

INSTITUTIONAL INVESTOR STEWARDSHIP IN TAIWAN: THE TAIWAN STEWARDSHIP CODE'S INEFFECTIVENESS AND POTENTIAL IMPROVEMENTS

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ABSTRACT

After the UK published the UK Stewardship Code in 2010, several other jurisdictions followed suit and published their own versions of stewardship codes. The focus on institutional investor stewardship has become a global trend in recent years. In 2016, Taiwan joined the trend by launching the “Stewardship Principles for Institutional Investors” (Taiwan Stewardship Code). As the Taiwan Stewardship Code has been based on the UK Stewardship, this Article first conducts a comparative analysis between the Taiwan and UK Stewardship Codes. To shed more light on institutional investor stewardship in Taiwan, this Article reviews the 2020 stewardship reports of all 153 signatories of the Taiwan Stewardship Code, which were released exactly five years after the launch of the Taiwan Stewardship Code. Examining the signatories’ stewardship activities in several aspects, this Article found that the signatories’ stewardship is far from satisfying. Not only does the level of stewardship fall short of the Taiwan Stewardship Code’s expectations, but the signatories also have not been following the requirements of the Taiwan Stewardship Code. Based on these findings, it can be concluded that the Taiwan Stewardship Code has been ineffective in promoting stewardship among Taiwan institutional investors. To achieve that end, the Taiwan Stewardship Code will need to be revised significantly. This Article proposes and analyzes several potential improvements to the Taiwan Stewardship Code so that it can ultimately strengthen Taiwan’s corporate governance system.

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I. INTRODUCTION

“Institutional investors,” according to an Organization for Economic Cooperation and Development (OECD) report, “refer to institutions which collect funds from investors to invest on their behalf but in the name of the institution.”¹ Typical institutional investors include mutual funds, pension funds, insurance companies, and banks, among others.² Today, a significant proportion of the world’s assets are held by these institutional investors, and this proportion continues to grow.³ As the share ownership of institutional investors increases, so does the importance of their role in the capital markets. The existence of institutional shareholders creates two levels of agency problems. The first level exists between the corporate managers and shareholders, while the second level exists between the institutional investors and their client investors. Institutional investors may lack the incentive to supervise the investee company due to a large number

1. OECD, THE ROLE OF INSTITUTIONAL INVESTORS IN PROMOTING GOOD CORPORATE GOVERNANCE, CORPORATE GOVERNANCE 21 (2011), <https://www.oecd.org/daf/ca/49081553.pdf> [<https://perma.cc/3QC6-BL8Z>].

2. *Id.* at 19.

3. The proportion of stocks held by institutional investors in the US, UK, Australia, Germany and Japan in 2009 was higher than the proportion 20 years ago. *See id.*

of investment targets, fixed management fees, and conflict of interests with the investee company.⁴ However, the monitoring of investee companies by the institutional investors can potentially improve the performance of the companies, which in turn will benefit the institutional investors' client investors. This leads to a misalignment of interests between the institutional investors and their client investors, thus an agency problem arises between the institutional investors and their client investors.⁵ It is this exact agency problem that has brought increased scrutiny towards institutional investor stewardship, which the 2020 UK Stewardship Code defines as "the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society."⁶

After the 2008 Financial Crisis, institutional investors were criticized by government regulators and the wider public for their lack of oversight of their investee companies. This lack of oversight resulted in the excessive pursuit of short-term interests and high-risk operations, which eventually led to the financial crisis. With increasing international attention to the issue of institutional investor stewardship, the Financial Reporting Council (FRC) published the U.K. Stewardship Code in 2010, which is recognized by many as the first stewardship code in the world.⁷ After the publication of the U.K. Stewardship Code, jurisdictions in the Asia-Pacific region such as Australia, Hong Kong, Japan, Malaysia, Singapore, and South Korea have all introduced their versions of the stewardship code. In 2016, Taiwan joined this global trend of stewardship by launching the "Stewardship Principles for Institutional Investors" (Taiwan Stewardship Code).⁸

This Article aims to provide insights into the Taiwan institutional investor stewardship landscape and evaluate the effectiveness of the Taiwan Stewardship Code. Since the Taiwan Stewardship Code is based

4. See generally Lucian A. Bebchuk, Alma Cohen & Scott Hirst, *The Agency Problems of Institutional Investors*, J. ECON. PERSP., Summer 2017, at 89.

5. *Id.*

6. FIN. REPORTING COUNCIL [hereinafter FRC], THE UK STEWARDSHIP CODE 2020, at 4 (2020), https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Dec-19-Final-Corrected.pdf [<https://perma.cc/AQ5F-8XNU>] [hereinafter 2020 UK STEWARDSHIP CODE].

