IIUM LAW JOURNAL

VOLUME 33, NUMBER (2), 2025

International Islamic University Malaysia
http://journals.iium.edu.my/index.php/iiumlj

IIUM Law Journal (ISSN 0128-2530) is published twice yearly, in May and November, by the IIUM Press, Research Management Centre, International Islamic University Malaysia, P.O. Box 10, 50728 Kuala Lumpur, Malaysia. The journal is a refereed journal and is indexed in Scopus, MyCite and Web of Science (Emerging Sources Citation Index).

Published by:
IIUM Press, International Islamic University Malaysia
P.O. Box 10, 50728 Kuala Lumpur, Malaysia
Phone: (+603) 6196-5014; Fax: (+603) 6196-6298
Website: https://journals.iium.edu.my/v2/

IIUM Law Journal

Vol. 33, Number (2), 2025

Table of Contents

33 (2) 2025 IIUMLJ 159 -204

DIRECTORS' ELECTION WITHIN CONCENTRATED SHAREHOLDING STRUCTURE: A COMPARATIVE ANALYSIS OF MALAYSIA AND INDONESIA

Aiman @ Nariman Mohd. Sulaiman*

Yetty Komalasari Dewi**

ABSTRACT

Shareholders' involvement in directors' elections is viewed as an important governance tool, enabling the disciplining of non-performing directors. However, this power could be distorted to entrench directors affiliated with controlling shareholders. This article presents a comparative analysis of directors' election mechanisms comparing Malaysia and Indonesia, jurisdictions with similar concentrated shareholding structures (dominated by family and state control) but with different board structures (unitary versus dual board). Highlighting gaps in statutory laws and corporate governance rules related to shareholder proposal rights, voting mechanisms and the functioning of the nomination committee, the article analyses whether the shareholders' election rights are effective to counter director entrenchment. The article relies primarily on qualitative research method, combining doctrinal legal analysis and a comparative study of legal provisions, international and regional developments and court decisions. The article finds three key differences: First, Malaysia requires lower shareholding thresholds (2.5% for agenda proposals versus Indonesia's 20%), facilitating minority shareholder participation. Second, Indonesia's no mandatory poll and slate voting enables controlling shareholders' dominance that

---

*Professor of Corporate Law, Ahmad Ibrahim Kulliyyah of Laws, International Islamic University Malaysia, PO Box 10, 50728 Kuala Lumpur Malaysia Email: aimann@iium.edu.my (Corresponding Author).

**Professor of Economic Law (Corporate Law), Department of Economic and Technology, Faculty of Law, Universitas Indonesia, Jl. Prof. Mr Djokosoetono, Pondok Cina, Beji, Depok City, West Java 16424, Indonesia. Email: yetti.komalasari@ui.ac.id

[Received: 20 August 2025, Accepted: 30 October 2025, Published: 30 November 2025]

could lead to the entrenchment of affiliated directors. Third, there are different patterns of the tension between the nomination committee's authority and shareholders' powers. Malaysia showed the nomination committee's resistance to shareholder nominees, while Indonesian cases reveal concerns about bypassing the nomination committee. This article contributes to comparative corporate governance scholarship by: (1) identifying how unitary versus dual board structures produce distinct shareholder empowerment outcomes in concentrated ownership contexts; (2) documenting gaps in voting mechanisms that facilitate director entrenchment; and (3) providing a framework for evaluating shareholders' election rights across ASEAN jurisdictions.

Keywords: Directors' Election, Unitary and Dual Board Structures, Controlling Shareholders, Voting Rights, Nomination Committee.

PEMILIHAN PENGARAH DALAM STRUKTUR PEMEGANGAN SAHAM TERTUMPU: KAJIAN PERBANDINGAN MALAYSIA DAN INDONESIA

ABSTRACT

Penglibatan pemegang saham dalam pemilihan pengarah dilihat sebagai alat tadbir urus penting kerana ia membolehkan tindakan disiplin diambil terhadap pengarah yang tidak berprestasi, namun kuasa ini juga boleh disalahgunakan untuk mengukuhkan kedudukan pengarah yang mempunyai kaitan dengan pemegang saham pengawal. Artikel ini membentangkan analisis perbandingan mekanisme pemilihan pengarah di Malaysia dan Indonesia, dua bidang kuasa dengan struktur pegangan saham tertumpu yang hampir sama, didominasi keluarga dan kerajaan, tetapi berbeza dari segi struktur lembaga (unitari berbanding dwi-lembaga). Dengan menonjolkan kelompongan dalam undang-undang statutori dan peraturan tadbir urus korporat berkaitan hak cadangan pemegang saham, mekanisme pengundian dan fungsi jawatankuasa pencalonan, artikel ini menilai keberkesanan hak pemegang saham dalam mengekang pengukuhan kedudukan lembaga pengarah (entrenchement effect). Penyelidikan ini menggunakan kaedah kualitatif berasaskan analisis doktrinal undang-undang serta kajian perbandingan terhadap peruntukan undang-undang, perkembangan antarabangsa dan serantau, serta keputusan mahkamah. Hasil kajian menunjukkan tiga perbezaan utama: pertama, Malaysia menetapkan ambang pegangan saham yang lebih rendah (2.5% berbanding Indonesia 20%) bagi mencadangkan agenda, sekali gus meningkatkan penyertaan pemegang saham minoriti; kedua, ketiadaan kewajipan undi mengikut pengangan saham dan amalan *slate voting* di Indonesia membolehkan dominasi pemegang saham kawalan (controlling shareholding) yang boleh mengukuhkan kedudukan pengarah berkaitan; ketiga, corak ketegangan antara kuasa jawatankuasa pencalonan dan kuasa pemegang saham adalah berbeza di kedua-dua negara, dengan Malaysia memperlihatkan jawatankuasa cenderung mementang pencalonan dari pemegang saham manakala kes di Indonesia menunjukkan kebimbangan mengenai situasi dimana jawatankuasa diketepikan. Artikel ini menyumbang kepada beasiswa tadbir urus korporat perbandingan dengan mengenal pasti bagaimana struktur lembaga unitari dan dwi-lembaga menghasilkan tahap pemberdayaan pemegang saham yang berbeza dalam konteks pemilikan tertumpu, mendokumentasikan kelompongan mekanisme pengundian yang memudahkan pengukuhan pengarah, serta menyediakan rangka kerja untuk menilai hak pemilihan pemegang saham merentasi bidang kuasa ASEAN.

Kata Kunci: Pemilihan Pengarah, Struktur Lembaga Unitari Dan Dwilapis, Pemegang Saham Kawalan, Hak Mengundi, Jawatankuasa Pencalonan.

INTRODUCTION

Modern corporate law theories, despite their varied perspectives, consider directors as key corporate actors appointed to represent shareholders' and stakeholders' interests. Shareholders' authority to determine board membership ensures directors' accountability. By nominating and removing directors, shareholders create incentives for directors to align their interests with shareholders' interests and enable disciplining non-performing, under-performing or errant directors.[1] However, the way modern large public corporations operate, usually under a 'separation of ownership from control' structure, facilitates managerial hegemony. Managerial hegemony theory considers the governing board of an organisation as simply a "rubber stamp" and all its strategic decisions are dominated and pre-empted by the

[1]See Helen L. Anderson et al, "The Evolution of Shareholder and Creditor Protection in Australia: An International Comparison," *International and Comparative Law Quarterly* 61(1) (2012): 171–207; Reena Aggarwal, Sandeep Dahiya and Nagpurnanand Prabhala, "The power of shareholder votes: Evidence from uncontested director elections," *Journal of Financial Economics* 133(1) (2019): 134-153.

professional managers.[2] In terms of directors' entrenchment, management's involvement in the directors' selection process creates boards with a weak monitoring role and less inclined to challenge management.[3] Existing literature identified mechanisms linking managerial hegemony to director entrenchment, which involve (a) (non) availability of proposal rights, i.e., the ability to propose board candidates in addition to right to vote to elect and remove directors, i.e. approval rights, (b) voting rules that (dis)enfranchise shareholders (c) nomination process that either facilitate proposal and approval rights or could be used to subdue shareholders' activism in directors election.[4]

For Asian jurisdictions, a specific concern raised by the OECD is the concentrated shareholding structure with family and state control.[5] Although a concentrated shareholding structure presents

---

[2]Anil Shividasani and David Yermack. "CEO involvement in the selection of new board members: An empirical analysis." *Journal of Finance* 54 (1999): 1829-1853; Samuel Fulgence, Agyenim Boateng, and Frank Kwabi. 2024. "Ownership Structure, Corporate Governance Disclosure, and the Moderating Effect of CEO Power: Evidence from East Africa." *Accounting Forum* November (2024): 1–30.

[3]Majid J. Khan, Faiza Saleem, Shahab Ud Din Muhammad Yar Khan. "Nexus between boardroom independence and firm financial performance: evidence from South Asian emerging market. *Humanities and Social Science Communications* 11(2024): 590. https://doi.org/10.1057/s41599-024-02952-3

[4]See OECD, *Better Policies for Board Nomination and Election in Asia*, *Corporate Governance* (OECD Publishing, 2013), http://dx.doi.org/10.1787/9789264204386-en; OECD, *Board Member Nomination and Election*, (OECD Publishing, 2012). http://dx.doi.org/10.1787/9789264179356-en;Standing Committee on Industry, Science and Technology (Canada), *Statutory Review of the Canada Business Corporations Act*, Report of the Standing Committee (June 2010), House of Commons, Canada; Industry Canada, *Consultation on the Canada Business Corporations Act* (2013). OECD, *Shareholder Meetings and Corporate Governance: Trends and Implications* (OECD Publishing,2025)Paris, https://doi.org/10.1787/2d36fa5c-en;
OECD, *OECD Corporate Governance Factbook 2025*, (OECD Publishing,2025) Paris, https://doi.org/10.1787/f4f43735-en.

[5]OECD, *Corporate Governance in Asia: Progress and Challenges* (OECD Publishing, 2011), http://dx.doi.org/10.1787/9789264096790-en; OECD, *Reform Priorities in Asia: Taking Corporate Governance to a Higher Level* (OECD Publishing, 2013),

controlling shareholders with the incentive and voting power to exercise active monitoring over management,[6] voting power could be distorted to support directors who are perceived as merely mouthpieces for the controlling shareholders.[7] In companies where the controlling shareholder is a family, closely related individuals typically have uncontested control with direct participation as members of the top management team.[8] Controlling shareholders will try to reduce reliance on external enforcement mechanisms and instead protect their investment by appointing the board and managers who support them.[9] As part of succession and control by the family unit, the company is sometimes used to provide employment for inexperienced family members or is used as empire-building to solidify the social prestige of the family-CEO (or other family directors) at the expense of optimising profits.[10] There is anecdotal evidence of relatively young directors who

---

http://dx.doi.org/10.1787/9789264204416-en

[6]Paul L. Davis and Klaus J. Hopt, "Boards in Europe—Accountability and Convergence," *American Journal of Comparative Law* 61 (2013): 301–75; Fuxiu Jaing, Bing Zhu, Xue Wang and Wenjiang Cai, "Multiple large shareholders and corporate investment: Evidence from China" *Journal of Corporate Finance* 56 (2018): 66-83.

[7]Chandrasekhar Krishnamurthi and Aleksandar Sevic, "Legal Environment, Firm-Level Corporate Governance and Expropriation of Minority Shareholders in Asia," *Economic Change and Restructuring* 38(1) (2005): 85–110; Regina M. Lizares, 'Ownership concentration and board structure: Alignment and entrenchment effects in an emerging market "*Managerial and Decision Economics* 43(6) (2022): 2557 – 2569; Yan-Leung Cheung et al., "Connected board of directors: A blessing or a curse?" *Journal of Banking & Finance* 37(8) (August 2013): 3227-3242.

