resolution of the audit committee shall be recorded in the minutes of the directors meeting.

	Last year	This year	*Last year law*	Applicable Law	Comment
Can the majority vote of holders of the affected shares prevent changes to the rights of their class of shares?	*Yes*	Yes	*Article 159 of the Company Act*	Article 157 and 159 of the Company Act	(as below)

Comments:

1.According to Article 157 of Company Act, where a company is to issue special shares, it shall include in its Articles of Incorporation provisions concerning (1)Order, fixed amount or fixed ratio of allocation of dividends and bonus on special shares;(2)Order, fixed amount or fixed ratio of allocation of surplus assets of the company;(3)Order of or restriction on or no voting right on the exercise of voting power by special shareholders; and (4)Other matters concerning rights and obligations incidental to special shares.

2.According to Article 159 of Company Act:

(1)In case a company has issued special shares, any modification or alteration in the Articles of Incorporation prejudicial to the privileges of special shareholders shall be adopted in a resolution by a majority of the shareholders present who represent two-thirds or more of the total number of its outstanding shares and shall also be adopted by a meeting of special shareholders;

(2)For a company whose share certificates have been publicly issued, if the total number of shares represented by shareholders attending a shareholders' meeting is not sufficient to meet the criteria as specified in the preceding paragraph, the said resolution may be adopted by a large majority

representing two thirds of the votes at a shareholders' meeting attended by shareholders representing a majority of the total number of issued shares, and a favorable resolution to be adopted by a meeting of special shareholders shall be also be required;

(3) In case stricter criteria for the total number of shares represented by the attending shareholders and the number of votes at the shareholders' meetings referred to in the preceding two paragraph are specified in the Articles of Incorporation of a company, such stricter criteria shall govern.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must the CEO and the chair of the board of directors be different individuals?	*Yes*	Yes	*Article 27 and 222 of the Company Act*	Article 29, 222 and 27 of the Company Act , Paragraph 1, 2 and 3 of Article 14-4 of Securities and Exchange Act, Article 4 of Regulations Governing the Exercise of Powers by Audit Committees of Public Companies, Paragraph 2, Article 23 of Corporate Governance Best Practice Principles for TWSE/GTSM Listed Companies	(as below)

Comments:

1. The fact that a CEO is also a board director is allowed under Taiwan laws. However under Article 27 and 222 of Company Act, a board director or CEO cannot be a supervisor at the same company. Furthermore, in accordance to Paragraph 1,2,3 of Article 14-4 of Securities and Exchange Act and Article 4 of Regulations Governing the Exercise of Powers by Audit Committees of Public Companies: (1) A company that has issued stock in accordance with this Act shall establish either an audit committee or a supervisor; (2) The audit committee shall be composed of the entire number of independent directors. (3) For a company that has established an audit committee, the provisions regarding supervisors in this Act, the Company Act, and other laws and regulations shall apply mutatis mutandis to the audit committee.
2. According to Paragraph 2, Article 23 of Corporate Governance Best Practice Principles for TWSE/GTSM Listed Companies, it is inappropriate for the chairperson to also act as the general manager. If the chairperson also acts as the general manager or the chairperson and general manager are spouses or relatives within one degree of consanguinity, it is advisable that the number of independent directors be increased. If it is necessary to set up a functional committee, the responsibilities and duties of the committee shall be clearly defined.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must the board of directors (or supervisory board) include independent and non-executive	*Yes*	Yes	*Article 14-2 of Securities and Exchange Act; the*	Article 14-2 of the Securities and Exchange	(as below)

board members?		*Directions of Financial Supervisory Commission*	Act; Ruling of Financial Supervisory Commission	

Comments:

1. A company that has issued stock in accordance with the Securities and Exchange Act may appoint independent directors (one of the criteria is not being employees of the company) in accordance with its articles of incorporation. The Competent Authority, however, shall as necessary in view of the company's scale, shareholder structure, type of operations, and other essential factors, require it to appoint independent non-executive directors, not less than two in number and not less than one-fifth of the total number of directors.
2. The listed company shall appoint independent non-executive directors, not less than two in number and not less than one-fifth of the total number of directors.

	Last year	This year	*Last year law*	Applicable Law	Comment
Can shareholders remove members of the board of directors without cause before the end of their term?	*Yes*	Yes	*Article 199 of Company Act*	Article 199 of the Company Act	(as below)

Comments:

1. A director may be discharged at any time by a resolution adopted at a shareholders' meeting provided, however, that if a director is discharged during the term of his/her office as a director without good cause shown, the said director may make a claim against the company for any and all damages sustained by him/her as a result of such discharge.
2. A resolution required for discharging a director under the preceding Paragraph may be adopted only by a majority of the shareholders present who represent two-thirds or more of the total number of its outstanding shares by the company.
3. For a company whose shares are issued to the public, if the total number of shares represented by the shareholders present at a shareholders' meeting is less than the quorum set forth in the preceding Paragraph, the resolution required for discharging a director may be adopted by two-thirds (2/3) of the total votes of the shareholders present at the shareholders' meeting attended by the shareholders representing a majority of the total number of outstanding shares issued by the company.
4. Where higher requirements of the quorum of a shareholders' meeting and the number of votes are specified in the Articles of Incorporation of a company, such higher requirements shall prevail.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must Buyer have a separate audit committee?	*No*	Yes	*Article 14-4 of the Securities and Exchange Act; Article 4 of the Regulations Governing the Exercise of Powers by Audit Committees of Public Companies; the ruling of Financial Supervisory Commission*	Article 14-4 of the Securities and Exchange Act; Article 4 of Regulations Governing the Exercise of Powers by Audit Committees of Public Companies, Ruling of Financial Supervisory Commission	(as below)

Comments:

1. According to Paragraph 1, Article 14-4 of Securities and Exchange Act, a public company shall establish either an audit committee or a supervisor.
2. In accordance with the ruling of Financial Supervisory Commission, from 2014 the listed company with paid-up capital over NTD 10,000,000,000 shall establish audit committee which, based on the Paragraph 2 of Article 14-4 and Article 4 of Regulations Governing the Exercise of Powers by Audit Committees of Public Companies, should be composed of the entire number of independent directors. From 2017, the listed company with paid-in capital over NTD 2,000,000,000 shall establish audit committee.