7. Although the Canadian Coalition for Good Governance (CCGG) had launched "Stewardship Principles" back in 2005, it was not until the UK launched the UK Stewardship Code in 2010 that the idea of stewardship code really spread internationally. See Dan W. Puchniak, *The False Hope of Stewardship in the Context of Controlling Shareholders Making Sense Out of the Global Transplant of a Legal Misfit* 17–18 (Eur. Corp. Governance Inst., Law Working Paper No. 589/2021, 2021).

8. *TWSE Launched the Stewardship Principles for Institutional Investors*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR. (June 30, 2016), <https://cgc.twse.com.tw/pressReleases/promoteNewsArticleEn/1207> [<https://perma.cc/YUH4-CLPX>]. As the term "stewardship code" has been commonly accepted and understood internationally, this Article adopts the term "Taiwan Stewardship Code" to refer to the "Taiwan "Stewardship Principles for Institutional Investors," which is the official English title of the Taiwan Stewardship Code.

on the U.K. Stewardship Code, this Article conducts a comparative analysis between the United Kingdom and Taiwan Stewardship Codes. To shed more light on institutional investor stewardship and evaluate the effectiveness of the Taiwan Stewardship Code, this Article then reviews the 2020 stewardship reports of the 153 signatories of the Taiwan Stewardship Code where available. These reports were completed exactly five years after the launch of the Taiwan Stewardship Code and thus offer a glimpse into the initial performance of Taiwan's Stewardship Code. As this Article demonstrates, the Taiwan Stewardship Code has not been effective in promoting institutional investor stewardship in Taiwan. To achieve that end, the Taiwan Stewardship Code needs to be revised significantly. This Article proposes and analyzes several potential improvements to Taiwan Stewardship Code that will make it more effective in promoting institutional investor stewardship in Taiwan, so that it can ultimately strengthen Taiwan's corporate governance system. Finally, as English-language academic literature on the Taiwan Stewardship Code is relatively scarce and limited, this Article hopes to serve as a comprehensive introduction to the development of the Taiwan Stewardship Code.⁹

The Article proceeds as follows: Part II introduces the background, contents, and developments of the U.K. Stewardship Code. Part III introduces the Taiwan Stewardship Code, including the reasons for its introduction, six stewardship principles, the 2020 revision, signatories to the Code, and comparisons with the U.K. Stewardship Code. Part IV then looks at the institutional investor stewardship in Taiwan by reviewing the 2020 stewardship reports disclosed by the signatories. Based on Part IV's findings, Part V proposes and analyzes several potential improvements to the Taiwan Stewardship Code and Part VI concludes.

II. THE UK STEWARDSHIP CODE

As the Taiwan Stewardship Code is mostly based on the U.K. Stewardship Code, the U.K. Stewardship Code is a natural starting point. In order to fully understand the Taiwan Stewardship Code, it is necessary to have basic knowledge of the U.K. Stewardship Code. Therefore, this part provides a brief introduction to the U.K. Stewardship Code.

The collapse of Lehman Brothers in the United States triggered the 2008 Financial Crisis—the United Kingdom was not spared and suffered massive economic distress as a result. Large British financial institutions such as HBOS and the Royal Bank of Scotland were on the brink of bankruptcy and had to be rescued by the U.K. government.¹⁰ People have speculated as to the causes of the 2008 Financial Crisis. While the

9. For an English article on the Taiwan Stewardship Code, see Andrew Jen-Guang Lin, *The Assessment of Taiwan's Shareholder Stewardship Codes*, in *GLOBAL SHAREHOLDER STEWARDSHIP* 261 (Dionysia Katelouzou & Dan W. Puchniak eds., 2022).

10. *The Financial Crisis – 10 Years On*, BANK OF ENG., <https://www.bankofengland.co.uk/news/2018/september/the-financial-crisis-ten-years-on> [<https://perma.cc/BAA2-VYL5>] (last visited Nov. 20, 2022).

main cause of the crisis was excessive risk-taking by the banks, a significant portion of the blame was on the passiveness of institutional investors to oversee their portfolio companies.¹¹ Lord Myners, then Financial Services Secretary to the Treasury, famously criticized institutional investors as “absentee landlords,”¹² whose passiveness made their investee companies “ownerless corporations.”¹³