[8]Rafael La Porta, Florencio Lopez-De-Silanes, and Andrei Shleifer, "Corporate Ownership around the World," *Journal of Finance* 54(2) (1999): 471–517; Steve Sauerwald et al., "Are All Private Benefits of Control Ineffective? Principal–Principal Benefits, External Governance Quality, and Firm Performance," *Journal of Management Studies* 56(4) (2019): 725-757. Franklin Nakpodia, "Corporate Governance and Family Business: A Perspective Article." *Journal of Family Business Management* November 3 (2023). https://doi.org/10.1108/jfbm-10-2023-0198.

[9]Michael Burkart, Fausto Panunzi, and Andrei Shleifer, "Family Firms," *Journal of Finance* 58 (2003): 2167–2202.

[10]Randall Morck, Daniel Wolfenzon, and Bernard Yeung, "Corporate Governance, Economic Entrenchment and Growth," *Journal of Economic Literature* 43 (2005): 657–722.

are family members of the majority founding shareholders appointed to the board.[11] Attempts to remove underperforming or conflicted directors by outside shareholders are challenging due to family affiliations, with votes cast in line with this affiliation.[12]

Managerial hegemony in government-controlled entities exists because government appointees are often insulated from traditional governance measures used to discipline errant behaviours. Government control operates through (a) shareholding control or ownership, (b) appointment powers over directors and senior management or (c) decision making powers to make major decisions (e.g. contract awards, strategy, restructuring and financing, acquisitions and divestments) usually via veto power or 'golden shares'.[13] Although research shows that politically connected firms have preferential treatment to capital and business opportunities and have a positive impact on a company's financial position,[14] contrasting research indicate that companies enter into transactions which are not commercially beneficial due to the

---

[11]Risen Jayaseelan, "Kim Yew Makes Comeback," *StarBiz*, *The Star*, February 7, 2012 "…Lee was CHHB's group managing director from 1986 until 2007. In 2009, the reins of the company were handed down to his daughter …, who was only 24 years old then. The elder Lee remained as non-executive deputy chairman of CHHB until now…"a similar observation was made for Country Heights Holdings Bhd". Lee is passing the baton to the new management, which includes his son-in-law… Lee's second daughter and son remain on the board as deputy chairman and executive director, respectively." Lee Weng Khuen "Country Heights taps technology to move ahead but details remain scarce" *The Edge Malaysia.* (13 Oct 2020)

[12]Michael J. Barclay and Clifford G. Holderness, "Private Benefits of Control in Public Corporations," *Journal of Financial Economics* 25 (1989): 374.

[13]Yeing Wai Lau and C. Q. Tong, "Are Malaysian Government Linked Companies (GLCs) Creating Value?" *International Applied Economics and Management Letters* 1() (2008): 9–12; Wai-Yan Wong and Chee-Wooi Hooy, "Do Types of Political Connection Affect Firm Performance Differently?" *Pacific-Basin Finance Journal* 51(2018): 297-317; see the Putrajaya Committee on GLC Transformation, *GLC Transformation Manual*, accessed via www.pcg.gov.my/faq.asp.

[14]Chenxi Liu et al., "The Effect of Sovereign Wealth Funds on Corporations: Evidence of Cash Policies in Singapore". *Research in International Business and Finance*. 56 (2021):101354.

political goals inconsistent with shareholders' interests.[15] Because board or senior level appointments often reflect political ties, they are expected to follow directives from politicians who might use the companies for personal, economic or political gain to the company's detriment.[16] These companies are generally perceived to be riskier and have greater agency problems, leading to increased monitoring costs.[17] State-controlled corporations' stellar performance is often viewed sceptically since the performance could be artificially generated, subject to manipulation to achieve a political purpose.[18] Recent events

---

[15]Marcel Kahan and Edward Rock, "When the Government Is the Controlling Shareholder," *Texas Law Review* 89 (2011): 1293–1349.

[16]Edmund Terence Gomez and Kwame S. Jomo, *Malaysia's Political Economy: Politics, Patronage and Profits* (Cambridge: Cambridge University Press, 2002); Anisah Safiah Maznorbalia, Muhammad Awalluddin, Ardzlyn Hawatul Yuhanis Ayob. "Exploring The Role of Institutional Investors in Voting, Monitoring and Dialogue Engagement in Mitigating Agency Conflict in Malaysia's Public Listed Companies", *Humanities Social Science Communications*. Vol 10, (2023): 141. https://doi.org/10.1057/s41599-023-01631-z Joni Joni, Kamran Ahmed and Jane Hamilton, "Politically Connected Boards, Family and Business Group Affiliations, and Cost of Capital: Evidence from Indonesia" *The British Accounting Review* 52(3), (2020): 100878; Shannon Teoh, "Tussle at Telekom Malaysia Raises Spectre of Political Power Play," *The Straits Times*, June 5, 2019.

[17]Simon Johnson and Todd Mitton, "Cronyism and Capital Controls: Evidence from Malaysia," *Journal of Financial Economics* 67(2) (2003): 351–82; Puan Yatim, Pamela Kent, and Peter Clarkson, "Governance Structures, Ethnicity, and Audit Fees of Malaysian Listed Firms," *Managerial Auditing Journal* 21(7) (2006): 757–82; Ferdinand A. Gul, "Auditors' Response to Political Connections and Cronyism in Malaysia," *Journal of Accounting Research* 44(5) (2006): 931–63; Ng Ching Yat David et al., "An Evaluation of Corporate Governance Characteristics and Corporate Performance between Government-Linked Companies (GLCs) in Malaysia and Singapore: A Panel Data Analysis," 124 (January 1, 2021): 04005.

[18]Edmund T. Gomez, "The Politics and Policies of Corporate Development: Race, Rents and Redistribution in Malaysia," in *Malaysia's Development Challenges: Graduating from the Middle*, ed. Hal Hill, Tham Siew Yean, and Ragayah Mat Zin (London: Routledge, 2012), 63,82; see The Daily Express, 13 March, 2009 where a member of Parliament, Lim Guan Eng, a qualified accountant, told parliament Khazanah's performance had not been encouraging and questioned the performance of Khazanah. Jamaliah

in Malaysia reinforced the perception of nepotism involving the appointment of politicians to the board of state-owned or state-controlled companies.[19]

When family and state control are combined, minority shareholders are more at risk. Controlling families could exercise influence on legislative outcomes through their financial power and influence, stifling the enactment of investor protection laws.[20] The state, as the controlling shareholder, may have independent reasons to oppose reforms that redistribute wealth to minority shareholders or to sponsor legal changes that facilitate minority expropriation. An example is the recent restructuring of the Ministry of State-owned Enterprise into BP BUNM (State Owned Enterprise Management Agency) and the creation of Danantara with its golden shares granting the Indonesian government special veto rights over mergers, acquisitions, liquidation, and decisions affecting "national interest", which has faced public criticism.[21]

Said et al., "Impacts of Accountability, Integrity, and Internal Control on Organisational Value Creation: Evidence from Malaysian Government Linked Companies." *International Journal of Business Governance and Ethics* 14 (2) (March 10, 2020): 206

[19]Choy Nyen Yiau, "Political appointments still the norm under unity govt, albeit reduced — IDEAS," *TheEdgemalaysia,* October 3, 2024, accessed November 25, 2025 https://theedgemalaysia.com/node/728917. Mohsin Abdullah, "When Heading a GLC Is a Political Reward," *TheEdgeMarkets.com*, April 14, 2020, accessed October 27, 2023, https://theedgemalaysia.com/article/when-heading-glc-political-reward. ; "Risks, Conflicts Raised in Political Appointments to GLCs." FocusMalaysia, accessed October 27, 2023, https://focusmalaysia.my/risks-conflicts-raised-in-politicalappointments-to-glcs/; Yiswaree Palansamy, "Finance Ministry Terminates Tajuddin as Prasarana Chairman," *Malay Mail*, May 26, 2021, accessed October 27, 2023,https://www.malaymail.com/news/malaysia/2021/05/26/finance-ministry-terminates-tajuddins-tenure-as-prasarana-chairman/1977198.

[20]Mariana Pargendler, "State Ownership and Corporate Governance," *Fordham Law Review* 80 (2012): 2917–2958.

[21]Nivell Rayda. "Can Prabowo 'clean up' Indonesia's problematic state-owned enterprises with new law, regulator?" (October 13, 2025) at *https://danantaramonitor.org/can-prabowo-clean-up-indonesias problematic-state-owned-enterprises-with-new-law-regulator/.*

The landscape in Malaysia and Indonesia demonstrates the likelihood of the entrenchment effect. The majority of the public listed companies in Malaysia are family-controlled, followed by significant state control [22] while a 2018 study showed that sixty percent of the companies listed on the Indonesian Stock Exchange are family-owned.[23] Many important sectors in Indonesia's economy remain either State monopolies, or are largely dominated by wholly State-owned enterprises. Figures from 2021 showed that there were over 100 SOEs in Indonesia overseen by the Ministry of State-Owned Enterprises (MSOE). These SOEs comprised over 1,000 subsidiaries and hold more than $500 billion (Rp8,892 trillion) in assets, equivalent to 56.2% of the country's gross domestic product (GDP) in 2019— and account for roughly 6% of Indonesian output (as of 2017).[24] Business groups with political connections were identified as the main governance problem in Indonesian corporations.[25] In both jurisdictions, the CEO, Chairman or Vice-Chairman are often a family member of the controlling shareholder or an employee drawn from the ranks of the controlling shareholder.[26] However, despite a similar

[22]Stijn Claessens et al., "Disentangling the Incentive and Entrenchment Effects of Large Shareholding," *Journal of Finance*57 (2002): 2741–2771. In Malaysia, the top 10 families control about 25per cent of the total market capitalization. See also Shanthy Rachagan and Aiman Nariman Mohd-Sulaiman, "Controlling Shareholders: Issues and Challenges for Shareholders' Empowerment in Directors' Remuneration in Corporate Malaysia," *Asian Journal of Comparative Law. Vol* 9, no 1 (2014): 267–94.

[23]Sami R. M. Musallam, Hasan Fauzi, and Nadhirah Nagu, "Family, Institutional Investors Ownerships and Corporate Performance: The Case of Indonesia," *Social Responsibility Journal* 15 1 (2018): 1–10.

[24]Asian Development Bank, Unlocking the Economic and Social Value of Indonesia's State-Owned Enterprises (2022) Asian Development Bank.

[25]The SOEs prevailed in industries such as banking, electricity, mining, oil and gas, post and telecommunications, railways and shipbuilding sectors. See International Finance Corporation, *The Indonesia Corporate Governance Manual* (IFC, 2014).

[26]. Thillainathan Ramasamy , "Corporate Governance and Restructuring in Malaysia: A Review of Markets, Mechanisms, Agents and the Legal Infrastructure " in Asian Development Bank, *Corporate Governance and Finance in East Asia: A Study of Indonesia, Republic of Korea, Malaysia, Philippines, and Thailand, Consolidated Report*, vol. 1 (ADB, 2000); Rashid Ameer, Fairuz Ramli, and Husein Zakaria, "A New Perspective

shareholding structure, the board structures in Malaysia and Indonesia are starkly different: Malaysia operates under a unitary board while Indonesia has a dual-board structure. Although the comparative strengths and weaknesses of one-tier and two-tier boards have been well debated, reports of governance problems occur under both board models.[27]

This article builds upon shareholders' empowerment debate to counter managerial hegemony by evaluating aspects of their power to influence and determine directors' election. By documenting regulatory gaps, the research provides insights into how legal rules translate into practical governance outcomes. This exercise assists in determining whether the shareholders' election rights are really effective to counter director entrenchment in the presence of a controlling shareholding structure. From a comparative corporate governance perspective, the article shows how unitary versus dual board structures produce distinct shareholder empowerment outcomes in a concentrated ownership context.