	Last year	This year	*Last year law*	Applicable Law	Comment
Is there a percentage of acquired shares which triggers a mandatory bid rule, requiring a potential acquirer to make a tender offer to all remaining shareholders?	*Yes*	Yes	*Article 43-1 of the Securities and Exchange Act; the Directions of Financial Supervisory Commission Article 11 of Regulations Governing Public Tender Offers for Securities of Public Companies.*	Paragraph 2,3 of Article 43-1 of the Securities and Exchange Act; Article 11 of Regulations governing Public Tender Offers for Securities of Public companies	(as below)

Comments:

1. Any public tender offer to purchase the securities of a public company from unspecified person(s) bypassing the centralized securities exchange market or the over-the-counter market may be conducted only after it has been reported to the Competent Authority and publicly announced.
2. Where any person independently or jointly with another person(s) proposes to acquire over 20% percentage of the total issued shares of a public company within 50 days shall make the acquisition by means of a public tender offer.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must Buyer distribute profits or pay dividends within a set maximum time period from the declaration date?	*Yes*	Yes	*Article 46, paragraph 9, of the Operating Rules of the Taiwan Stock Exchange Corporation; Article 10, paragraph 8, of the Taipei Exchange Rules Governing Securities Trading on the Taipei Exchange; and the ruling of the Ministry of the Economic Affairs; Paragraph 2 of Article 82 of Enforcement Rules of the*	Paragraph 9, Article 46 of Operating Rules of the Taiwan Stock Exchange	(as below)

Comments:
According to Operating Rules of Taiwan Stock Exchange Corporation, when a listed company or a primary listed company has not issued a cash dividend within 3 months after the ex-dividend record date, the TWSE may impose a penalty of NT$100,000 and send the company a written notice to correct the situation within 1 month after its receipt of the notice. If the company again fails to issue the dividend within the deadline, the TWSE may impose a penalty of not less than NT$200,000 and not more than NT$1 million, and may impose a new deadline for correction according to the circumstances of the individual case. If the company still fails to comply, the TWSE may impose a penalty of not less than NT$200,000 and not more than NT$1 million for each successive failure to comply.

	Last year	This year	*Last year law*	Applicable Law	Comment
Is a subsidiary prohibited from acquiring shares issued by its parent company? If not, must the subsidiary dispose of the shares within a year and cannot exercise any voting rights?	*No*	Yes	*Article 167, paragraph 3, Article 369-1, and Article 369-2 of the Company Act*	Paragraph 3,4 of Article 167, Article 179, Article 369-1 and 369-2 of the Company Act	(as below)

Comments:

1. Pursuant to Article 167, Paragraph 3 of the Company Act, where a majority of the total number of outstanding voting shares or of the total amount of the capital stock of a subordinate company are held by its holding company, the shares of the holding company shall not be purchased nor be accepted as a security in pledge by the said subordinate company.
2. According to Paragraph 4 , Article 167 of Company Act, where the holding company and its subordinate company as referred to in the preceding Paragraph jointly hold or possess a majority of the total number of outstanding shares or of the total amount of the capital stock of another company, the shares of the said holding company and its subordinate company shall also not be purchased nor be accepted as a security in pledge by the said another company.
3. According to Article 369-1 and 369-2 of Company Act, affiliated enterprises refer to enterprises which are independent in existence but are interrelated in either of the following relations:(1) Companies having controlling and subordinate relation between them;(2) Companies having made investment in each other. As to the definition of affiliated enterprises, the controlling company, the subordinate company; and a company which holds a majority of the total number of the outstanding voting shares or the total amount of the capital stock of another company is considered the controlling company, while the said another company is considered the subordinate company.
4. In addition, pursuant to Article 179 of the Company Act, the shares shall have no voting power under any of the following circumstances:
   (1) the share(s) of a company that are held by the issuing company itself in accordance with the laws;
   (2) the shares of a holding company that are held by its subordinate company, where the total number of voting shares or total shares equity held by the holding company in such a subordinate company represents more than one half of the total number of voting shares or the total shares equity of such a subordinate company; or
   (3) the shares of a holding company and its subordinate company(ies) that are held by another company, where the total number of the shares or total shares equity of that company held by the holding company and its subordinate company(ies) directly or indirectly represents more than one half of the total number of voting shares or the total share equity of such a company.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must Buyer disclose ultimate beneficial ownership stakes (i.e. direct and/or indirect) representing 5%?	*Yes*	Yes	*Articles 11 and 10, paragraph 2 of the Regulations Governing Information to be Published in*	Article 11 of the Regulations Governing Information to be Published in Annual Reports	(as below)

			Annual Reports of Public Companies	of Public Companies	

Comments:
The section on capital and shares shall include the following information: (4) List of principal shareholders: List all shareholders with a stake of 5 percent or greater, or the names of the top ten shareholders, specifying the number of shares and stake held by each shareholder on the list.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must Buyer disclose information on other activities and directorships held by board members, including on their primary employment?	*Yes*	Yes	*Article 10 of Regulations Governing Information to be Published in Annual Reports of Public Companies*	Article 209 of the Company Act, Article 10 of Regulations Governing Information to be Published in Annual Reports of Public Companies; Subparagraph 19, paragraph 1, Article 3 of Taiwan Stock Exchange Corporation Rules Governing Information Filing by Companies with TWSE Listed Securities and Offshore Fund Institutions with TWSE Listed Offshore Exchange-Traded Funds	(as below)

Comments:

1. Pursuant to Article 209 of the Company Act, a director who does anything for himself or on behalf of another person that is within the scope of the company's business, shall explain to the meeting of shareholders the essential contents of such an act and secure its approval. The aforesaid approval shall be given upon a resolution adopted by a majority of the shareholders present who represent two-thirds or more of the total number of its outstanding shares. In case a director does anything for himself or on behalf of another person in violation of the provisions of the above regulation, the meeting of shareholders may, by a resolution, consider the earnings in such an act as earnings of the company.
2. According to Article 10 of Regulations Governing Information to be Published in Annual Reports of Public Companies, the contents of an annual report shall include a corporate governance report in which the following information of directors and supervisors shall be disclosed: names, principal work experience and academic qualifications, position(s) held concurrently in the company and/or in any other company, date on which current position was assumed, term of contract, the commencement date of the first term, shares held by directors/supervisors and their spouses, children of minor age, and held through nominees, professional expertise, and whether they are independent directors/supervisors. For directors and supervisors acting as the representatives of institutional shareholders, this section shall indicate the names of the institutional shareholders, and shall further

indicate the names of its 10 largest shareholders and the holding percentage of each. If any of those 10 largest shareholders is an institutional shareholder, the name of the corporate shareholder and the names of its 10 largest shareholders and the holding percentage of each shall be noted).