Responding to Lord Myners’ criticism, the Institutional Shareholders’ Committee (“ISC”) issued the “Code on the Responsibilities of Institutional Investors” in 2009. The ISC Code’s ultimate goal was to promote shareholder engagement to “improve long-term returns to shareholders and reduce the risk of catastrophic outcomes due to bad strategic decisions.”¹⁴ The Final Recommendations of the Review of Corporate Governance in U.K. Banks and Other Financial Industry Entities, commissioned by the U.K. government and led by Sir David Walker (commonly known as the “Walker Report”), published in November 2009, echoed the ISC Code by recommending it to become the Stewardship Code.¹⁵ However, the Walker Report also considered that at least “quasi-official imprimatur” will be required to attract and promote adherence for the Stewardship Code,¹⁶ and therefore recommended that the FRC, the independent financial regulator of the U.K., ratify and oversee the Stewardship Code.¹⁷ The recommendations were adopted by the FRC, and based on the recently published ISC Code without major changes, the FRC published the U.K. Stewardship Code in July 2010.¹⁸

A. 2010 and 2012 UK Stewardship Code

Shortly after the publication of the UK Stewardship Code in 2010, it was revised in 2012. However, the 2012 revision did not make any substantial changes to the 2010 Stewardship Code, minor changes centered only around the “clarification of the respective responsibilities of asset managers and asset owners for stewardship, clearer explanations on conflicts of interest and for greater assurance of stewardship activities to be provided.”¹⁹ Thus, the 2010 and 2012 versions of the UK Stewardship

11. Arad Reisberg, *The UK Stewardship Code: On the Road to Nowhere*, 15 J. CORP. L. STUD. 217, 220 (2015).

12. Kate Burgess, *Myners Lashes Out at Landlord Shareholders*, FIN. TIMES (Apr. 22, 2009) <https://www.ft.com/content/c0217c20-2eaf-11de-b7d3-00144feabdc0> [<https://perma.cc/TZ5P-9UNB>].

13. Brian R. Cheffins, *The Stewardship Code’s Achilles’ Heel*, 73 MOD. L. REV. 1004, 1010 (2010).

14. *Id.* at 1011.

15. DAVID WALKER, A REVIEW OF CORPORATE GOVERNANCE IN UK BANKS AND OTHER FINANCIAL INDUSTRY ENTITIES: FINAL RECOMMENDATIONS 83 (2009).

16. *Id.*

17. *Id.* at 17.

18. Reisberg, *supra* note 11, at 222.

19. FRC, *UK Stewardship Code Archive*, <https://www.frc.org.uk/investors/uk-stewardship-code/uk-stewardship-code-archive> (last visited Nov. 20, 2022).

Code will be collectively introduced in this section. The substantially revised 2020 version, , will be introduced in the next section.²⁰

1. Application of the Code

To begin with, the target of the Stewardship Code is institutional investors, hence retail investors are not covered by the Stewardship Code. The 2010 Stewardship Code did not define who “institutional investors” are, but its Preface stated that “[t]he code is addressed firstly to firms who manage assets on behalf of institutional shareholders such as pension funds, insurance companies, investment trusts and other collective investment vehicles.”²¹ Even though the Stewardship Code’s main focus is fund managers, the Stewardship Code still pointed to trustees and owners who are asset owners, because the asset owners can influence their fund managers’ stewardship “either directly or indirectly through the mandates given to fund managers.”²² Therefore, the 2010 Stewardship Code encourages all institutional investors to become signatories.²³ Later, the subsequent 2012 Stewardship Code distinguishes between “asset owners” and “asset managers,” and set different expectations and responsibilities under the stewardship principles accordingly. “[A]sset owners include pension funds, insurance companies, investment trusts and other collective investment vehicles.”²⁴ As capital providers, asset owners dictate the direction of stewardship taken by the asset managers; while asset managers carry out the day-to-day stewardship operations and influence the investee companies’ performance.²⁵

The Stewardship Code applies to all institutional investors, foreign or domestic. But just as the Walker Review had pointed out that the Stewardship Code is “UK-centric,”²⁶ the contents of the Stewardship Code are tailored for domestic investors and may not be suitable for foreign investors, thus flexibilities are provided to overseas investors to encourage their compliance. When “the application of the Code duplicates or confuses their responsibilities,” the Stewardship Code specifically calls on overseas investors who follow other national or international codes to make use of the “explain” option, rather than struggling to comply with the Stewardship Code.²⁷ Furthermore, the disclosures made by over-

20. *See infra* Part II.B.

21. FRC, THE UK STEWARDSHIP CODE 2 (2010), <https://www.frc.org.uk/getattachment/e223e152-5515-4cdc-a951-da33e093eb28/UK-Stewardship-Code-July-2010.pdf> [<https://perma.cc/A7TU-GUP6>] [hereinafter 2010 UK STEWARDSHIP CODE].