Recent developments in ASEAN corporate governance underscore the importance of this comparative analysis. Malaysia and Indonesia have both amended their laws clarifying improvements to the beneficial ownership framework and voting methods, which could have an impact on the entrenchment effect.

The ASEAN Corporate Governance Scorecard 2024 already identifies shareholders' nomination rights, voting mechanisms, and nomination committee processes as key assessment criteria, with Malaysia scoring 61.5% and Indonesia 35.7% among regional markets. This would influence Malaysia's and Indonesia's efforts to improve corporate governance practices. From a broader perspective of regional

---

on Board Composition and Firm Performance in Emerging Markets," *Corporate Governance: An International Review* 10(5) (2010): 647–661; Erma Setiawati, Eskasari Putri, and Nashirotun Nisa. "Implementation of Corporate Governance, Family Ownership, and Family-Aligned Board: Evidence from Indonesia." *Problems and Perspectives in Management* 20(. 4) (October 11, 2022): 14–23. https://doi.org/10.21511/ppm.20(4).2022.02.

[27]Thillainathan, "Corporate Governance and Restructuring in Malaysia"; Ameer, Ramli, and Zakaria, "New Perspective on Board Composition" Setiawati Putri and Nisa, "Family Ownership, and Family Aligned Board."

cooperation, the article assists in clarifying where focused reforms and improvement efforts should be prioritised. This is in line with the aspiration behind the ASEAN Capital Market Forum, also contributing towards ASEAN's drive for integrated and harmonised standards for listed companies and protection of shareholders' rights in general, irrespective of the board structure. This could also inform investment decisions and risk management as Indonesian and Malaysian companies are increasingly engaged in cross-border and investment transactions.

RESEARCH METHODOLOGY AND CONCEPTUAL FRAMEWORK

Adopting a qualitative research method, the research combines doctrinal legal analysis and comparative study of legal provisions and international and regional developments including cases decided by the Malaysian and Indonesian courts and media reports. A comparative study assists in identifying each element of each system that could be adapted or reformed to improve board effectiveness across jurisdictions. The selection of Malaysia and Indonesia enables an assessment of whether board structure affects shareholder empowerment outcomes in similar ownership contexts. The comparison is based on three factors:

(1) Both jurisdictions exemplify a corporate landscape characterised by high ownership concentration dominated by state and family control and where boards of family companies are dominated by incumbent family members.[28]

(2) They represent different board governance models (unitary versus dual board); and

(3) They participate in regional harmonisation initiatives under the ASEAN Capital Markets Forum.

The key legal documents for Malaysia are the Companies Act 2016, the Bursa Malaysia Listing Requirements and the Code on Corporate Governance. For Indonesia, these are the Indonesian

[28]Ameer, Ramli and Zakaria, "New Perspective on Board Composition and Firm Performance"; Setiawati, Putri and Nisa. "Family Ownership, and Family-Aligned Board"

Company Law legislations including Law 40 of 2007 and the related Financial Services Authority Regulations. The following structured analytical framework, as depicted in Table 1 below, is adopted to systematically evaluate directors' election mechanisms across Malaysia and Indonesia:

	Aspects	**Evaluation Component**	**Rationale**
1	Proposal rights	Shareholding thresholds; notice requirements for nominating directors;	Measures accessibility of nomination process
2	Approval rights	Voting methods (majority/plurality); individual *versus* slate voting; voting by poll	Measures effectiveness of shareholder voice in elections
3	Removal rights	Removal procedures; tenure limits; reasons required; power to suspend, reasons regarding removal of director	Measures ability to discipline non-performing or errant directors
4	Voting rules	One-share-one-vote; cumulative voting; special voting for independents directors, dual-class shares |	Measures procedures supporting or hindering functioning of proposal, approval and removal rights
5	Nomination committee	Nomination committee's authority vis-à-vis shareholders' power	Measures if governance structure functions to support shareholder empowerment or director entrenchment

Table 1: Directors' Election Mechanisms Across Malaysia and Indonesia

COMPARISON OF SHAREHOLDERS' RIGHTS IN DIRECTORS' ELECTION

Proposal, Approval and Removal Rights

Proposal right defines shareholders' power regarding board composition. Without it, shareholders can only choose from candidates selected and chosen by the incumbent board through nomination committees controlled by existing directors, further reinforcing the incumbent board's position or influence.[29] Directors' entrenchment occurs when shareholders cannot propose alternatives, merely rubber-stamping a predetermined outcome.

The entrenchment effect for Malaysia is minimised due to Malaysia's shareholder-friendly rules with well-established shareholders' rights to propose/nominate, elect and remove directors.[30] Courts in Malaysia have consistently reinforced shareholders' proposal rights in relation to directors' election, deciding that directors' appointment is a matter within the general meeting's competence. Attempts by the incumbent board to prevent shareholders from exercising their right to propose such a resolution have generally been rejected by the courts.[31] Legally, the shareholders' decision at the general meeting regarding directors' election is binding on the company and the board has no discretion not to implement the decision.[32] Although the board may appoint a director, this is exercisable if explicitly provided by the constitution and even then, only to fill in a vacancy on the board arising out of a death, bankruptcy or resignation of a director. The tenure of this director is limited to the next annual general meeting where he must offer himself for re-election.[33] Where removal rights are concerned, the shareholders' power to remove any directors of a public company is absolute and

---

[29]Jennifer Hill, "The Rising Tension Between Shareholder and Director Power"; An example of a common law with restrictive shareholders' proposal rights is the US. See U.S. Shareholders' Bills of Rights (2009) and Shareholder Empowerment Act, H.R. 2161 (2009) introduced by senators Charles Schumer and Maria Cantwells. Introduced in the US House of Representatives by Representative Gary Peters which were not passed as law.

[30]Sections 202 and 206, Companies Act 2016.

[31]*Wintoni Group Bhd v Kang Choon Leu* [2016] MLJU 409 (High Court); *Choong Chee Hoong & Ors v Woo Ah Choy* [2015] MLJU 2245; *Lew Siew Mopi v Ann Loong Holdings Sdn Bhd* [2010] MLJU 1418 (High Court); *Malaysian Flour Mills Bhd v The Wee Kok* [2005] 7 MLJ 247; *Twenty First Century Oils Sdn Bhd v Twenty First Century Oleochemicals Sdn Bhd* [1994] MKJU 368.

[32]See sec 202 and 206, Companies Act 2016.

[33]Malaysian Companies Act 2016, Sec 208(4). See also Tan *Sri Wan Sidek Wan Abdul Rahman v Rahman Hydraulic Tin Bhd.* [2012] 6 MLJ 681

unfettered, exercisable by the general meeting passing an ordinary resolution.[34] Any arrangement or agreement to entrench directors of public companies or prevent their removal by shareholders and any provisions in the constitution or any other agreement that limit this power are invalid.[35] There is also mandatory retirement by rotation where at least at least 1/3 of the directors must retire at the conclusion of each annual general meeting.[36] Further, in a listed company, no director can hold office for more than three years without being re-elected.[37]

Similar recognition of proposal and appointment rights exists under Indonesian company legislation. Indonesian Company Law (Law 40 of 2007) [38] provides for a two-tier board system requiring the establishment of the Board of Directors (BOD) and the Board of Commissioners (BOC). For public companies, the term of appointment for the BOD is subject to a maximum term of 5 years per term.[39] Members of the BOC are appointed for a limited period and may be reappointed by the GMS. The Articles of Association will determine procedures for the nomination, appointment, replacement, and dismissal of BOC members.[40] Shareholders with voting rights[41] may

---

[34]Malaysian Companies Act 2016, sec 206(1)(b).

[35]Malaysian Companies Act 2016, Sec 206(2).

[36]Malaysian Companies Act 2016, sec 205(3),

[37]See para 7.28, Bursa Malaysia Listing Requirements.

[38]Indonesia, *Undang-Undang tentang Perseroan Terbatas* [Law on Limited Liability Company] No. 40, Acts of Parliament (2007).

[39]Indonesia, Otoritas Jasa Keuangan, POJK No. 33 /POJK.04/2014, on Issuers or Public Companies Director and Board of Commissioners (*Peraturan Otoritas Jasa Keuangan No. 33/POJK.04/2014 tentang Direksi Dan Dewan Komisaris Emiten Atau Perusahaan Publik),* State Gazette 37, Supplementary State Gazette 5645, Art. 3 (2); Indonesia, Otoritas Jasa Keuangan, *Peraturan* OJK No. 33 /POJK.04/2014, Art. 3 (3).

[40]Article 111(4) Law No. 40 of 2007" Articles of association shall regulate the procedures to appoint, replace, and dismiss the members of the Board of Commissioners, and may also regulate the procedures to nominate the members of the Board of Commissioners ".

[41]Law No. 40 Year 2007 grants ordinary shares three (three) types of rights to the holder: the right to attend and vote in the GMS, the right to receive dividend payments and liquidation assets, and the right to exercise additional rights granted by the Indonesian Company Law. The company may also issue shares without voting rights / non-voting shares under Article 53 (4) Law No. 40 of 2007.

nominate members of the BOD[42] and BOC,[43] to vote in the election and removal of these directors.[44] The two jurisdictions share similar strategies for the election or removal of directors:

(a) Both allow shareholders to request inclusion of directors' election resolution in already convened company meetings,[45]

(b) Shareholders in both jurisdictions can trigger an independent shareholder meeting. Malaysia grants shareholders the right to convene their own meeting and set director election resolutions on the agenda. [46] Indonesia provides a parallel remedy where shareholders may convene and conduct a meeting if directors or the Board of Commissioners fail to announce an Extraordinary General Meeting within 15 days of receiving a convocation request, or

(c) Both jurisdictions allow the shareholders' to make a formal request to the board for the board to convene a meeting to consider director election resolutions, When the board fails to do so, the shareholders may convene the meeting themselves. For Malaysia, a time frame of 14 days is given for the board to convene the requested meeting[47] whilst Indonesia's time frame is fifteen days after receiving the request.[48] where shareholders who are eligible to request an Extraordinary GMS shall submit a registered letter outlining the reasons for the request,[49] which must be copied to the BOC.[50]

---

[42]Art. 53 (4) b. Law No. 40 of 2007

[43]Art 111 Law No. 40 of 2007

[44]Art. 87 (2) Law No. 40 of 2007

[45]For Malaysia, under Companies Act 2016, Sec 323 (1) (b). For Indonesia: Elucidation of Art. 83, Law No. 40 of 2007; POJK No. 15/POJK.04/2020, Art. 16 (1). Under Article 16 (1) and (2) of the Indonesian Financial Service Authority ("OJK") Regulation No. 15 year 2020 (POJK No. 15 Year 2020) , shareholders of listed companies that retain a minimum of 1/20 (one twenty)/ 5% of the amount of shares with voting rights may submit the written agenda to the Extraordinary GMS organizers at the latest 7 (seven) days prior to the Extraordinary GMS summon: POJK No. 15 /POJK.04/2020, Art. 16 (1) jo. Art. 16 (2).

[46]Malaysian Companies Act 2016, sec 310

[47]Malaysian Companies Act 2016, sec 311, 312 & 313

[48]Art. 80 (1), Law 40 of 2007; POJK No. 15/POJK.04/2020, Art. 7.

[49]Art. 79 (3), Law No 40 of 2007; POJK No. 15 /POJK.04/2020, Art. 3 (2).

[50]Art. 79 (4), Law No. 40 of 2007; POJK No. 15 /POJK.04/2020, Art. 3 (3).

In theory, both jurisdictions recognise formal shareholder rights to nominate and elect directors as crucial to make directors accountable. However, there are other challenges related to legal and /or procedural requirements or implementation of those rights that impede their effectiveness.