3. In accordance with Subparagraph 19, paragraph 1, Subparagraph 19, paragraph 1, Article 3 of Taiwan Stock Exchange Corporation Rules Governing Information Filing by Companies with TWSE Listed Securities and Offshore Fund Institutions with TWSE Listed Offshore Exchange-Traded Funds, a TWSE listed company shall file with the TWSE periodically the information on the main current positions and main experience of any independent directors, and whether they serve as a director or supervisor in any other company(ies), and the board meeting attendance and continuing education record of all directors and supervisors. TWSE-listed companies should file the above information on any changes for the preceding month by the 15th day of each month.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must Buyer disclose on an individual basis the compensation of directors and high-ranking officers, including bonuses and incentive schemes?	*Yes*	Yes	*Article 10 and 11 of Regulations Governing Information to be Published in Annual Reports of Public Companies*	Article 10, 11 of the Regulations Governing Information to be Published in Annual Reports of Public Companies	(as below)

Comments:
According to Article 10, 11 of the Regulations Governing Information to be Published in Annual Reports of Public Companies, public companies should disclose: (1) the remuneration paid during the most recent fiscal year to directors, supervisors, the general manager, and assistant general managers. (2) compensation of directors and supervisors.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must Buyer publish the notice of shareholder meeting 21 calendar days in advance and include information and deadlines on participating and exercising voting rights remotely?	*Yes*	Yes	*Article 170, 172 and 177-3 of the Company Act; Article 5 of the Regulations Governing Content and Compliance Requirements for Shareholders' Meeting Agenda Handbooks of Public Companies*	Article 170, 172 and 177-3 of the Company Act; Article 3, 4, 5 of the Regulations Governing Content and Compliance Requirements for Shareholders' Meeting Agenda Handbooks of Public Companies	(as below)

Comments:

1. According to Article 172 of Company Act, (1)for a publicly traded listed company, a notice to convene an annual general meeting of shareholders shall be given to each shareholder no later than 30 days prior to the scheduled meeting dates. (2) for a limited company, a notice to convene an annual general meeting of shareholders shall be giver to each shareholder no later than 20 days prior to the scheduled meeting date.
2. Persuant to Article 177-3 of Company Act and Article 3, 4 ,5 of Regulations Governing Content and Compliance Requirements for Shareholders' Meeting Agenda Handbooks of Public Companies:

(1)the shareholders' meeting agenda handbook shall contain the following information as well as a table of contents and page numbers: (a)The name of the company; (b)The year and type of the shareholders' meeting; (c) The date and location of the shareholders' meeting; (d)The shareholding

status of the directors and supervisors: the minimum numbers of shares required to be held by the entire bodies of directors and supervisors in accordance with Article 26 of the Securities and Exchange Act, and the numbers of shares held by the directors and supervisors individually and by the entire bodies thereof respectively as recorded in the shareholders' register as of the book closure date for that shareholders' meeting; (e)Meeting agenda; (f)Content of any proposals to be put forward at the meeting and the persons putting them forward; (g) Shareholders' meeting procedure rules, articles of incorporation, and other reference materials .

(2) Except as otherwise provided by other applicable acts or regulations, the shareholders' meeting agenda handbook shall include the following information in accordance with the circumstances stated below: (a)When elections are to be held for directors or supervisors, the number of persons to be elected, the duration of their terms, start and end dates, and election procedures. (b)If a candidate nomination system is to be adopted for an election of directors or supervisors in accordance with Article 192-1 and Article 216-1 of the Company Act, the candidate list and the educational background, professional experience, and number of shares held by each candidate shall be specified; if a candidate is a representative of a juristic person, the name of the juristic person and the number of shares held by the juristic person shall also be specified. (c)When a director or supervisor is dismissed, the name of that director or supervisor, the number of shares held, and the reasons for the dismissal. (d)The reasons for exclusion from the shareholders' meeting agenda of any proposals raised by shareholders in accordance with Article 172-1 of the Company Act. (e)When the board of directors reports to the shareholders' meeting on an offer to subscribe to corporate bonds under Article 246 of the Company Act, the reason for the offer, the amount of bonds offered, and other related matters. (f)When the board of directors reports to the shareholders' meeting on a resolution to buy back shares of the company under Article 28-2 of the Securities and Exchange Act, the purpose of the buyback, the number of shares intended to be bought back, price range, and other related matters, as well as the status of actual execution by the company or the reasons why the buyback did not proceed in accordance with the board of directors resolution. (g)In the case of any amendment to the articles of incorporation, the content of the pre- and post-amendment versions and the reasons for the amendment. (h)In the case of a capital increase, the amount of the increase, the share subscription rate or share distribution rate, the basis and reasonableness of the price of the issue or private placement, the plan for use of the funds, and the schedule for, and anticipated benefits from, use of the funds. (i)In the case of a capital decrease, the reason for, and amount of, the decrease, and the share exchange ratio. (j)When there is any of the acts under Article 185, paragraph 1, of the Company Act, including information about the location and general condition of the business or assets, the name and address of the counterparty, the counterparty's relation to the company, and other important content of the contract or the transaction. (k)All annual final accounting books and statements submitted for ratification.(l)When distribution of profits or covering of losses is submitted for ratification, including information about the business report for the most recent fiscal year, the balance sheet for the most recent fiscal year, the income statement for the most recent fiscal year, the circumstances of distribution of profits or covering of losses, and whether all or a portion of the surplus is allocated for a capital increase and issuance of new shares. In subparagraphs (k) and (l) of the preceding paragraph, the relevant financial tables shall be included in the shareholders' meeting agenda handbook, and may not be replaced with the annual report or other meeting materials.

(3) Thirty days before an annual general shareholders' meeting, the publicly traded listed company shall prepare electronic files of the meeting announcement, proxy form, explanatory materials relating to proposals for ratification, matters for deliberation, election or dismissal of directors or supervisors, and other matters on the shareholders' meeting agenda, and upload them to the information disclosure plat form--the Market Observation Post System (a website where all public companies release material publications required by laws and regulations or voluntarily due to the importance of the matters). Furthermore, where voting powers at a shareholders' meeting are to be exercised in writing, a print version of the materials referred to in the preceding paragraph and a printed ballot shall also be sent to the shareholders.