22. *Id.*

23. *Id.*

24. FRC, THE UK STEWARDSHIP CODE 1 (2012), [https://www.frc.org.uk/getattachment/d67933f9-ca38-4233-b603-3d24b2f62c5f/UK-Stewardship-Code-\(September-2012\).pdf](https://www.frc.org.uk/getattachment/d67933f9-ca38-4233-b603-3d24b2f62c5f/UK-Stewardship-Code-(September-2012).pdf) [<https://perma.cc/DE69-2JBY>] [hereinafter 2012 UK STEWARDSHIP CODE].

25. *Id.*

26. WALKER, *supra* note 15, at 84, para. 5.41.

27. 2012 UK STEWARDSHIP CODE, *supra* note 24, at 3. *See also* 2010 UK

seas investors in accordance with other national or international codes can be used to demonstrate their compliance with the UK Stewardship Code.²⁸ As for service providers, such as proxy advisors, the 2010 and 2012 versions of the Stewardship Code did not provide specific principles for service providers; rather, it encouraged service providers “to disclose how they carry out the wishes of their clients by applying the principles of the Code that are relevant to their activities.”²⁹

2. Comply or Explain Approach

Although the U.K. Stewardship Code is labeled a “Code,” compliance with the Code is not compulsory; rather, compliance depends on whether the investor is an overseas or U.K. domestic investor. According to the Conduct of Business Rule 2.2.3 promulgated by the U.K. Financial Conduct Authority (FCA), asset managers authorized by the FCA must follow the U.K. Stewardship Code.³⁰ As most asset managers authorized by the FCA are U.K. domestic investors, U.K. asset managers are effectively required to follow the U.K. Stewardship Code.³¹ On the other hand, overseas investors are not bound by the FCA Rule, thus it is up to them whether to voluntarily comply with the U.K. Stewardship Code.

Regardless of voluntariness, the principle-based 2010 and 2012 U.K. Stewardship Code is applied to signatories on a “comply or explain” basis.³² Under the comply or explain approach, signatories of the U.K. Stewardship Code should either comply with the principles of the Stewardship Code; or in circumstances of non-compliance, signatories should explain why they have not complied with the Code. Compliance with the Stewardship Code may not be in the best interest for all institutional investors. For some investors who trade within short windows or passively track stock indices, compliance will not be their priority and may even be harmful to their funds.³³ Just as the Preface of the 2010 U.K. Stewardship Code acknowledges, “not all parts of the Code will be relevant to all institutional investors . . . In these circumstances, they should take advantage of the ‘comply or explain’ approach and set out why this is the case.”³⁴ These characteristics allow the U.K. Stewardship Code

STEWARDSHIP CODE, *supra* note 21, at 2.

28. *Id.*

29. 2010 UK STEWARDSHIP CODE, *supra* note 21, at 2.

30. COBS 2.2.3R (06/12/2010):

A firm, other than a venture capital firm, which is managing investments for a professional client that is not a natural person must disclose . . . : (1) the nature of its commitment to the Financial Reporting Council’s Stewardship Code; or (2) where it does not commit to the Code, its alternative investment strategy.

31. Dionysia Katelouzou & Dan W. Puchniak, *Global Shareholder Stewardship: Complexities, Challenges, and Possibilities* 26 (Eur. Corp. Governance Inst., Law Working Paper No. 595/2021, 2021).

32. 2010 UK STEWARDSHIP CODE, *supra* note 21, at 1; 2012 UK STEWARDSHIP CODE, *supra* note 24, at 1.

33. Lee Roach, *The UK Stewardship Code*, 11 J. CORP. L. STUD. 463, 475 (2011).

34. 2010 UK STEWARDSHIP CODE, *supra* note 21, at 2.

to be “soft law” to prevent the rigidity in the application associated with “hard law.”

3. Seven Stewardship Principles

The 2010 and 2012 U.K. Stewardship Codes both consist of seven principles. Despite having minor differences in the wordings of the principles, the two versions of the Codes are basically identical in their core. The seven principles of the 2012 U.K. Stewardship Code are:

So as to protect and enhance the value that accrues to the ultimate beneficiary, institutional investors should:

1. publicly disclose their policy on how they will discharge their stewardship responsibilities.
2. have a robust policy on managing conflicts of interest in relation to stewardship which should be publicly disclosed.
3. monitor their investee companies.
4. establish clear guidelines on when and how they will escalate their stewardship activities.
5. be willing to act collectively with other investors where appropriate.
6. have a clear policy on voting and disclosure of voting activity.
7. report periodically on their stewardship and voting activities.³⁵