First, both Malaysia and Indonesia have similar shareholding thresholds to request a meeting related to the directors' election. Malaysian law stipulates a minimum shareholding threshold of at least10 % of the issued share capital or a lower threshold as specified in the company's constitution. Indonesia's legislation specifies it at not less than 10% of the shares with voting rights, unless the Article of Association determines a lower number. For both jurisdictions, a group of shareholders is allowed to act together to meet the shareholding requirement. However, if shareholders want to include director election resolutions into a meeting agenda, Malaysia's shareholding threshold is at 2.5% of voting paid-up capital (s.323 CA 2016), whilst Indonesia has a higher threshold of at least 5% of voting shares (POJK 15/2020 Art.16). Hence, Malaysian law significantly lower threshold facilitates minority participation.

Second, there are different mandatory rotation and re-election requirements between Malaysia and Indonesia. Malaysia's mandatory three-year re-election requirement for listed company directors creates shorter accountability cycles than Indonesia's five-year maximum BOD terms. Mandatory rotation term minimises the entrenchment effect as it prevents directors from securing positions indefinitely. Periodic re-election provides shareholders opportunities for evaluating directors' performance and for raising and responding to governance concerns. Directors are called upon to demonstrate value to shareholders every three years (or five years in Indonesia) or face potential replacement as otherwise, directors could be complacent, particularly if there were no shareholders' resolution to replace them. In fact, the court in Malaysia has emphasised the governance aspect of the mandatory retirement and re-election process, stating that companies cannot circumvent shareholders' democracy by deliberately not convening AGMs to automatically retire directors.[51]

[51] *Dato' Sri Andrew Kam Tai Yeow v Grandfoods Sdn Bhd & Ors,* Civil Appeal No: W-02(NCC)(A)-602-04/2022 | Court of Appeal, at para 21

Third, a relevant process in directors' selection is the notice of intention to appoint a director which must be submitted to the company. For listed companies in Malaysia, para 7.28 of the BMLR states that, such notice shall be made with at least 11 clear days' notice of intention to do so sent to the company by the nominator, if the nominee is not a retiring director. A shorter time of at least 9 clear days' notice must be given when the recommendation is made by the board. The notice of each and every candidature shall be served on the registered holders of shares at least 7 days before the meeting at which the election is to take place. Although shareholders can propose to appoint a director, failure to comply with the time frame coul be detrimental to the election process. While the rules does not prohibit earlier nomination, a captured board could strategically rely on the minimum 9 days notice as an element of surprise, preventing shareholders from effectively collaborating and communicating especially in contested directors' elections. Internationally, the OECD (2012) Board Nomination and Election report highlighted a timeline for nomination, suggesting that sufficient time, i.e. three months must be provided for shareholders to present nominees to the board/nomination committee. As a comparison, the Australian Stock Exchange requires that the company must receive nominations for elections up to 35 business days before the date of the AGM, unless the constitution states otherwise; if the constitution allows, a company may accept nominations closer to the date of the general meeting. Further, ASX Listing Rule 3.13.1 requires companies to announce the AGM date and the closing date for director nominations at least 5 business days before the nomination closing date. A longer timeline as suggested by OECD, allows for meaningful shareholder participation and adequate time for nominee identification and evaluation as well as for shareholders' collaboration and engagement or negotiation. It also provides sufficient time for the nomination committee to conduct due diligence to assess the candidate. Nomination committee would be able to exercise its regulatory function properly and continue evaluating candidates' qualifications and suitability, providing recommendations to shareholders, and facilitating the selection process. The longer time frame also gives ample opportunity for shareholders to present alternative candidates. This can incentivise boards to recommend truly qualified and independent directors, rather than submitting candidates aligned with management interests. Thus, for both Malaysia and Indonesia, the timeline for the current nomination period should be considered.

Fourth, recent developments within ASEAN involving reforms to the beneficial ownership disclosure framework in Malaysia and Indonesia can prevent managerial hegemony and directors' entrenchment. Managerial hegemony often operates through controlling shareholders who appoint management-aligned directors rather than through professional managers alone.[52] The Indonesian POJK 3/2021, Article 1(26) defines controlling shareholders as parties capable of directly or indirectly determining company management and policies through share ownership, voting arrangements, articles of association, or agreements. Malaysia's Companies (Amendment) Act 2024 expanded beneficial ownership criteria to include persons exercising "ultimate effective control" over the company, directors, or management, and persons holding the right to appoint or remove directors holding majority voting rights. Both jurisdictions explicitly link ownership disclosure to director selection. The beneficial ownership disclosure framework reveals control structures when there is disclosure of nominee arrangements or special rights to enable certain parties to determine who sits on the board.[53] Undoubtedly, the information will not likely shift voting power. But for minority shareholders, this is likely useful for them to choose who are the competing directors based on the visible information. There would also be better oversight and monitoring because both regulators and investors are now made aware of the power structure in the directors' selection as well as in identifying potential governance concerns that exist due to the controlling shareholder's influence. The Indonesian approach (via POJK 3/2021) that imposes liability on designated controlling shareholders for losses caused by board actions taken in bad faith, illegal acts, or illegal asset use ensures accountability. These forces controlling shareholders to ensure directors are independent and competent as otherwise, the controlling shareholder would be liable when they used the director selection process to create an obedient board that facilitates transactions which are not beneficial to the company. Malaysia, however does not have this rule.

[52]Jie Cai, Tu Nguyen, and Ralph A. Walkling. "Director Appointments – It Is Who You Know." *Social Science Research Network*, October 11, 2020. https://doi.org/10.2139/SSRN.2934434.

[53]Andres Knobel. "Complex Ownership Structures: Addressing the Risks for Beneficial Ownership Transparency." *Social Science Research Network*, January 1, 2022. https://doi.org/10.2139/ssrn.4040794.

It is worthwhile here to discuss the selection of independent non-executive directors (INEDS) as part of the landscape in board composition due to the stance of some countries that may be underemphasising independent non-executive directors as part of the mechanisms that minimises directors' entrenchment. While Malaysia's unitary board system benefits from the presence of independent directors and mandates minimum INED representation on boards, Indonesia's separation of management and supervisory boards is viewed as capable of reducing entrenchment risks due to oversight of the BOD by BOC. However, recent literature has criticised the election mechanisms for BOC members, including independent commissioners, as being favourable to controlling shareholders, potentially compromising their very independence.[54] The removal of a BOC member which can occur at any time and for any reason, subject only to a majority shareholder vote, is viewed as creating pressure for the BOC to align with the interests of controlling shareholders to maintain their positions.[55] Commentators have also stressed that the BOC does not have real authority to appoint and dismiss (for cause) the members of the management board.[56]

It is noted that neither the Indonesian Company Law nor the POJK govern the obligation to nominate candidates who are unrelated to the controlling stockholders, essentially the INEDS. Indonesia has also removed the requirement for INEDS in listed companies via the amendment of the 2018 Jakarta Stock Exchange Listing Regulations. While this move has been rationalised as being in line with the dual-board structure, where there are already BOCs that are independent of the BOD, it has also been viewed as reinforcing the entrenchment of

---

[54]Royhan Akbar, Nathaniel Mangunsong and Dan W Puchniak, "The Abolition of Independent Directors in Indonesia: Rationally Autochthonous or Foolishly Idiosyncratic?" (May 23, 2025). Forthcoming in the American Journal of Comparative Law, European Corporate Governance Institute - Law Working Paper No. 802/2024, Singapore Management University School of Law Research Paper Forthcoming, Available at SSRN: https://ssrn.com/abstract=4941189 or http://dx.doi.org/10.2139/ssrn.4941189.

[55]Akbar, Mangunsong and Puchniak, "The Abolition of Independent Directors in Indonesia"

[56] Akbar, Mangunsong and Puchniak, "The Abolition of Independent Directors in Indonesia"

directors affiliated with controlling shareholders.[57] This approach is also not aligned with internationally accepted corporate governance recommendations and practices applicable to the dual-board structure as recommended by the OECD's *Board Member Nomination and Election* report.

In contrast, for Malaysia, independent directors are mandatory for public listed companies due to the stock exchange listing requirements which are given statutory backing; a number of independent directors must be appointed to the BOD and they must constitute the majority in the audit committee, the nomination and the remuneration committee. The Listing Requirements also define independent directors, i.e., they must not be affiliated with management or controlling shareholders.[58] Malaysia's domestic institutional shareholders are also quite active, providing a balance against controlling shareholders in relation to director elections, particularly for independent directors. They are also part of the Institutional Investors Council Malaysia (IIC) who are signatory to the Malaysian Code for Institutional Investors (MCII). The MCII contains recommendations about when should institutional investors vote or abstain or vote against a resolution. An example is the adoption by the members of the MCII recommendation that its signatories abstain or vote against resolutions of their investee companies to retain independent directors with tenure of more than nine years. The Malaysian GLC also has a voting policy in relation to the retention of independent directors.[59]

There are, however, several areas where Indonesia's legislation could provide lessons for Malaysia. First, despite the BOC not being conferred with the power to appoint and dismiss a director, the BOC may suspend a director, subject to confirmation by the GMS within 30 days or otherwise it becomes void (Article 106). The reason for such suspension must be stated and the director must be informed about his

[57]Miko Kamal, (2008), "The New Indonesian Company Law: Does it Support Good Corporate Governance?", 7 August 2008, Available at SSRN: http://ssrn.com/abstract=1215867; OECD*, Board Member Nomination and Election*,40.
[58]Paragraph 1.01 of the Listing Requirements
[59]See SC Corporate Governance Monitor 2024:7.

temporary dismissal.[60] The director has the right to defend himself in the GMS which must be held within no later than 30 days after the director is informed about his temporary dismissal. If no decision is made within the 30 days period by the GMS, the temporary dismissal is cancelled and the suspended director resumes his position. In contrast, this is not expressly dealt with by Malaysian corporate legislation and the courts have given opposite decisions in relation to the board's power to suspend a director.[61]

Second, Indonesian law mandates that the basis or reasons for the dismissal of the members of the BOC or the BOD must be stated.[62] the law provides some examples of reasons.[63] In contrast, there is no such legal requirement for reasons or justifications to be provided to shareholders or the capital market regulators.[64] While directors who face removal by a shareholders' resolution are allowed to provide written representation on the proposal, they may not voluntarily provide information due to concerns about future claims involving breach of duty or defamatory statements.[65] However, the Indonesian approach may have limited benefits due to shareholders' written or circular resolution that may be used to remove directors, without

---

[60]See also Art 30, Financial Services Authority Regulation Number 33/Pojk.04/2014 Concerning the Board of Directors and The Board of Commissioners of Issuers or Public Companies.

[61]*Dato' Shun Leong Kwang & Anor v Menang Corporation (M) Bhd* [2021] 7 CLJ 23; *Kwan Teck Hian v Insulflex Corporation Sdn Bhd* [2018] 2 CLJ 335.

[62]Art. 94 (1), and Art. 105 (1) Law 40 of 2007, *Undang-Undang Perseroan Terbatas*

[63]Art 105(1) Law 40 of 2007. Actions that are detrimental to the company entail: violating the obligation of good faith by abusing power; no longer being diligent and competent in running the company; using the company's assets for personal gain; carrying out improper management of the company; or violating the applicable laws and regulations, which can be considered a violation of their statutory duty.

[64]Legally, the reasons for removing a director need not be given. This is the legal position for jurisdictions with a UK company law model: See *Kennenth Yeung Bing Kwong v Mount Oscar Ltd* [2018] HKCFI 2763, the HK Court of First Instance held that a Hong Kong company is not required to give any reasons for the removal of a director.