3. In accordance with Article 170 of the Company Act, a limited company shall convene an AGM once a year.

	Last	This	*Last year law*	Applicable Law	Comment

	year	year			
Can shareholders or members who hold 5% of Buyer's share capital put items on the general meeting agenda?	*Yes*	Yes	*Article 172-1 of Company Act*	Article 172-1 of the Company Act	(as below)

Comments:
Shareholder(s) holding one percent (1%) or more of the total number of outstanding shares of a company may propose to the company a proposal for discussion at the annual general shareholders' meeting, provided that only one matter shall be allowed in each single proposal, and in case a proposal contains more than one matter, such proposal shall not be included in the agenda.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must a certified external accountant audit Buyer's annual financial statements?	*Yes*	Yes	*Article 36 of the Securities and Exchange Act; Article 2 of the Regulations Governing Approval of Certified Public Accountants to Audit and Attest to the Financial Reports of Public Companies; Article 20 of the Company Act; the ruling of the Ministry of Economic Affairs.*	Article 36 of the Securities and Exchange Act; Ruling of Ministry of Economy	(as below)

Comments:
1. In accordance with Article 36 of Securities and Exchange Act, unless under special circumstances as otherwise provided by the Competent Authority, an issuer under this Act shall perform public announcement and registration with the Competent Authority as follows: within 3 months after the close of each fiscal year, publicly announce and register with the Competent Authority financial reports duly audited and attested by a certified public accountant, approved by the board of directors, and recognized by the supervisors.
2. According to Paragraph 2 of Article 20 of the Company Act and relevant ruling, where the amount of equity capital of a company exceeds NTD30,000,000, the company shall first have its financial statements audited and certified by a certified public accountant pursuant to the auditing and certification rules as prescribed by the central competent authority.

	Last year	This year	*Last year law*	Applicable Law	Comment
Must Buyer disclose its audit reports to the public?	*Yes*	Yes	*Article 36 of the Securities and Exchange Act*	Article 36 of the Securities and Exchange Act; Subparagraph 1, paragraph 1, Article 3 of Taiwan Stock Exchange Corporation Rules Governing	(as below)

Information Filing by Companies with TWSE Listed Securities and Offshore Fund Institutions with TWSE Listed Offshore Exchange-Traded Funds

Comments:

1. In accordance with Article 36 of Securities and Exchange Act, unless under special circumstances as otherwise provided by the Competent Authority, an issuer under this Act shall perform public announcement and registration with the Competent Authority as follows: within three months after the close of each fiscal year, publicly announce and register with the Competent Authority financial reports duly audited and attested by a certified public accountant, approved by the board of directors, and recognized by the supervisors.
2. In accordance with Article 3 of Taiwan Stock Exchange Corporation Rules Governing Information Filing by Companies with TWSE Listed Securities and Offshore Fund Institutions with TWSE Listed Offshore Exchange-Traded Funds, a TWSE listed company shall file with the TWSE balance sheet, comprehensive income statement, cash flow statement, statement of changes in equity, CPA audit or review report, name of CPA, and matters disclosed in the notes to the financial report by the deadlines for public disclosure and filing of financial reports as set in applicable laws and regulations. Any TWSE listed company that also issues securities outside of Taiwan shall simultaneously file the English version of the audit or review report issued by its certified public accountant (CPA) and the name of the CPA (the English name registered on the passport).

III. Conflict of interest case study

For the following questions, in addition to previous assumptions, please assume the following:

- **Mr. James owns 60% of Buyer. He sits on the 5-member board of directors** (or management board) together with 2 other directors whom he elected. He is neither CEO nor chair.
- **Mr. James also owns 90% of Seller,** which operates a chain of retail stores. Seller, facing financial difficulties, closed a large number of stores and is no longer using many of its trucks.
- **Mr. James proposes** that Buyer purchase Seller's unused fleet of trucks to expand Buyer's distribution of its products. Buyer agrees and enters into the transaction.
- **All required approvals are obtained and all mandatory disclosures are made.** Buyer pays Seller a cash amount equal to **10% of Buyer's assets** to acquire the trucks.
- The transaction is part of Buyer's **ordinary course of business** and is **not *ultra vires*** (i.e. is not outside the power or authority of Buyer).
- **It is subsequently discovered that the price of the trucks was above market value.** The transaction therefore causes damages to Buyer. Shareholders of Buyer want to sue Mr. James as well as board members who voted in favor.

Who provides the final authorization before Buyer can acquire Seller's trucks? The board of directors excluding Mr. James

Applicable Law: Article 14 of the Regulations Governing the Acquisition and Disposal of Assets by Public Companies; Article 14-3 and Article 14-5 of the Securities and Exchange Act, Articles 178, 180, 206 of Company Act, Paragraph 1, Article 16 of Regulation Governing Procedure for Board of Directors Meetings of Public Companies

Comments:

1. According to Article 14 of the Regulations Governing the Acquisition and Disposal of Assets by Public Companies, such a transaction amount reaches 10 percent of the Buyer's total assets, thus the transaction shall be approved by Buyer's board of directors and recognized by its supervisors before Buyer enters into the transaction contract or make a payment.
2. According to Article 14-3 and Article 14-5 of the Securities and Exchange Act, if Buyer has selected independent directors or established an audit committee, the said transaction shall be approved by Buyer's board of directors or audit committee because the personal interest of Mr. James gets involved in such transaction.
3. Moreover, According to Articles 178, 180, 206 of Taiwan Company Act, considering Mr. James has a personal interest in the matter at a board meeting, so he should explain to the board meeting the essential contents of such personal interest and shall not vote nor exercise the voting right on behalf of another shareholder. As a result, the shares held by Mr. James shall not be counted in the total number of issued shares while adopting a resolution at a meeting of shareholders.
4. According to Paragraph 1, Article 16 of Regulation Governing Procedure for Board of Directors Meetings of Public Companies, if any director or a juristic person represented by a director is an interested party with respect to any agenda item, the director shall state the important aspects of the interested party relationship at the respective meeting. When the relationship is likely to prejudice the interests of the company, the director may not participate in discussion or voting on that agenda item, and further, shall enter recusal during discussion and voting on that item and may not act as another director's proxy to exercise voting rights on that matter.

Must an independent body, external to the company, review the transaction prior to its execution (e.g. external auditor, outside financial advisor, stock exchange or regulator)? Yes, professional appraisers or certified public accountants shall review the transaction.