Looking at the principles of the U.K. Stewardship Code, it is not difficult to observe that stewardship is based on the institutional investors’ fiduciary duty toward their beneficiaries or clients.³⁶ Indeed, the foreword of the 2012 U.K. Stewardship Code expressly provides that the aim of stewardship is “to promote the long term success of companies in such a way that the ultimate providers of capital also prosper.”³⁷ Guidance to Principle 2 of the 2012 U.K. Stewardship Code also makes clear that “[a]n institutional investor’s duty is to act in the interests of all clients and/or beneficiaries when considering matters such as engagement and voting.”³⁸ It is therefore unsurprising that the foreword of the 2012 U.K. Stewardship Code recognizes that “[c]ompliance with the Code does not . . . preclude a decision to sell a holding, where this is considered in the best interest of clients or beneficiaries.”³⁹

Under English law, institutional investors being shareholders, do not owe fiduciary duties to the investee company.⁴⁰ Instead, as the relationship between fund managers and clients is a fiduciary one akin to

35. 2012 UK STEWARDSHIP CODE, *supra* note 24, at 5.

36. Anna Tilba & Arad Reisberg, *Fiduciary Duty Under the Microscope: Stewardship and the Spectrum of Pension Fund Engagement*, 82 MOD. L. REV. 456, 483 (2019).

37. 2012 UK STEWARDSHIP CODE, *supra* note 24, at 1.

38. *Id.* at 6.

39. *Id.* at 1.

40. Cheffins, *supra* note 13, at 1011. For discussions on the fiduciary duty of shareholders under US law, see generally Iman Anabtawi & Lynn Stout, *Fiduciary Duties for Activist Shareholders*, 60 STAN. L. REV. 1255 (2008).

trusts, fiduciary duties of institutional investors are owed to their beneficiaries or clients, so any stewardship taken by the institutional investors needs to be in the interest of their beneficiaries or clients. Following this mandate of fiduciary duties to act in the best interest of the beneficiaries, the seven principles of the U.K. Stewardship Code can be broadly divided into two categories: “reporting” and “intervention.”⁴¹ Principles 1, 2, 6, and 7 require signatories to disclose their stewardship policy, conflict of interest management policy, voting policy, and periodically report stewardship in order to inform the beneficiaries or clients how their capital is being managed; Principles 3, 4, and 5 require signatories to oversee and monitor the investee companies’ management to improve their performance so that the clients return rate also improves.⁴²

4. Signatories and Their Compliance

By the end of 2018, the 2012 U.K. Stewardship Code had 278 signatories, including 172 asset managers, 94 asset owners, and 12 proxy advisors or investment consultants.⁴³ Since domestic U.K. asset managers are compelled to follow the Stewardship Code as required by the FCA’s Conduct of Business Rule, only a little more than 100 signatories voluntarily signed up to the Stewardship Code.⁴⁴ To improve the reporting quality of the signatories, the FRC began to implement a tiering system for the assessment of the quality of their stewardship reports in 2016.⁴⁵ The tiering system aims to curb the signatories who publish unsatisfactory reports, “distinguished between signatories who reported well and demonstrated their commitment to stewardship, and those where reporting improvements were needed.”⁴⁶ Even though no disciplinary mechanism existed for the tiering system, the tiering results of 2021, just before the 2012 Stewardship Code was discontinued, showed that a large portion of the signatory list was assigned to Tier 1, the top tier.

This may be the result of great compliance by the signatories. One of the most obvious incentives for institutional investors to comply with the Stewardship Code is to avoid stricter regulations imposed by government agencies.⁴⁷ Furthermore, institutional investors may also have

41. Bobby V. Reddy, *The Emperor’s New Code? Time to Re-Evaluate the Nature of Stewardship Engagement Under the UK’s Stewardship Code*, 84 MOD. L. REV. 842, 846 (2021).

42. For detailed introduction on the principles and guidance of the UK Stewardship Code, see Roach, *supra* note 33, at 479–93.

43. JOHN KINGMAN, INDEPENDENT REVIEW OF THE FINANCIAL REPORTING COUNCIL 45, ¶ 2.81 (2018), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767387/frc-independent-review-final-report.pdf [<https://perma.cc/MFD8-9KBR>] [hereinafter KINGMAN REVIEW].

44. See COBS 2.2.3R (06/12/2010).

45. *History of the UK Stewardship Code*, *supra* note 19.