[65]See a decision from Australia: *Re City Pacific Limited v Bacon [2009] FCA 687; Lachlan Reit Limited v Garnaut & Ors [2010] VSC 399; Century Funds Management Limited v Opus Capital Limited [2011] FCA 78.*

convening the GMS.[66] This is in contrast to Malaysia, where a written resolution to remove a director of either a public or private company is not valid. The rationale for a general meeting is to encourage the director to provide a written statement regarding his removal so that this may be debated and discussed at a meeting, such debate is unlikely in a written resolution process. For Indonesia, although the director in question must be informed in advance of the proposed removal and given the opportunity to defend himself before a decision is made,[67] how this right of defence may be exercised is unclear in a written resolution process.

Voting Methods

Voting methods are an important mechanism which can either minimise or facilitate directors' entrenchment. A voting method viewed as a more accurate reflection of the representative nature of directorship is the majority voting in contrast to the plurality voting. A majority voting system requires a proposal to receive the support of a majority of the issued paid up voting shares, where a nominee must receive more votes cast "for" than "against" to be elected. If there is less than a majority of shareholders voting by poll or by a show of hands supporting a director's election, this indicates that there is insufficient support for the person to be appointed as a director to represent a majority of the shareholders. Hence, only candidates who genuinely represent the shareholder majority are able to serve on the board. This contrasts with the traditional plurality system, where a director could be elected with only a relative majority, even if most shareholders abstained or opposed the candidate.

Under plurality voting, a director candidate is only required to obtain a higher number of votes than the other candidates.[68] This system does not encourage directors to be accountable to shareholders. If a director runs unopposed, he or she only needs one vote to be elected. Plurality voting works in favour of incumbent directors who

[66]Article 91 Law 40 of 2007.
[67]Art. 105 (3) Law 40 of 2007.
[68]A variation of plurality voting is where directors who receive a majority of withhold "votes" are required to submit a letter of resignation to the board of directors, which retains the discretionary authority to accept or reject the director's resignation

are guaranteed their position irrespective of whether or not they receive majority support so long as they receive any votes in their favour. Under plurality voting, a director candidate is only required to obtain a higher number of votes than the other candidates.[69] It has also been said that in a plurality voting system, shareholders have the option to express dissatisfaction with a candidate by indicating that they wish to "withhold" authority to vote their shares in favour of the candidate.[70] However, a substantial number of "withheld" votes will not prevent a candidate from getting elected as the usefulness of the withholding of votes is its ability to influence future decisions by the board of directors concerning director nominees only.[71]

Majority voting, nonetheless, has been criticised. As highlighted earlier, the majority voting can be easily skewed to favour the controlling shareholders' choice of director, given family or political affiliations. This is where special voting rights could be relied on as practised in Malaysian listed companies. Second, majority voting could lead to the company not having any board of directors if none of the directors received the minimum votes required. However, it is unlikely that an entire board will fail to be re-elected, due to other safeguards and additional measures that can be put in place to prevent such an outcome. One way is by requiring individual director election rather than slate voting. Third, the possibility that a company would end up without an independent director. However, this concern may be addressed by providing a grace period for appointments. This concern also misses the reasons for the independent director; it is not merely a regulatory requirement. If a company is not able to appoint an independent director due to a lack of willing candidates, this signals that there could be some cause for concern in relation to the governance of the company. This can also be supported via regulatory enforcement actions. For example, the Malaysian stock exchange (Bursa Malaysia) has enforced corporate governance rules related to audit committee composition.

---

[69]Ertimur, et al, "Does the Director Election System Matter? Evidence from Majority Voting,"1-41.

[70]U.S. Securities and Exchange Commission, "Voting Mechanics," accessed July 2, 2025, http://www.sec.gov/spotlight/proxymatters/voting_mechanics.shtml

[71]Council of Institutional Investors, FAQ: Majority Voting for Directors, 2017, https://www.cii.org.

One voting method which is viewed as a director's entrenchment measure is voting under a slate system where directors are elected 'en bloc' under a list as opposed to being voted upon individually. Malaysian public companies are required to vote in directors' elections on an individual basis.[72] Any resolution regarding directors' election is invalid if passed by way of slate voting unless prior to its use, the shareholders have unanimously agreed to vote under a slate system. In contrast, under Indonesian company law, the resolutions to appoint directors can be voted on en bloc, i.e, by slate or list as well as individually. Any shareholder or group of shareholders may propose a slate of candidates to the Board of Directors, which will make up the majority of the board.[73] Consequently, minority shareholders are frequently forced to approve the full package proposed by the incumbent board, with no opposing slate of candidates.[74]

Another voting method, cumulative voting, empowers minority shareholders by addressing the imbalance between cash flow rights and control rights.[75] The ACGS 2024 report noted that cumulative voting is allowed under Indonesian law but did not go into a detailed discussion of its implementation. An earlier 2004 study found that 40% of Indonesian companies acknowledged cumulative voting, where 20% of those companies have used it.[76] In cumulative voting, each member has for each share a number of votes equal to the number of directors being elected. The member is given additional voting power based on the number of nominees to the board which he can allocate to any of the candidates as the member chooses. In jurisdictions where the majority shareholders are almost always on the board of directors, cumulative voting may enable a minority group to be represented on the board. The use of cumulative voting enables minority and

[72]sec 203, Companies Act 2016; Under this slate system or where directors' appointment is bundled as a group, shareholders vote for the slate on an "all or none" basis, resulting in the entire slate either being elected or not being elected.

[73]Hye-Sung Kim, "Corporate Elections and Shareholder Proposal Rights," in *Corporate Governance in Asia*, ed. Sang-Woo Nam and Il Chong Nam (Tokyo: ADBI, 2004), 266.

[74]World Bank, *Report on the Observance of Standards and Codes*, 13.

[75]Ibid., 23.

[76]Sang-Woo Nam and Il Chong Nam, *Corporate Governance in Asia: Recent Evidence from Indonesia, Republic of Korea, Malaysia, and Thailand* (Tokyo: Asian Development Bank Institute, October 2004), 18.

institutional shareholders to collaborate to determine the quality, independence and accountability of the board. These institutional shareholders normally control substantial shareholdings as a group but individually have shareholdings which is insufficient to influence board membership under the normal one-vote-one share voting. They may then coordinate their action to support independent directors, relying on the institutions' competency to evaluate directors' qualification, suitability and competence.[77]

While Malaysia does not have cumulative voting, it has adopted a different approach.[78] The special voting for the election of independent directors has been considered by the UK Financial Conduct Authority (FCA) for premium listed companies. It involves separate voting by independent shareholders in addition to voting by the shareholders as a whole.[79] A modification of this approach was adopted by Malaysia in 2012. Malaysia introduced a new rule for public listed companies via the Malaysian Code on Corporate Governance 2012 (MCCG) excluding long-serving directors (i.e for 9 years or more) from being designated as an independent director.[80]

[77]Jeffrey N Gordon, 'Institutions as Relational Investors: A New Look at Cumulative Voting' *Columbia Law Review*, (1994) Vol. 94, No. 1: 124-192. Since institutional investors having voting guidelines identify the board composition as an agenda for their activism, cumulative voting will enable the institutions to determine the quality, independence and accountability of board.

[78]Cumulative voting was suggested by the Malaysian Finance Committee on Corporate Governance in 1999 and was raised again in the 2001 CMP1, although there was no concrete reform proposal thereafter: see The Finance Committee on Corporate Governance, *Report on Corporate Governance* (Feb 1999) Kuala Lumpur, at Ch 6, para 2.1.25, p 206. *Securities Commission* Capital Market Masterplan 1(2001) *at http://www.sc.com.my/capital-market-masterplan-1/ and* Capital Market Masterplan 2 *at* http://www.sc.com.my/capital-market-masterplan-2. Given that the special voting for election of independent directors is already in place in Malaysia, cumulative voting is a moot point.

[79]The voting results at these meetings must be by majority votes. However, if the majority votes are not obtained, the company can call another meeting for the election of the directors after 90 days from the meeting where the shareholders may vote as one class.

[80]The MCCG 2012 recommended that: "The tenure of an independent director should not exceed a cumulative term of nine years. Upon completion of the nine years, an independent director may continue to serve on the board

Shareholders' approval is required for the board's decision to retain a person who has served as a non-executive director in that capacity for more than nine years.[81] The 2022 amendment to the stock exchange's Listing Requirements set a 12-year tenure limit for independent directors. By June 2023, a long serving independent director must either resign or be redesignated as a non-independent director. Second, special voting rules in relation to retention of an independent director beyond nine years, the MCCG 2021 recommends that the board provide justification and seek shareholders' approval using the two-tier voting process for the retention of said director. The two-tier voting applies for large companies.[82] Under the two-tier voting process, shareholders' votes will be cast in the following manner at the same shareholders' meeting:

- Tier 1: Only the Large Shareholder(s) of the company votes; and
- Tier 2: Shareholders other than Large Shareholders' votes.

The decision for the above resolution is determined based on the vote of Tier 1 and a simple majority of Tier 2. If there is more than one Large Shareholder, a simple majority of votes determines the outcome of the Tier 1 vote. The resolution is deemed successful if both Tier 1 and Tier 2 votes support the resolution.

During the early stages of the two-tier voting rule, there was promising adoption. SC's Corporate Governance Monitor (2019) showed that there were 242 resolutions involving retention of independent directors with tenure of more than 12 years which went through this voting method. Out of 316 resolutions to retain independent directors with tenure between 9 to 12 years through annual shareholders' approval, one resolution to retain an independent director who has served 9 years was defeated with more than 99% dissenting votes.[83] In 2021, the two-tier voting approach was utilised by 95 listed companies to decide on the retention of independent directors with tenure of more than 12 years, compared to 161 companies in 2018

subject to the director's re-designation as a non-independent director" (Recommendation 3.2)

[81]Introduced via Securities Commission Corporate Governance Blueprint 2011.

[82]Defined as the top 100 companies on the Main Market of Bursa Malaysia Top or companies with a market capitalisation of RM2 billion and above at the start of the companies' financial year)

[83]Securities Commission, "Corporate *Governance Monitor"* (2019)

when the approach was first introduced. The decrease was due to the voluntary resignations of independent directors, where 81 long-serving independent directors resigned before the general meeting. This is an encouraging move as an indication of internalisation of good governance practices. Nonetheless, there were also 18 companies which did not use the two-tier voting process, opting instead to vote using a simple majority in 2021.[84] However, the recent SC Corporate Governance Monitor 2024 recorded a reduction in the adoption of the two-tier voting process leading to the SC warning against companies back-pedalling. For example, independent directors who obtained support during the two-tier voting in 2022 were re-elected in 2023 with a simple majority vote. There are thus strategies to ensure continued compliance by listed companies.