Applicable Law: Article 13 of the Regulations Governing the Acquisition and Disposal of Assets by Public Companies

Comments:

According to Article 13 of the Regulations Governing the Acquisition and Disposal of Assets by Public Companies, (1)when a public company engages in any acquisition or disposal of assets from or to a related party, in addition to ensuring that the necessary resolutions are adopted and the reasonableness of the

transaction terms is appraised, if the transaction amount reaches 10 percent or more of the company's total assets, the company shall also obtain an appraisal report from a professional appraiser or a CPA's opinion in compliance with the provisions of the preceding Section and this Section.(2)The calculation of the transaction amount referred to in the preceding paragraph shall be made in accordance with Article 11-1 herein.(3)When judging whether a trading counterparty is a related party, in addition to legal formalities, the substance of the relationship shall also be considered.

What information about the Buyer-Seller transaction must Mr. James disclose to the board of directors before the transaction is concluded? Full disclosure of all material facts regarding Mr. James' interest in the Buyer-Seller transaction.

Applicable Law: Article 206 of Company Act; Article 16 of Regulations Governing Procedure for Board of Directors Meetings of Public Companies; Article 14 of the Regulations Governing the Acquisition and Disposal of Assets by Public Companies

Comments:

1. According to Article 206 of Company Act and Article 16 of Regulations Governing Procedure for Board of Directors Meetings of Public Companies, Mr. James shall disclose the important aspects of the interested party relationship to Buyer's board of directors. When the relationship is likely to prejudice the interests of the company, the director may not participate in discussion or voting on that agenda item, and further, shall enter recusal during discussion and voting on that item and may not act as another director's proxy to exercise voting rights on that matter.
2. According to Article 14 of the Regulations Governing the Acquisition and Disposal of Assets by Public Companies, Mr. James shall disclose the following information to Buyer's board of directors and Buyer's supervisor: (1) The purpose, necessity and anticipated benefit of the acquisition or disposal of assets.(2) The reason for choosing the related party as a trading counterparty.(3) The date and price at which the related party originally acquired the real property, the original trading counterparty, and that trading counterparty's relationship to the company and the related party.(4) Monthly cash flow forecasts for the year commencing from the anticipated month of signing of the contract, and evaluation of the necessity of the transaction, and reasonableness of the funds utilization.(5) An appraisal report from a professional appraiser or a CPA's opinion obtained in compliance with the preceding article.(6) Restrictive covenants and other important stipulations associated with the transaction.

Which information about the Buyer-Seller transaction must be disclosed by Buyer to the public, the regulator or the stock exchange immediately (within 72 hours of closing the transaction)?

	Last year	This year
A description of the assets purchased by Buyer	*Yes*	Yes
The nature and amount of consideration paid by Buyer to Seller	*Yes*	Yes
Mr. James' ownership interest and/or director position in Buyer	*Yes*	Yes
The fact that Mr. James owns 90% of Seller	*Yes*	Yes

Applicable Law: Article 30 of Regulations Governing the Acquisition or Disposal of Assets by Public Companies, Article 4 and 6 of the Taiwan Stock Exchange Corporation Procedures for Verification and Disclosure of Material Information of Companies with Listed Securities

Comments:

1. 1According to Article 30 of Regulations Governing the Acquisition or Disposal of Assets by Public Companies, a public company acquiring or disposing assets other than real property from or to a related party where the transaction amount reaches 20% or more of paid-in capital, 10% or more of the company's total assets or NT$300 million or more of assets shall publicly announce and report the relevant information on the FSC's designated website in the appropriate format as prescribed by regulations within 2 days commencing immediately from the date of occurrence of the event.
2. According to Article 4 and Article 6 of Taiwan Stock Exchange Corporation Procedures for Verification and Disclosure of Material Information of Companies with Listed Securities, a TWSE listed company shall input the material information or explanations into the Internet information reporting system designated by the TWSE one hour before the beginning of trading hours on the trading day following the date of occurrence of the event, whereas the below information is regarded as material: an acquisition or

disposal, by the TWSE listed company or by a subsidiary whose shares have not been publicly issued domestically, of assets within the scope of Article 3 of the Regulations Governing Acquisition or Disposal of Assets by Public Companies adopted by the competent authority and where the circumstances of Article 30 or 31 of those Regulations require public disclosure and filing (but with the exception of the following circumstances: (a) Public disclosure has already been made of a merger, consolidation, division, acquisition, or transfer of shares from another pursuant to subparagraph 11 of this paragraph. (b) Public disclosure has already been made of an acquisition or disposal of privately placed securities pursuant to subparagraph 24 of this paragraph. (c) The information pertains to derivatives trades that must be reported by the 10th of each month. (d) An acquisition or disposal of any type of open-end fund.)

Which information about the Buyer-Seller transaction must be disclosed by Buyer in its annual financial statement?

	Last year	This year
A description of the assets purchased by Buyer	*Yes*	Yes
The nature and amount of consideration paid by Buyer to Seller	*Yes*	Yes
Mr. James' ownership interest and/or director position in Buyer	*Yes*	Yes
The fact that Mr. James owns 90% of Seller	*Yes*	Yes

Applicable Law: Article 18 of the Regulations Governing the Preparation of Financial Reports by Securities Issuers (IFRSs Adopted Edition)

Comments: According to Article 18 of the Regulations Governing the Preparation of Financial Reports by Securities Issuers (IFRSs Adopted Edition), an issuer shall fully disclose information on related party transactions in accordance with IAS 24...,and relevant information shall be disclosed in the notes to the financial reports in accordance with IAS 24.

Can shareholders representing 10% sue Mr. James for the losses that the transaction caused to Buyer? Yes, derivatively.

Applicable Law: Article 369-3 and Article 369-4 of the Company Act

Comments:

1. According to Article 369-3 of the Company Act, under any of the following circumstances, it shall be concluded as the existence of the controlling and subordinate relation:

(1) Where a majority of executive shareholders or directors in a company are contemporarily acting as executive shareholders or directors in another company; or

(2) Where a majority of the total number of outstanding voting shares or the total amount of the capital stock of a company and another company are held by the same shareholders.

3. In this case, Mr. James owns 60% of Company A and 90% of Company B, therefore, the controlling and subordinate relation exists between Company B and Company A. Company B sells its trucks to Company A above market value and thus is contrary to normal business practice, according to Paragraph 1 and Paragraph 2 of Article 369-4 of the Company Act, Company B should pay Company A an appropriate compensation upon the end of the fiscal year involved. If Company B fails to do so, and thus causes Company A to suffer damages, Company B shall be liable for such damages. Mr. James, as the responsible person of Company B which caused Company A to do business contrary to normal business practice and caused damages to Company A, shall be liable, jointly and severally, with the company B for such damages.
4. Furthermore, in the event Company B fails to make the indemnification as required in the preceding Paragraph, Company A's creditor, or the shareholder(s) who hold(s) 1% or more of the total number of the outstanding voting shares or of the total amount of the capital stock of Company A may exercise, in its (or his/their) own name, the rights of Company A as set forth in the preceding Paragraphs to claim for the payment of the indemnity from the Company B to Company A.