46. *Id.*

47. Paul L. Davies, *The UK Stewardship Code 2010–2020 from Saving the Company to Saving the Planet?* 18 (Eur. Corp. Governance Inst., Law Working Paper No. 506/2020, 2020).

reputational incentives to comply with the Stewardship Code. The Stewardship Code requires the signatories to disclose their stewardship activities to the beneficiaries and clients, the beneficiaries and clients then select the better-performing institutional investor based on these disclosures; this, in turn, provides incentives for the institutional investor to invest more in stewardship, forming a virtuous cycle.⁴⁸ In theory, this should have induced more stewardship, unfortunately, this does not seem to be the case in the real world.

5. Kingman Review

In April 2018, then Secretary of State, Greg Clark, asked Sir John Kingman to conduct an independent review on the FRC. Sir Kingman's findings were later published as the "Independent Review of the Financial Reporting Council," also known as the Kingman Review, in December 2012. The Kingman Review set out 83 recommendations, not only recommending that the FRC be replaced with an "independent statutory regulator," but also that the U.K. Stewardship Code that is overseen by the FRC.⁴⁹ The Kingman Review pointed out that while "[i]nformed and engaged stewardship of companies by U.K. investors helps the FRC to meet its wider responsibilities . . . , the existing tiering approach focuses predominantly on checking the content of stewardship statements, not on actual effectiveness or outcomes."⁵⁰ This led to Recommendation 42 of the Kingman Review, resembling an ultimatum, calling on the FRC to seriously consider abolishing the Stewardship Code if no improvements were made.⁵¹ To put it succinctly, in the Kingman Review's opinion, the Stewardship Code was well-intentioned but not effective in practice.⁵²

B. 2020 U.K. Stewardship Code

The blunt warnings of the Kingman Review precipitated a revision of the U.K. Stewardship Code in 2020. Unlike the previous revision in 2012, the 2020 revision made substantial changes to the Stewardship Code in terms of its scope, principles, structure, and underlying theoretical basis. However, because the Taiwan Shareholders Principles were modeled after the 2010 and 2012 versions of the Stewardship Code, for

48. Reddy, *supra* note 41, at 847.

49. *Independent Review of the Financial Reporting Council (FRC) Launches Report*, GOV.UK (Dec. 18, 2018), <https://www.gov.uk/government/news/independent-review-of-the-financial-reporting-council-frc-launches-report>.

50. KINGMAN REVIEW, *supra* note 43, at 46, ¶ 2.85-86.

51. *Id.* at 46. Recommendation 42:

The Review recommends that a fundamental shift in approach is needed to ensure that the revised Stewardship Code more clearly differentiates excellence in stewardship. It should focus on outcomes and effectiveness, not on policy statements. The Government should also consider whether any further powers are needed to assess and promote compliance with the Code. *If the Code remains simply a driver of boilerplate reporting, serious consideration should be given to its abolition* (emphasis added).

52. *Id.* at 8.

the sake of concision, this Article will not discuss the 2020 U.K. Stewardship Code in depth. Only the major points of the 2020 revision that are relevant to the development of the Taiwan Stewardship Code will be discussed in this section.

1. Define and Broaden Stewardship

Deviating from the past versions of the U.K. Stewardship Code, the 2020 UK Stewardship Code provided a definition of “stewardship” for the first time. Stewardship is defined as “the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society.”⁵³ This definition of stewardship reflects the importance of market-wide and systemic risk and ESG issues emphasized by the 2020 revision, instructing that stewardship is not only for the benefit of clients and beneficiaries, but also for the benefit of the wider economy, environment, and society.⁵⁴ And as a response to the evolving investment market where assets other than equity such as “fixed income bonds, real estate and infrastructure” have grown significantly, given that these different asset classes “have different terms, investment periods, rights and responsibilities,” the 2020 U.K. Stewardship Code requires signatories “to consider how to exercise stewardship effectively” regarding these assets.⁵⁵

2. ESG and Stewardship

In the 2012 U.K. Stewardship Code, social and environmental issues are only lightly mentioned in the guidance under Principle 4, listing “social and environmental matters” as “[i]nstances when institutional investors may want to intervene.”⁵⁶ After the 2020 revision, the Stewardship Code came to recognize that “[e]nvironmental, particularly climate change, and social factors, have become material issues for investors to consider when making investment decisions and performing stewardship,” and that “asset owners and asset managers play an important role as guardians of market integrity and in working to minimize systemic risks as well as being stewards of the investments in their portfolios.”⁵⁷ It is, therefore, Principle 4 of the 2020 Stewardship Code that requires signatories to “identify and respond to market-wide and systemic risks to promote a well-functioning financial system.”⁵⁸ And Principle 7 requires

53. 2020 UK STEWARDSHIP CODE, *supra* note 6, at 4.