Another voting rule that is relevant to directors' entrenchment is the dual-class shares or multiple voting shares. Introduced in Indonesia in December 2021 via Regulation No. 22/POJK.04/2021, the rule allows eligible technology companies to issue shares with multiple voting rights.[85] Malaysia does not allow dual listed companies to have

---

[84]Securities Commission *"Corporate Governance Monitor"* (2022)

[85]In Hong Kong, this was the listing of Alibaba Group in the NYSE instead of the HKEx. In Singapore, it was the listing of Manchester United on the NYSE instead of the SGX. In Alibaba's case, this was not exactly the weighted voting structure or dual class shares with differential voting. The initial terms grants to Alibaba Partnership the exclusive right to *nominate* a simple majority of the members of its board of directors but there is no weighted voting rights as such. The election of each director nominee will be subject to the director nominee receiving a majority vote from its shareholders voting at an annual general meeting of shareholders. Later amendment provides that if the board comprises less than a simple majority of directors nominated or appointed by the Alibaba Partnership for any reason, the Alibaba Partnership will be entitled (in its sole discretion and without the need for additional shareholder action) to appoint such number of additional directors to the board as necessary to ensure that the directors nominated or appointed by the Alibaba Partnership comprise a simple majority of the board of directors. See Hong Kong Exchanges and Clearing Ltd, *Concept Paper Weighted Voting Shares* (August 2014) at http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2014082.pdf (viewed on August 30, 2023); see also Singapore To Allow Dual-Class Share Structure For Public Companies Dow Jones Newswires | 04

dual class shares. Although research has stated that dual class shares or shares with weighted voting rights enable shareholders with small financial investment in the company to gain disproportionate control rights, the majority opinion is that allowing for dual class shares may further entrench the power of the insiders.[86] Family-controlled firms especially those with founders are more likely to issue dual-class shares, to have non-traded high voting shares, and to use alternative mechanisms such as a right of pre-emption, a voting restriction, or a shareholder agreement.[87] The OECD considers the absence of weighted voting shares or dual-class shares as indicating a legal system's strong shareholders' protection.[88] Weighted voting rights are a useful means for the state to exercise control over companies where the government wants to ensure achieving national interests. However, where a concentrated shareholding structure is dominated by state control, the state could use this to undermine much-needed investor protection reforms due to conflicts of interest inherent in the government's dual role as shareholder and regulator.[89] Given the evidence of decisions that are motivated by personal gains or political

October 2012 http://www.sharesinv.com/articles/2012/10/04/singapore-to-allow-dual-class-share-structure-for-public-companies/

[86]See Triana Dewi Seroja et al, "Dual-Class Share Structure in the Indonesian Equity Market: Valuing International Insights and Acknowledging Local Wisdom", *Lentera Hukum*, vol 10, no 3 (2023): 433-468. See also Harvard "Dual-Class Shares: Governance Risks and Company Performance" *Harvard Law School Forum on Corporate Governance. https://corpgov.law.harvard.edu/2019/06/28/dual-class-shares-governance-risks-and-company-performance/(*Friday, June 28, 2019; Anandi Banerjee, "Dual-Class Firms: A Systematic Literature Review," *Empirical Economics Letters,* 23(April Special Issue 3), (April 1, 2024): 257-270, 2024.

[87]Henrik Cronqvist Mattias Nilsson, "Agency costs of controlling minority shareholders," *Journal of Financial and Quantitative Analysis, vol* 38, no 4 (2003): 695–719.

[88]G20/OECD Principles of Corporate Governance (Revised 2023) Priya P. Lele and Mathias M. Siems "Shareholder Protection – A Leximetric Approach", Journal *of Corporate Law Studies*, vol 7, (2007):17-50; Holger Spaman, "The "Antidirector Rights Index" Revisited*" The Review of Financial Studies*, vol 23(2010): 467-486.

[89]Pargendler, "State Ownership and Corporate Governance" :2917-2958

goals,[90] there is more likelihood of expropriation of minority interests. Nonetheless, jurisdictions that adopt this type of shares, usually provide for a sunset clause, limiting their lifespan such as the Indonesian Regulation No. 22/POJK.04/2021 stating that the shares can be held for a maximum of 10 years, extendable once for another 10 years with independent shareholder approval.

One shortcoming for Indonesia is the lack of use of "voting by poll", which is part of the ASEAN CGS 2024 metrics. [91] For Indonesia, the ASEAN CGS 2024 highlighted that voting in Indonesia "generally takes place on what is called a "deliberative consensus" basis, which effectively means a show of hands. A formal poll is conducted if there is no consensus, at which point the voting threshold is typically 50% of those voting in person or by proxy. Voting abstentions are traditionally counted with the majority, which is questionable." In contrast, voting by poll has been mandatory for listed companies in Malaysia since 2016 and was introduced as an enhancement of the "one share-one vote" rule and part of measures to improve board accountability to shareholders.[92] Additionally, unlike Malaysia.[93] The voting mechanism is not regulated by Indonesian company law but by a company's own Articles of Association.[94] This creates a less protective environment for minority shareholders as there are no minimum standards where rights are based on the discretion of the governing body controlled by the controlling shareholder

[90] Kahan and Rock. "When the Government Is the Controlling Shareholder": 1293; Stephen Martin and David Parker, "Privatization and Economic Performance Throughout the UK Business Cycle". *Managerial & Decision Economics*. (1995) 16(3):225-237. Lim, Ernest. "Concentrated Ownership, State-Owned Enterprises and Corporate Governance. " *Corporate Governance: An International Review* 29(1) (2021): 28-53.

[91]See ASEAN Corporate Governance Scorecard, item A.3.10: Did the company vote by poll (as opposed to by show of hands) for all resolutions at the most recent AGM?

[92]Para 8.29A, Bursa Malaysia Listing Requirements

[93]Sec 291(3), sec 292(3) and sec 293 of the Companies Act 2016.

[94]Ertimur, Ferri and Oesch, "Does the director election system matter? Christine Shropshire, Jonathan Bundy, and Latifa A Albader. "Advisory Governance Policy, Shareholder Voice, and Board Responsiveness: The Case of Majority Vote in Director Elections," *Business & Society* 62(2) (2022): 285-321. https://doi.org/10.1177/00076503221081003.

Nomination Committee *Versus* Shareholders' Nomination

One mechanism to ensure the presence of high quality and independent directors and the integrity of the selection process is the establishment of the nominating committee (NC). For Malaysia, mandated by the BMLR, the NC assists in directors' selection, succession planning and performance evaluation. Comprising exclusively of non-executive directors, the majority of the members must be independent directors. While the BOD must have a fit and proper policy for the appointment and re-election of directors of the company and its subsidiaries, it is the NC that is responsible to explain application of the policy (a) to ensure the mix of skills, independence and diversity (including gender diversity) required to meet the needs of the company, (b) the nomination and election process of directors; and (c) the assessment undertaken by the NC regarding the performance of the board, committees and individual directors.[95]

Nevertheless, given Malaysia's legal framework that confers on shareholders unfettered power to appoint and remove directors as highlighted earlier, it is not clear as to how this power interlinks with the nomination committee's role. The ambiguity is shared by directors of Malaysian companies who believed that the final say in appointing independent directors falls on the board based on the recommendation of the nomination committee and that the general meeting's approval is a fait accompli.[96]

Several incidents involving Malaysian companies suggest that there is support for this view. These cases suggest that there is a misalignment between the exercise of shareholders' rights and what the nomination committee believes to be its function:

- In August 2015, the board of Kronologi Asia received a requisition to convene an EGM to replace some directors. The board announced its refusal to convene the requisitioned meeting on the basis that this could cause the company to contravene the BMLR specifically the terms of reference of the Nomination committee. The board believed that the meeting

[95]Bursa Malaysia, *Listing Requirements, Main Market – Chapter 15: Corporate Governance.*

[96]Abdullah et al., "The Appointment Process for Independent Directors in Malaysian Listed Companies," *Corporate Ownership & Control* 14 (1-3) (Fall 2016): 519–531.

was inappropriate considering that the nomination committee had not approved the candidates.[97] This matter was subsequently resolved out of court.

- In June, 2015, Lysaght Galvanized Steel Bhd received notices from two shareholders to nominate two persons to the board at the upcoming AGM. The board initially rejected the nomination based on legal advice regarding the validity of the notice. Lysaght subsequently reversed this decision and announced that it would put the two candidates' names to be voted on at the AGM to be convened on 22nd June 2015. However, the board only announced to the Bursa Malaysia on 15th June 2015 that the persons nominated were eligible for election consideration. The notices of candidature were posted on Bursa Malaysia on 17th June 2015. This led to oone of the shareholders initiating legal action to postpone the company's AGM due to the short notice given to other shareholders on the candidacy of the person he had nominated as director.[98]

Several recent incidents have reinforced the ambiguity in shareholders, nomination committee engagement.[99] These incidents involved the board reappointing directors who were recently removed by shareholders at general meeting.

- In SC Estate Builder Bhd, the 8 directors who were not re-elected, were re-appointed by the two remaining directors at a board meeting. These events took place after a shareholder's nomination of eight new directors, including himself, was rejected, allegedly without proper justification.[100]

---

[97]M. Hafidz Mahpar, "Kronologi Asia board rejects exec chairman's EGM request," *The Star*, August 6, 2015.

[98]Intan Farahan Zainol, "Lysaght power tussle to culminate in coming AGM," *The Star*, June 27, 2015; M. Hafidz Mahpar, "Lysaght board reverses decision on director nomination notices," *The Star*, June 15, 2015.

[99]See Izzul Ikram, "Substantial shareholders countersue Peterlabs over failure to convene EGM to remove directors" theedgemalaysia.com (06 Jun 2025).

[100]Seah Eu Hen, "Boardroom tussle intensifies at SCBuild as eight directors 'reappointed' after being voted out" *The Edge Malaysia* (1 Jan 2022): At the AGM, shareholders also rejected the approval of directors' fees and directors' benefit.

- During South Malaysia Industries Bhd (SMI) AGM on 27 March 2024, six shareholders holding 51.2% of the voted shares voted against the re-election of one of its executive directors. Two months after this resolution, the board appointed him as the new chief executive officer. Among other motions rejected at the AGM were the payment of non-executive directors' fees and benefits, the granting of authority to issue new shares, as well as a waiver of pre-emptive rights among existing shareholders over new shares and securities. SMI's *2024 Annual Report* disclosed that directors' fees and benefits which were previously rejected by shareholders appear to have been replaced by other emoluments.[101]
- In November 2023, KNM Group Berhad reappointed one of its INED to the same role after he was removed by a shareholders' resolution at a general meeting. The board justified the decision on the basis of a proposed scheme of arrangement that the company was arranging which provides the scheme's creditors with the right to terminate the proposed scheme if there were any changes of the BOD.[102]

Some guidelines as to how the tension should be resolved can be gleaned from a Singapore decision Due to similar board structure, legal provisions and corporate governance rules related to directors election and nomination committee, the Singapore judicial decisions provides some clarity regarding the balance between shareholders' authority and nomination committee and board's power in directors' selection In *The Wellness Group Pte Ltd v Paris Investment Pte Ltd and others [2018] SGCA 47,* the court held that in the context of a shareholders' agreement to nominate a candidate, this right is subject to amongst others, the board's decision regarding suitability of the candidate. The court gave some examples where the board may refuse to accept the nomination. These are where the nominee would be obviously unfit for office or where his appointment would be obviously injurious to the company due to competing or a conflict of interest. With this decision, the court provided a strict burden of proof on the board regarding the

[101] "Governance concerns at SMI: Disgruntled shareholders question board's actions" *FocusM* (05/11/2024).

[102] Anis Hazim, "KNM defends reappointment of Ho Soo Woon as independent director" *theedgemalaysia.com* (21 Nov 2023)

candidate's unsuitability. It is not the appointing shareholder who has to positively establish the suitability of its nominee. Rather, the board must present clear, specific evidence to show the shortcomings of the nominee if the board wishes to reject the nomination; rejection cannot be based on generalised corporate governance concerns.[103]

For Indonesia, the Financial Services Authority Regulation 34/POJK.04/2014, does not mandate the establishment of the NC. However, if no nominating committee is established, the public listed company must disclose the information in their annual report and website. The company must state, at least (a) the reasons for not establishing the Committee; and (b) an explanation of the implementation of the nomination and remuneration functions by the BOC during that financial year.[104] If established, the NC must consist of three members, with an independent chair although the members may include any BOC members, parties from outside the company, and management involved in human resources management. Of significance is the rule applicable for public companies where any proposals for the appointment, dismissal, and/or replacement of members of Directors presented to the GMS shall consider the recommendations of the Board of Commissioners or a nomination committee.[105] Thus unlike Malaysia and Singapore where the board via the nomination committee has discretion which is tempered by the duty to consider the company's best interests, the Indonesian regime mandates consultation with the NC which must provide its recommendation before the GMS can consider the nominee's appointment.