Which of the following is the least difficult to prove for shareholders and would be sufficient to hold Mr. James liable for the damage that the transaction causes to the company? That there was a conflict of interest, that the transaction was unfair and/or that it caused damages to the company.

Applicable Law: Article 369-3 and Article 369-4 of the Company Act; previous High Court decisions.

Comment:

1. According to Article 369-3 of the Company Act, under any of the following circumstances, it shall be concluded as the existence of the controlling and subordinate relation:

(1)Where a majority of executive shareholders or directors in a company are contemporarily acting as executive shareholders or directors in another company; or

(2)Where a majority of the total number of outstanding voting shares or the total amount of the capital stock of a company and another company are held by the same shareholders.

2. Previous High Court decisions indicates that any transaction of which purpose, price, processing procedures or any other term is deem to be unreasonable, or contrary to normal business practice, is a transaction not in the normal course of operation. Besides, in accordance with Paragraph 1, Article 369-4 of the Company Act, in case a controlling company has caused its subsidiary company to conduct any business which is contrary to normal business practice or not profitable, but fails to pay an appropriate compensation upon the end of the fiscal year involved, and thus causing the subsidiary company to suffer damages, the controlling company shall be liable for such damages.
3. In this case, Mr. James owns 60% of Company A and 90% of Company B, therefore, the controlling and subordinate relation exists between Company B and Company A. Company B sells its trucks to Company A above market value and thus is contrary to normal business practice, according to Paragraph 1 and Paragraph 2 of Article 369-4 of the Company Act, Company B should pay Company A an appropriate compensation upon the end of the fiscal year involved. If Company B fails to do so, and thus causes Company A to suffer damages, Company B shall be liable for such damages. Mr. James, as the responsible person of Company B which caused Company A to do business contrary to normal business practice and caused damages to Company A, shall be liable, jointly and severally, with the company B for such damages.
4. Furthermore, in the event Company B fails to make the indemnification as required in the preceding Paragraph, Company A's creditor, or the shareholder(s) who hold(s) 1% or more of the total number of the outstanding voting shares or of the total amount of the capital stock of Company A may exercise, in its (or his/their) own name, the rights of Company A as set forth in the preceding Paragraphs to claim for the payment of the indemnity from the Company B to Company A.

Which of the following is the least difficult to prove for shareholders and would be sufficient to hold the other board members liable for the damage that the transaction causes to the company? That there was a conflict of interest, that the transaction was unfair and/or that it caused damages to the company.

Applicable Law: Articles 184, 227, 544 of Civil Code; Articles 8, 23, 193, 206 , 369-3 and 369-4 of Company Act; Articles 13 and 14 of the Regulations Governing the Acquisition and Disposal of Assets by Public Companies; and Article 171 of the Securities and Exchange Act of Company Act; Article 28 of Securities Investor and Futures Trader Protection Act.

Comment:

1.According to the comments of the previous two questions, the controlling and subordinate relation exists between Company B and Company A. Company B is the controlling company and should be liable for the damages Company A suffers from the above-said contrary-to-normal-business-practice transaction. According to Paragraph 1 and Pargraph 2 of Article 369-4 of the Company Act, Company B should pay Company A an appropriate compensation upon the end of the fiscal year involved. If Company B fails to do so, and thus causes Company A to suffer damages, Company B shall be liable for such damages. Mr. James, as the responsible person of Company B which caused Company A to do business contrary to normal business practice and caused damages to Company A, shall be liable, jointly and severally, with the company B for such damages. Furthermore, in the event Company B fails to make the indemnification as required in the preceding Paragraph, Company A's creditor, or the shareholder(s) who hold(s) 1% or more of the total number of the outstanding voting shares or of the total amount of the capital stock of Company A may exercise, in its (or his/their) own name, the rights of Company A as set forth in the preceding Paragraphs to claim for the payment of the indemnity from the Company B to Company A.

2.For Articles 184, 227, 544 of Civil Code, Articles 8, 23, 193 and 206 of Company Act, Articles 13 and 14 of the Regulations Governing the Acquisition and Disposal of Assets by Public Companies; and Article 171 of the Securities and Exchange Act, Buyer's Directors can be held liable for breach of their duty of care to the company if it can be proven that: (1) they were negligent in approving such deal; and (2) the transaction caused damage to Buyer.

3.According to Article 28 of Securities Investor and Futures Trader Protection Act, the SPIFC (Securities and Futures Investor Protection Center) may submit a matter to arbitration or institutie an action in its own name with respect to a securities or futures matter arising from a single cause that is injurious to multiple securities investors or futures traders, after having been so empowered by not less than 20 securities investors or futures traders. For more information, please see http://www.sfipc.org.tw.

If shareholders are successful in their action(s) against Mr. James, what remedies are available?

	Last year	This year
He pays damages	*Yes*	Yes
He repays personal profits made from the transaction	*No*	Yes
He is disqualified from serving in the management of any company for 1 year or more	*No*	No

Applicable Law: Paragraph 1 and Paragraph 3 of Article 23, Paragraph 2 of Article 215, Paragraph 1 and Paragraph 2 of Article 369-4 of the Company Act, Paragraph 1, subparagraph 2 of Article 171 of Securities and Exchange act, Article 10-1 of Securities Investor and Futures Trader Protection Act.