54. *Id.* at 11, 15.

55. *Id.* at 4.

56. 2012 UK STEWARDSHIP CODE, *supra* note 24 at 8 (“Instances when institutional investors may want to intervene include, but are not limited to, when they have concerns about the company’s strategy, performance, governance, remuneration or approach to risks, including those that may arise from social and environmental matters.”).

57. 2020 UK STEWARDSHIP CODE, *supra* note 6, at 4.

58. *Id.* at 11 (“Market-wide risks are those that lead to financial loss or affect overall performance of the entire market Systemic risks are those that may lead to the collapse of an industry, financial market or economy . . .”).

signatories to “systematically integrate stewardship and investment, including material environmental, social and governance issues, and climate change, to fulfil their responsibilities.”⁵⁹ The addition of these two Principles echoes the definition of stewardship in the 2020 U.K. Stewardship Code, reaffirming that stewardship is not only for the benefit of clients and beneficiaries, but also for the benefit of the wider economy, environment, and society. In the words of U.K. scholar, Paul Davies, the 2020 revision of the U.K. Stewardship Code is a transformation “from saving the company to saving the planet.”⁶⁰

3. Twelve-Plus-Six Stewardship Principles

The 2020 revision made significant changes to the overall structure of the Stewardship Code. The original seven principles for asset owners and asset managers were expanded into twelve principles, and another six principles for service providers were set out in the 2020 Stewardship Code. Specific roles and responsibilities were laid out for different types of signatories which take into consideration the differences in their business models. Asset owners and asset managers “cannot delegate their responsibility and are accountable for effective stewardship,” and “[s]tewardship activities include investment decision-making, monitoring assets and service providers, engaging with issuers and holding them to account on material issues, collaborating with others, and exercising rights and responsibilities.”⁶¹ As for service providers, they include, but are not limited to, “investment consultants, proxy advisors, and data and research providers.”⁶² Service providers “provide services that support their clients [asset owners and asset managers] to fulfil their stewardship responsibilities,” the services include “engagement, voting recommendations and execution, data and research provision, advice, and provision of reporting frameworks and standards.”⁶³

4. Apply and Explain Approach

The 2010 and 2012 U.K. Stewardship Code are applied on a basis of “comply or explain.” However, this approach does not have enough force to ensure the compliance of the signatories, not to mention changing the stewardship behaviors of the institutional investors. This shortcoming led to the 2020 U.K. Stewardship Code adopting the “apply and explain” approach. Signatories of the 2020 U.K. Stewardship Code are required to apply and report on all principles, except “[i]n cases where there is a strong reason why a reporting expectation does not apply, applicants should explain this reason.”⁶⁴ But the 2020 U.K. Stewardship Code

59. *Id.* at 15.

60. Davies, *supra* note 47, at 31.

61. 2020 UK STEWARDSHIP CODE, *supra* note 6 at 7.

62. *Id.* at 23.

63. *Id.*

64. *How to Report on the UK Stewardship Code*, FRC, <https://www.frc.org.uk/investors/uk-stewardship-code/how-to-report> [<https://perma.cc/S8BC-4PA6>] (last

makes it clear that it “does not prescribe a single approach to effective stewardship. Instead, it allows organizations to meet the expectations in a manner that is aligned with their own business model and strategy.”⁶⁵ Hence, one of the notable points of the 2020 revision is that equal weight is given to “exit decisions,” i.e., to sell off shareholdings.⁶⁶ This provides more flexibility to the signatories as it allows them the option to exit rather than monitor or intervene with the investee company, and may be more aligned with the signatories’ business models, giving them more incentives to follow the Stewardship Code.

5. Enhance Reporting Requirements

Responding to the Kingman Review’s criticism that the FRC “focuses predominantly on checking the content of stewardship statements, not on actual effectiveness or outcomes,”⁶⁷ the 2020 U.K. Stewardship Code requires the signatories to focus on the “activities and outcomes” of stewardship.⁶⁸ The guidance under each principle that existed in the 2010 and 2012 versions was replaced by “reporting expectations,” which focuses on activity and outcome. “Activities identify the actions taken by the organization during the reporting period to fulfil the Principle, while Outcomes explain the result of the actions taken during the reporting period.”⁶⁹ The 2020 Stewardship Code also laid out different reporting expectations aimed at different types of signatories; Principles 6, 7, 8, 9, 11, and 12 have different expectations for asset owners or asset managers. Signatories should follow the reporting expectation that is most appropriate to its business model.⁷⁰

Moreover, since the 2012 U.K. Stewardship Code has been discontinued, to become a signatory of the 2020 U.K. Stewardship Code, institutional investors now have to apply to the FRC and submit their stewardship report.⁷¹ The FRC will then assess the quality of the submitted stewardship report to determine whether the institutional investor’s application is successful or unsuccessful.⁷² Only successful applicants will be listed as signatories of the 2020 U.K. Stewardship Code, unsuccessful applicants can choose to re-apply in the next application window.⁷³ The signatory list is updated annually, and signatories “are required to report every year to the FRC on their application of the Code” to maintain

visited Nov. 20, 2022).