Several judicial decisions from Indonesia highlight the court's focus on procedural compliance. A lawsuit was submitted to the Indonesian Cikarang District Court regarding the appointment of members of the BOD and BOC of a listed company, allegedly without

[103] *The Wellness Group Pte Ltd v Paris Investment Ltd and others* [2018] SGCA 47,

[104] Art 23, The Financial Service Authority /Otoritas Jasa Keuangan (OJK) Regulation No. 34/POJK.04/2014 on Nomination and Remuneration Committees of Public Companies.

[105] See Art 7 and Art 26, Regulation of Financial Services Authority Number 33/Pojk.04/2014, *Regulation of Financial Services Authority Concerning the Board of Director and Board of Commissioners of Issuers or Public Companies.*

being deliberated by the NC.[106] The court rejected the challenge since the nomination function was taken over and implemented by the BOC.[107] In another incident, the *PT Kawasan Industri Jababeka Tbk.* (PT KIJA)'s case, a legal challenge was brought by seven shareholders of PT KIJA, contesting an annual GMS resolution dated 26th June, 2019. The resolution amended the composition of the company's BOD and BOC, including the appointment of its President Director and another BOC member on the basis that the changes were approved by 52,12% of the shareholders, but lacked any recommendation from PT KIJA's NC. It was alleged that the GMS resolution contradicted the requirements of the POJK 34/2014. Article 8(a) of the POJK 34/2014 provides that the Committee's recommendation is a mandatory element in the change of BOD and BOC members. Due to these unlawful changes, it was also alleged that as a result, PT KIJA was at risk of default on debt issued by its subsidiary, Jababeka International BV, amounting to US$300 million or equivalent to Rp 4.23 trillion. The court decided that the defendants, including PT KIJA and the President Commissioner of PT KIJA, have committed the unlawful act and were liable for damages. The court also declared the annual GMS resolution as invalid, thereby annulling the appointment of the new President Director and reinstating, the previous President Director.[108] A key element is the fact that the nomination committee recommendation was entirely absent from the procedure. Also, despite the clear majority votes, the court prioritised the procedural requirement for NC recommendations.

The above cases are troubling from a corporate governance perspective. In the Malaysian incidents, the nomination committee's response is particularly alarming. Under Malaysian regulations, nomination committees must comprise a majority of independent directors, specifically to uphold objectivity, good governance standards, and protect shareholder interests. When there is a boardroom tussle or where a significant power struggle arises within a company's board of directors, the nomination committee should have regard for shareholder sentiment. Failure to do so undermines confidence in the independence and effectiveness of the committees and the INEDs. The Malaysian incidents regarding the reappointment of directors also

[106]Cikarang District Court, *Putusan* No. 98/Pdt.G/2020/PN Ckr, p. 9.
[107]Cikarang District Court, *Putusan* No. 9/Pdt.G/2020/PN Ckr, p. 124.
[108]Central Jakarta District Court Decision No. 660/Pdt.G/2019/PN Jkt.Pst

highlight the proper exercise of directors' power to appoint a new director to fill in a casual vacancy under sec 208(4) of the Companies Act 2016. Further, the board's commitment to shareholders' interests is also suspect given the fact that the decision was a clear disregard of shareholders' wishes at an AGM. The Indonesian mandatory approach can be considered as less sympathetic to shareholders' nominations; it is stricter where the non-compliance renders the nomination invalid. Of note is the fact that the regulation lacks clarity about standards for evaluating whether the nominees are suitable.

Furthermore, given the presence of controlling shareholders in both Malaysian and Indonesian companies, the assumption that the nomination committees or Boards of Commissioners will exercise genuine independence from management and controlling shareholders may be viewed with scepticism.

CONCLUSION

This comparative study of director election mechanisms in Malaysia and Indonesia is aimed at identifying gaps that could lead to challenges in the exercise of formal shareholder rights to determine board membership. The challenge in jurisdictions with controlling shareholders is to ensure that the entrenchment effect is minimised without entirely discrediting the many contributions of family and state ownership or control.

The reform recommendations are explained below.

(1) The article shows that shareholders' formal rights must be supported by effective procedural safeguards. One reform area for both Malaysia and Indonesia relates to extending nomination timelines to 35 business days (consistent with Australian standards) or three months (as recommended by the OECD) would substantially enhance and enable meaningful shareholder participation and enable the nomination committee to conduct meaningful candidate evaluation. electoral power. For Malaysia, reform could consider following Indonesia's approach in directors' suspension as well as the legal requirement to provide reasons for removal. While both jurisdictions have mandatory retirement clauses for listed companies, it is worthwhile considering if the timing for

the periodic re-election is actually effective to make directors accountable.

(2) There is also the need to reform and improve voting mechanism design aiming at minority shareholder protection. Majority voting requirements, which mandate director candidates receive majority support, are preferred as theoretically it strengthens accountability. Dual class voting structures likely grant controlling shareholders with added power and influence to entrench directors affiliated or backed by controlling shareholders.

(3) There is ambiguity related to the nomination committee's gatekeeping function vis-à-vis the extent of shareholders' proposal rights. There should be clarification or guidelines provided in the corporate governance code that balance the nomination committee's gatekeeping role with shareholders' activism. While a mandatory recommendation from the nomination committee may be unnecessary as this creates a rigid governance structure, it is worth considering rules that address delaying tactics. In addition, it is worth noting that the nomination committee is more suited to enable the selection of the independent directors in uncontested elections and for succession planning. In contested elections, there must be a re-evaluation of the nominating committee's functioning vis-à-vis shareholders. Management can capture the nomination committee composition to control candidate identification, effectively creating entrenchment through procedural control rather than shareholder disenfranchisement.

(4) There is a need to harmonise independent director requirements. While the beneficial disclosure framework addresses one of the reasons for managerial hegemony which is information asymmetry, without mandatory independence requirements, the above reforms would still result in an entrenched and compliant board.

Future research could consider (a) whether shareholders' litigation involving challenges to the director selection process increases after the Singapore decision in *Wellness Group* and on what stated grounds, or (b) whether there are any differences in the nominating committee's functioning in uncontested versus contested election, (c) the adoption of a mixed method combining qualitative and quantitative methods for example, by evaluating whether there are any differences in the monitoring by directors nominated through shareholder proposals versus nomination committee recommendations.

REFERENCES

Agustina Wahyu Widyaningrum, Fajar Gustiawaty Dewi, and Usep Syaipudin. “The Impact of Political Ties, Family Ownership and Board Positions on Good Governance: A Literature Review.” *Marginal Journal of Management Accounting General Finance and International Economic Issues*, (2023) December. https://doi.org/10.55047/marginal.v3i2.951

Anandi Banerjee,“Dual-Class Firms: A Systematic Literature Review,” *Empirical Economics Letters,* 23(April Special Issue 3), (April 1, 2024): 257-270, 2024, Available at SSRN: https://ssrn.com/abstract=4822951 or http://dx.doi.org/10.2139/ssrn.4822951

Andres Knobel. “Complex Ownership Structures: Addressing the Risks for Beneficial Ownership Transparency.” *Social Science Research Network*, January 1, 2022. https://doi.org/10.2139/ssrn.4040794.

Anil Shividasani and David Yermack. “CEO involvement in the selection of new board members: An empirical analysis.” *Journal of Finance* 54 (1999): 1829-1853

Anis Hazim, “KNM defends reappointment of Ho Soo Woon as independent director” *theedgemalaysia.com* (21 Nov 2023)

Anisah Safiah Maznorbalia, Muhammad Awalluddin, Ardzlyn Hawatul Yuhanis Ayob. “Exploring The Role of Institutional Investors in Voting, Monitoring and Dialogue Engagement in Mitigating Agency Conflict in Malaysia’s Public Listed Companies”, *Humanities Social Science Communications*. Vol 10, (2023): 141. https://doi.org/10.1057/s41599-023-01631-z

Asian Corporate Governance Association, *CG Watch 2023, Spectrum of standards Regulators set the tone on CG progress* (June 2024)

Asian Development Bank, *Unlocking the Economic and Social Value of Indonesia’s State-Owned Enterprises* (2022).

Bénédicte Millet-Reyes and Ronald Zhao, “A Comparison between One-Tier and Two-Tier Board Structures in France,” *Journal of International Financial Management & Accounting* 21(3) (2010): 279–310

Bursa Malaysia, Listing Requirements, Main Market – Chapter 15: Corporate Governance.

Carsten M. Jungmann, "The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board Systems: Evidence from the UK and Germany," *European Company and Financial Law Review* 3(4) (2006): 426–74;

Chandrasekhar Krishnamurthi and Aleksandar Sevic, "Legal Environment, Firm-Level Corporate Governance and Expropriation of Minority Shareholders in Asia," *Economic Change and Restructuring* 38(1) (2005): 85–110.

Chenxi Liu, Nelson Yap, Chen Yin and Sili Zhou, "The Effect of Sovereign Wealth Funds on Corporations: Evidence of Cash Policies in Singapore. *Research in International Business and Finance* 56 (2021):101354.

Choy Nyen Yiau, "Political appointments still the norm under unity govt, albeit reduced — IDEAS," *TheEdgemalaysia,* October 3, 2024, accessed November 25, 2025 https://theedge malaysia.com/node/728917.

Christine Shropshire, Jonathan Bundy, and Latifa A Albader. "Advisory Governance Policy, Shareholder Voice, and Board Responsiveness: The Case of Majority Vote in Director Elections," *Business & Society* 62(2) (2022) : 285-321. https://doi.org/10.1177/00076503221081003

Edmund Terence Gomez, "The Politics and Policies of Corporate Development: Race, Rents and Redistribution in Malaysia," in *Malaysia's Development Challenges: Graduating from the Middle*, ed. Hal Hill, Tham Siew Yean, and Ragayah Mat Zin (London: Routledge, 2012), 63,82

Edmund Terence Gomez and Kwame S. Jomo, *Malaysia's Political Economy: Politics, Patronage and Profits* (Cambridge: Cambridge University Press, 2002)

Ernest Lim, "Concentrated Ownership, State-Owned Enterprises and Corporate Governance." *Corporate Governance: An International Review* 29(1) (2021): 28-53.

Ferdinand A. Gul, "Auditors' Response to Political Connections and Cronyism in Malaysia," *Journal of Accounting Research* 44(5) (2006): 931–63. Fulgence, Samuel, Agyenim Boateng, and

Frank Kwabi. 2024. "Ownership Structure, Corporate Governance Disclosure, and the Moderating Effect of CEO Power: Evidence from East Africa." *Accounting Forum*, November (2024): 1–30.

Franklin Nakpodia, "Corporate Governance and Family Business: A Perspective Article." *Journal of Family Business Management*, November 3 (2023). https://doi.org/10.1108/jfbm-10-2023-0198.

Helen L. Anderson, Michelle A. Welsh, Ian M. Ramsay, and Peter G. Gahan, "The Evolution of Shareholder and Creditor Protection in Australia: An International Comparison," *International and Comparative Law Quarterly* 61(1) (2012): 171–207.

Henrik Cronqvist and Mattias Nilsson, "Agency costs of controlling minority shareholders," *Journal of Financial and Quantitative Analysis* 38(4) (2003): 695–719

Holger Spaman, "The "Antidirector Rights Index" Revisited" *The Review of Financial Studies* 23(2010): 467-486

Hong Kong Exchanges and Clearing Ltd, Concept Paper Weighted Voting Shares (August 2014) at http://www.hkex.com.hk /eng/newsconsul/mktconsul/Documents/cp2014082.pdf (viewed on 30 August 2014);

Hsin-Ti Chang, Yu-Hsin Lin, and Ying-Hsin Tsai, "From Double Board to Unitary Board System: The Corporate Governance Reform in Taiwan," in *Independent Directors in Asia: A Historical, Contextual and Comparative Approach*, ed. Harald Baum et al. (Cambridge: Cambridge University Press, 2013)

Intan Farahan Zainol, "Lysaght power tussle to culminate in coming AGM," The Star, June 27, 2015.