Comment:

1. Pursuant to Paragraph 1 and Paragraph 2 of Article 369-4 of the Company Act, in case a controlling company (Company B) has caused its subsidiary company (Company A) to conduct any business which is contrary to normal business practice or not profitable, but fails to pay an appropriate compensation upon the end of the fiscal year involved, and thus causing the subsidiary company (Company A) to suffer damages, the controlling company (Company B) shall be liable for such damages. And if the responsible person (Mr. James) of the controlling company (Company B) has caused the subsidiary company (Company A) to conduct the business described in the preceding Paragraph, he shall be liable, jointly and severally, with the controlling company (Company B) for such damages.
2. According to Paragraph 1 of Article 23 of Company Act, a director (Mr. James) shall have the loyalty and shall exercise the due care of a good administrator in conducting the business operation of the company; and if Mr. James has acted contrary to this provision, he shall be liable for the damages to be sustained by the company there-from. As a result, Mr. James should pay the damages. In addition, persuant to Paragraph 3 of Article 23 of Company Act, in case a director (Mr. James) of a company does anything for himself or on behalf of another person in violation of his obligation of loyalty or duty of due care, the meeting of shareholders may, by a resolution, consider the earnings in such an act as earnings of the company unless one year has lapsed since the realization of such earnings. Therefore, Mr. James should repay personal profits made from the transaction following a resolution of the shareholders' meeting.
3. In accordance with Paragraph 2 of Article 215 of Company Act, if shareholders are successful in their actions against Mr. James, Mr. James shall be liable to compensate the shareholders who instituted the action for loss or damage resulting from such an action.
4. Mr. James causes the company to conduct transactions to its disadvantage and not in the normal course of operation, thus causing substantial damage to the company, according to paragraph 1, subparagraph 2 of Article 171 of Securities and Exchange Act, he shall be punished with imprisonment for not less than three years and not more than ten years, and in addition thereto, a fine of not less than NT$10 million and not more than NT$200 million may be imposed.
5. According to Paragraph 1 of Article 10-1 of Securities Investor and Futures Trader Protection Act, when the protection institution carries out matters under paragraph 1 of the preceding article and discovers conduct by a director or supervisor of an exchange-listed or OTC-listed company in the course of performing his or her duties that is materially injurious to the company or is in violation of laws, regulations, and/or provisions of the company's articles of incorporation, it may handle the matter in accordance with the following provisions:
   (1) The protection institution may request the supervisors of the company to institute an action against the director on behalf of the company, or may request the board of directors of the company to institute an action against the supervisor on behalf of the company. If the supervisors or the board of directors fail to institute an action within 30 days after receiving the request made by the protection institution, then the protection institution may institute the action on behalf of the company without regard to the restrictions of Article 214 of the Company Act or Article 227 of the Company Act as applied mutatis mutandis through Article 214. The protection institution's request shall be made through a written instrument.

(2) The protection institution may institute a lawsuit in court for an order dismissing the given director or supervisor, without regard to the restrictions of Article 200 of the Company Act or of Article 227 of the Company Act applied mutatis mutandis through Article 200.

Can a court void/rescind the transaction upon a successful claim by shareholder plaintiffs (please select the least difficult argument to prove that would likely succeed)? Yes, if there was a conflict of interest, if the transaction was unfair or caused damages.

Applicable Law: Articles 174-1 and 171, Paragraph 1, Subparagraph 2 of the Securities and Exchange Act

Comment:

1. According to previous supreme court decisions, the resolution adopted at Buyer's board meeting for such a transaction is contrary to applicable laws, shareholders can file a lawsuit to void the resolution in his/her/its own name.
2. According to Article 174-1 of Securities and Exchange Act, (1) When a director, supervisor, managerial officer, or employee of a company with securities issued pursuant to this Act commits a gratuitous act as set forth in Article 171, paragraph 1, subparagraphs 2 or 3 or paragraph 1, subparagraph 8 of the preceding Article prejudicial to the rights and interests of the issuer, the issuer may petition a court for voidance of the act. (2) If, at the time of commission of a non-gratuitous act by a director, supervisor, managerial officer, or employee of a company as referred to in the preceding paragraph, such person knew the act to be prejudicial to the rights and interests of the issuer, where the beneficiary of the act also knew of that circumstance at the time of receiving the benefits, the issuer may petition a court for voidance of the act. (3) When an application is made to a court for voidance pursuant to either of the two preceding paragraphs, the court may also be petitioned to order the beneficiary of the act or a party to whom benefits were transferred to restore the status quo ante, provided that this shall not apply where the party to whom the benefit was transferred was not aware of a cause for voidance at the time of the transfer. (4) Any disposition of property between a director, supervisor, managerial officer, or employee as referred to in paragraph 1 and such a person's spouse, lineal relative, cohabiting relative, head of household, or family member shall be deemed a gratuitous act. (5) Any disposition of property between a director, supervisor, managerial officer, or employee as referred to in paragraph 1 and any person other than those set forth in the preceding paragraph shall be presumed to be a gratuitous act.

Before filing a suit, can shareholders representing 10% obtain internal company documents such as minutes of board meetings, contracts and purchase agreements in connection with Buyer's acquisition of the trucks? Yes, both directly and through an inspector.

Applicable Law: Article 245 of the Company Act; Article 38-1 of Securities and Exchange Act; Article 9 of the Freedom of Government Information Law; Article 368 of the Code of Civil Procedure

Comment:

1. According to Article 245 of Company Act, shareholders who have been continuously holding three per cent of total number of the outstanding shares of a company for a period of one year or longer may apply to the court for appointment of inspector to inspect the current status business operations, the financial accounts and the property of the company. The court may, when it deems necessary based on the report made by the inspector, order the supervisor(s) of the company to convene a meeting of shareholders.
2. According to article 38-1 of Securities and Exchange Act, When shareholders who have been continuously holding, for a period of 1 year or longer, 3 percent or more of the total number of the outstanding shares of a company whose stock is listed on the stock exchange or traded over-the-counter deem that a specific matter materially damages the interests of shareholders, they may apply to the Competent Authority with reasons, related evidence, and explanations of necessity, asking for inspection of the specific matter, related documents, and account books of the issuer. If the Competent Authority deems necessary, it will proceed pursuant to the preceding paragraph. Therefore, if the Competent Authority deems necessary, it may from time to time appoint a certified public accountant, lawyer, engineer, or any other professionals or technicians to examine the financial and business conditions and related documents, statements, and account books of the issuer, securities underwriter, or other related parties and to submit reports or opinions to the Competent Authority, at the expense of the examinee.

3. Shareholders may request government agencies to provide government information in accordance with Article 9 of the Freedom of Government Information Law. "Government Information" means information which a government agency produces or acquires within its respective authority and is saved in the forms of documents, pictures .... etc.
4. Pursuant to Article 368 of the Code of Civil Procedure, where it is likely that evidence may be destroyed or its use in court may be difficult, or with the consent of the opposing party, the party may move the court for perpetuation of such evidence; where necessary, the party who has legal interests in ascertaining the status quo of a matter or object may move for expert testimony, inspection or perpetuation of documentary evidence.