Izzul Ikram, "Substantial shareholders countersue Peterlabs over failure to convene EGM to remove directors" theedge malaysia.com (06 Jun 2025).

Jamaliah Said, Md. Mahmudul Alam, Nurazwani Binti Mat Radzi, and Mohamad Hafiz Rosli. "Impacts of Accountability, Integrity, and Internal Control on Organisational Value Creation: Evidence from Malaysian Government Linked

Companies." *International Journal of Business Governance and Ethics* 14(2) (March 10, 2020): 206

Jeffrey N Gordon, "Institutions as Relational Investors: A New Look at Cumulative Voting", *Columbia Law Review* 94 (1) (1994): 124-192.

Jiang, Fuxia., Cai, Wenjiang., Wang, Xue., and Zhu, Bing, "Multiple large shareholders and corporate investment: Evidence from China" *Journal of Corporate Finance* 56 (2018): 66-83

Jie Cai, Tu Nguyen, and Ralph A. Walkling. "Director Appointments – It Is Who You Know." *Social Science Research Network*, October 11, 2020. https://doi.org/10.2139/SSRN.2934434

John Armour, Simon Deakin, Priya Lele, and Mathias Siems, "How do legal rules evolve? Evidence from a cross-national comparison of shareholder, creditor and worker protection", *American Journal of Comparative Law* 57(2009): 579-630.

Joni Joni, Kamran Ahmed and Jane Hamilton, "Politically Connected Boards, Family and Business Group Affiliations, and Cost of Capital: Evidence from Indonesia" *The British Accounting Review* 52(3), (2020): 100878

Kim Hye-Sung, "Corporate Elections and Shareholder Proposal Rights," in *Corporate Governance in Asia*, ed. Sang-Woo Nam and Il Chong Nam (Tokyo: ADBI, 2004), 266.

Miko Kamal,"The New Indonesian Company Law: Does it Support Good Corporate Governance?", 7 August 2008, Available at SSRN: http://ssrn.com/abstract=1215867

M Hafidz Mahpar, "Kronologi Asia board rejects exec chairman's EGM request," The Star, August 6, 2015.

M. Hafidz Mahpar, "Lysaght board reverses decision on director nomination notices," The Star, June 15, 2015.

Majid J. Khan, Faiza Saleem, Shahab Ud Din Muhammad Yar Khan. "Nexus between boardroom independence and firm financial performance: evidence from South Asian emerging market. *Humanities and Social Science Communications* 11(2024): 590. https://doi.org/10.1057/s41599-024-02952-3

Marcel Kahan and Edward Rock, "When the Government Is the Controlling Shareholder," *Texas Law Review* 89 (2011): 1293–1349.

Mariana Pargendler, "State Ownership and Corporate Governance," *Fordham Law Review* 80 (2012): 2917–2958.

Michael Burkart, Fausto Panunzi, and Andrei Shleifer, "Family Firms," *Journal of Finance* 58 (2003): 2167–2202.

Michael E. Murphy, "The Nominating Process for Corporate Boards of Directors: A Decision-Making Analysis," *Berkeley Business Law Journal* 5(2) (2008): 131–93.

Michael J. Barclay and Clifford G. Holderness, "Private Benefits of Control in Public Corporations," *Journal of Financial Economics* 25 (1989): 374.

Mohsin Abdullah, "When Heading a GLC Is a Political Reward," TheEdgeMarkets.com, April 14, 2020, accessed October 27, 2023, https://theedgemalaysia.com/article/when-heading-glc-political-reward.

Ng Ching Yat David, Teck Chai Lau, Peck Ling Tee, and Siew Fong Lai. "An Evaluation of Corporate Governance Characteristics and Corporate Performance between Government-Linked Companies (GLCs) in Malaysia and Singapore: A Panel Data Analysis" presented at International Conference on Management, Social Sciences & Humanities (ICMeSH 2020), SHS Web Conference 124 (January 1, 2021): 04005, https://www.shs-conferences.org/articles/shsconf/abs/2021/35/shsconf_icmesh2020_04005/shsconf_icmesh2020_04005.html

OECD, Better Policies for Board Nomination and Election in Asia, Corporate Governance (OECD Publishing) https://www.oecd.org/en/publications/better-policies-for-board-nomination-and-election-in-asia_9789264204386-en.html.

OECD, Corporate Governance in Asia: Progress and Challenges (OECD Publishing, 2011), http://dx.doi.org/10.1787/9789264096790-en

OECD, Reform Priorities in Asia: Taking Corporate Governance to a Higher Level (ECD Publishing, 2013), http://dx.doi.org/10.1787/9789264204416-en

OECD, *Shareholder Meetings and Corporate Governance: Trends and Implications,* (OECD Publishing, 2025) Paris, https://doi.org/ 10.1787/2d36fa5c-en.

OECD, O*ECD Corporate Governance Factbook 2025*, (OECD Publishing, 2025) Paris, https://doi.org/10.1787/f4f43735-en.

Paul L. Davis and Klaus J. Hopt, "Boards in Europe—Accountability and Convergence," American Journal of Comparative Law 61 (2013): 301–75.

Pieter-Jan Bezemer, Stefan Peij, Laura de Kruijs, and Gregory Maassen, "How Two-Tier Boards Can Be More Effective," *Corporate Governance* 14 (1) (2014): 15–33.

Priya P. Lele and Mathias M. Siems "Shareholder Protection – A Leximetric Approach", Journal *of Corporate Law Studies* 7 (2007):17-50.

Puan Yatim, Pamela Kent, and Peter Clarkson, "Governance Structures, Ethnicity, and Audit Fees of Malaysian Listed Firms," *Managerial Auditing Journal* 21 (7) (2006): 757–782

Rafael La Porta, Florencio Lopez-De-Silanes, and Andrei Shleifer, "Corporate Ownership around the World," *Journal of Finance* 54 (2) (1999): 471–517.

Randall Morck, Daniel Wolfenzon, and Bernard Yeung, "Corporate Governance, Economic Entrenchment and Growth," *Journal of Economic Literature* 43 (2005): 657–722

Randall Thomas and Patrick C. Tricke, "Shareholder Voting in Proxy Contests for Corporate Control, Uncontested Director Elections and Management Proposals," *Oklahoma Law Review* 70(1) (2017): 9-126.

Rashid Ameer, Fairuz Ramli, and Husein Zakaria, "A New Perspective on Board Composition and Firm Performance in Emerging Markets," *Corporate Governance: An International Review* 10 (5) (2010): 647–661.

Reena Aggarwal, Sandeep Dahiya & Nagpurnanand Prabhala, "The power of shareholder votes: Evidence from uncontested director elections," *Journal of Financial Economics* 133(1) (2019): 134-153

Regina M. Lizares, 'Ownership concentration and board structure: Alignment and entrenchment effects in an emerging market "Managerial *and Decision Economics* 43(6) (2022): 2557 – 2569.

Risen Jayaseelan, "Kim Yew Makes Comeback," StarBiz, The Star, February 7, 2012

"Risks, Conflicts Raised in Political Appointments to GLCs." FocusMalaysia, accessed October 27, 2023, https://focusmalaysia.my/risks-conflicts-raised-in-political-appointments-to-glcs/.

Royhan Akbar, Nathaniel Mangunsong and Dan W Puchniak, The Abolition of Independent Directors in Indonesia: Rationally Autochthonous or Foolishly Idiosyncratic? (May 23, 2025). Forthcoming in the *American Journal of Comparative Law*, European Corporate Governance Institute - Law Working Paper No. 802/2024, Singapore Management University School of Law Research Paper Forthcoming,

Sami R. M. Musallam, Hasan Fauzi, and Nadhirah Nagu, "Family, Institutional Investors Ownerships and Corporate Performance: The Case of Indonesia," *Social Responsibility Journal* 15(1) (2018): 1–10.

Samuel Fulgence, Agyenim Boateng, and Frank Kwabi. 2024. "Ownership Structure, Corporate Governance Disclosure, and the Moderating Effect of CEO Power: Evidence from East Africa." *Accounting Forum* November (2024): 1–30.

Sang-Woo Nam and Il Chong Nam, Corporate Governance in Asia: Recent Evidence from Indonesia, Republic of Korea, Malaysia, and Thailand (Tokyo: Asian Development Bank Institute, October 2004), 18.

Setiawati Erma, Eskasari Putri, and Nashirotun Nisa. "Implementation of Corporate Governance, Family Ownership, and Family-Aligned Board: Evidence from Indonesia." *Problems and*

Perspectives in Management 20 (4) (October 11, 2022): 14–23. https://doi.org/10.21511/ppm.20(4).2022.02.

Shamsul Nahar Abdullah, Nor Hafizah Zainal Abidin, Intan Suryani Abu Bakar and Anis Ur Rahman, "The Appointment Process for Independent Directors in Malaysian Listed Companies," *Corporate Ownership & Control* 14 (1-3) (Fall 2016): 519–531.

Shannon Teoh, "Tussle at Telekom Malaysia Raises Spectre of Political Power Play," The Straits Times, June 5, 2019.

Shanthy Rachagan and Aiman Nariman Mohd-Sulaiman, "Controlling Shareholders: Issues and Challenges for Shareholders' Empowerment in Directors' Remuneration in Corporate Malaysia," *Asian Journal of Comparative Law* 9(1) (2014) : 267–94, https://doi.org/10.1515/asjcl-2013-0020

Simon Johnson and Todd Mitton, "Cronyism and Capital Controls: Evidence from Malaysia," *Journal of Financial Economics* vol 67, no. 2 (2003): 351–82

Standing Committee on Industry, Science and Technology (Canada), Statutory Review of the Canada Business Corporations Act, Report of the Standing Committee (June 2010), House of Commons, Canada

Stephen Martin and David Parker, "Privatization and Economic Performance Throughout the UK Business Cycle," *Managerial & Decision Economics.* vol 16, no 3(1995):225-237.

Steve Sauerwald, Pursey P. M. A. R. Heugens, Roxana Turturea & Marc van Essen. "Are All Private Benefits of Control Ineffective? Principal–Principal Benefits, External Governance Quality, and Firm Performance," *Journal of Management Studies* 56 (4) (2019): 725-757.

Stijn Claessens, Simeon Djankov, Joseph P. Fan, and Larry Lang, "Disentangling the Incentive and Entrenchment Effects of Large Shareholding," *Journal of Finance* 57 (2002): 2741–2771.

Triana Dewi Seroja, David Tan, Winda Fitri and Shelvi Rusdiana, "Dual-Class Share Structure in the Indonesian Equity Marke: Valuing International Insights and Acknowledging Local Wisdom", *Lentera Hukum* 10 (3) (2023): 433-468.

U.S. Securities and Exchange Commission, "Voting Mechanics," accessed July 2, 2025, http://www.sec.gov/spotlight/proxymatters/voting_mechanics.shtml.

Wai-Yan Wong and Chee-Wooi Hooy, "Do types of political connection affect firm performance differently?" *Pacific-Basin Finance Journal* 51 (2018): 297-317

Yan-Leung Cheung, Cheong Wing Chung, Weiqiang Tan and Wenming Wang,"Connected board of directors: A blessing or a curse?" *Journal of Banking & Finance* 37 (8) (August 2013): 3227-3242

Yeing Wai Lau and C. Q. Tong, "Are Malaysian Government Linked Companies (GLCs) Creating Value?" *International Applied Economics and Management Letters* 1 (2008): 9–12.

Yiswaree Palansamy, "Finance Ministry Terminates Tajuddin as Prasarana Chairman," *Malay Mail*, May 26, 2021.

Yonca Ertimur, Fabrizio Ferri, and David Oesch, "Does the Director Election System Matter? Evidence from Majority Voting." *Review of Accounting Studies* 20(1) (2015): 1–41.