In a civil trial, what is the scope of information that the plaintiff can ask the judge to compel?

From the defendant: Any information that is relevant to the subject matter of the claim.

From an uncooperative witness: Any information that is relevant to the subject matter of the claim.

Applicable Law: Articles 342,343, 344, 346, 347of the Code of Civil Procedure

Comment:

1. Article 342 of the Code of Civil Procedure (1)where the document identified to be introduced as documentary evidence is in the opposing party's possession, a party shall move the court to order the opposing party to produce such document. (2)The motion provided in the preceding paragraph shall specify the following matters: (a) The identification of document requested to be produced; (b) The disputed fact to be proved by such document; (c) The content of such document; (d) The fact that such document is in the opposing party's possession; and (e) The reason why the opposing party has a duty to produce such document. In addition, where there exists manifest difficulty in specifying the matters provided in the first and the third subparagraphs of the preceding paragraph, the court may order the opposing party to provide necessary assistance.
2. Article 343 of the Code of Civil Procedure stipulates that where the court considers that the disputed fact is material and that the motion is just, it shall order the opposing party to produce the document by a ruling.
3. Article 344 Paragraph 1 of the Code of Civil Procedure stipulates that a party has the duty to produce the following documents: (1) Documents to which such party has made reference in the course of the litigation proceeding; (2) documents which the opposing party may require the delivery or an inspection thereof pursuant to the applicable laws; (3) documents which are created in the interests of the opposing party; (4) commercial accounting books; and (5) documents which are created regarding matters relating to the action.
4. Article 346 Paragraph 1 of the Code of Civil Procedure stipulates that, where a document identified to be introduced as documentary evidence is in a third person's possession, a party may move the court either to order such third person to produce such document or to designate a period of time within which the party who intends to introduce it as evidence shall produce such document.
5. Article 347 Paragraph 1 of the same Code stipulates that where the court considers that the disputed fact is material and that the motion is just, it may order, by a ruling, the third person to produce the document or to designate a period of time within which the party who intends to introduce it as evidence shall produce such document.
6. In general, under the provisions of Article 344 Paragraph 1 and Article 346 Paragraph 1 of the Code of Civil Procedure, a stockholder plaintiff can obtain the following three kinds of information from the defendant(s) and witnesses: (1) information that the defendant has indicated that he intends to rely on for his defense; (2) information that directly proves specific facts in the plaintiff's claim; (3) any information that is relevant to the subject matter of the claim. In addition, Articles 343 and 347 Paragraph 1 of the Code stipulate that the plaintiff can obtain from the defendant(s) and witnesses (4) any information that may lead to the discovery of relevant information. To sum up, the plaintiff's request to the judge be to compel evidence from a defendant or witness in a civil trial without specifically identify the documents sought.

How specific must the plaintiff's request to the judge be to compel evidence from a defendant or witness in a civil trial? The request need only identify categories of documents sought, without specifics.

Applicable Law: Article 342, 346 of the Taiwan Code of Civil Procedure.

Comment: Article 342 of the Code of Civil Procedure provides that:

1. According to Articles 342 of the Taiwan Code of Civil Procedure, (1)where the document identified to be introduced as documentary evidence is in the opposing party's possession, a party shall move the court to order the opposing party to produce such document. (2)The motion provided in the preceding paragraph shall specify the following matters: (a) The identification of document requested to be produced; (b) The disputed fact to be proved by such document; (c) The content of such document; (d) The fact that such document is in the opposing party's possession; and (e) The reason why the opposing party has a duty to produce such document. In addition, where there exists manifest difficulty in specifying the matters provided in the first and the third subparagraphs of the preceding paragraph, the court may order the opposing party to provide necessary assistance.
2. According to Article 346 of the Taiwan Code of Civil Procedure, (1)where a document identified to be introduced as documentary evidence is in a third person's possession, a party may move the court either to order such third person to produce such document or to designate a period of time within which the party who intends to introduce it as evidence shall produce such document. (2)the provisions of the second paragraph and the third paragraph of Article 342 shall apply mutatis mutandis to the motion provided in the preceding paragraph.

Which statements best describe the process of questioning defendants and witnesses in civil trials?

From the defendant: The plaintiff or plaintiff's lawyer performs his own questioning with prior approval by the court of the questions posed.

From an uncooperative witness: The plaintiff or plaintiff's lawyer performs his own questioning with prior approval by the court of the questions posed.

Applicable Law: Articles 200 and 320 of Taiwan Code of Civil Procedure.

Comment:

1. Article 200 Paragraph 1 of the Taiwan Code of Civil Procedure stipulates that a party may move the presiding judge to conduct necessary interrogation and may, after informing the presiding judge, conduct interrogation himself/herself. Paragraph 2 of the same Article stipulates that, where the presiding judge considers either the party's motion for interrogation or the interrogation conducted by the party to be inappropriate, the presiding judge may decline to conduct such interrogation or prohibit the party from conducting such interrogation.
2. Article 320 Paragraph 1 of the Taiwan Code of Civil Procedure stipulates that a party may move the presiding judge to conduct a necessary examination of a witness or, after informing the presiding judge, conduct such examination himself/herself.
3. Hence, during trial, a plaintiff must obtain prior approval from the court to question a defendant or witness.

Must the company or defendants reimburse the legal expenses (e.g., court fees, attorney fees and related expenses) of shareholders in their action against company directors? Yes if the court found in favor of the shareholders. The amount can be at the discretion of the court.

Applicable Law: Paragraph 2 of Article 215 of Company Act, Article 78 of the Code of Civil Procedure; Article 37 of Attorney Regulation Act and Article 35 of Rules of Professional Conduct

Comment:

1. In accordance with Paragraph 2 of Article 215 of Company Act, if shareholders are successful in their actions against Mr. James, Mr. James shall be liable to compensate the shareholders who instituted the action for loss or damage resulting from such an action.
2. According to Article 78 of the Code of Civil Procedure, the losing party shall bear the litigation expenses, which does not include the contingency fees.
3. Pursuant to Article 37 of Attorney Regulation Act, an attorney shall not demand in advance, or receive fees beyond those specified or provided for in Legal Codes, Attorney Code of Ethics or Bar Association Articles of Incorporation.
4. In accordance with Article 35 of Rules of Professional Conduct, a lawyer shall expressly inform a client of the amount of his/her remuneration or the method of calculating his/her remuneration, but may not

enter into an agreement for contingent fee payment with a client in the case of a family matter, criminal matter, or juvenile matter.