65. 2020 UK STEWARDSHIP CODE, *supra* note 6, at 4.

66. Davies, *supra* note 47, at 23.

67. KINGMAN REVIEW, *supra* note 43, at 46, ¶ 2.86.

68. *How to Report*, *supra* note 64.

69. *Id.*

70. *Id.*

71. FRC, UK STEWARDSHIP CODE 2020 APPLICATION AND ASSESSMENT, (Mar., 2022), <https://www.frc.org.uk/getattachment/Investors/UK-Stewardship-Code/UK-Stewardship-Code-%E2%80%93-How-to-apply/Stewardship-Code-Application-and-Assessment-March-2022.pdf> [<https://perma.cc/3VUE-Y7GU>].

72. *Id.*

73. *Id.*

their status as signatories for the next year.⁷⁴ In the first round of applications, the FRC received 189 applications, of which only 125 successfully became signatories.⁷⁵ Among those who failed to become signatories are big names like Schrodgers, which did not hold back its frustration, “saying FRC feedback had put this down to the format rather than the substance of its submission.”⁷⁶ Whether Schrodgers’ complaints are valid remains to be seen, but with a rejection rate of over one-third, the FRC has demonstrated its resolution to improve the quality of stewardship reports.

III. THE TAIWAN STEWARDSHIP CODE

On June 30, 2016, “[t]he Corporate Governance Center of the TWSE [Taiwan Stock Exchange], directed by the Financial Supervisory [C]ommittee (the “FSC”), in conjunction with the Taiwan Depository Clearing Corp., the Securities Investment Trust & Consulting Association, and Taiwan Financial Services Roundtable collectively launched the ‘Stewardship Principles for Institutional Investors’ [Taiwan Stewardship Code].”⁷⁷ This part first provides a thorough introduction to the Taiwan Stewardship Code, then it will be followed by a comparison between the Stewardship Codes of Taiwan and the United Kingdom.

A. *Reasons for Introducing the Taiwan Stewardship Code*

According to the TWSE Corporate Governance Center’s press release, the reasons for introducing the Taiwan Stewardship Code were generally attributed to the global trend of institutional investor stewardship and the increase in share ownership of institutional investors in Taiwan.⁷⁸

1. Global Trend of Stewardship

After the 2008 financial crisis, institutional investors were scrutinized by governments and regulators, which led to the creation of the U.K. Stewardship Code. In the following years, the focus on institutional investor stewardship has become a global trend. This can be seen from the G20/OECD Principles of Corporate Governance, in which Principle III focuses on the “institutional investors, stock markets, and other intermediaries,”⁷⁹ and the European Union Shareholder Rights Direc-

74. *UK Stewardship Code Signatories*, FRC, <https://www.frc.org.uk/investors/uk-stewardship-code/uk-stewardship-code-signatories> [<https://perma.cc/33JC-KPYD>] (last visited Nov. 20, 2022).

75. Huw Jones et al., *Schrodgers Among Asset Managers Failing to Make Best Practice List*, REUTERS (Sept. 6, 2021, 9:53 PM), <https://www.reuters.com/business/sustainable-business/scores-asset-managers-fall-short-tougher-uk-best-practice-code-2021-09-05> [<https://perma.cc/6WU6-6972>].

76. *Id.*

77. *TWSE Launched the Stewardship Principles for Institutional Investors*, *supra* note 8.

78. *See id.*

79. OECD, G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE (2015), https://www.oecd-ilibrary.org/g20-oecd-principles-of-corporate-governance_5js09wmjzz45.

tive II (SRD II) focuses on the “transparency of institutional investors, asset managers and proxy advisors.”⁸⁰ The focus on institutional investor stewardship resulted in the proliferation of stewardship codes internationally.⁸¹ According to one study, stewardship codes are published in twenty jurisdictions spanning six continents as of 2021.⁸² As stewardship codes have been published by the United Kingdom, Japan, Malaysia, and Hong Kong, this “emphasize[s] the importance and necessity of ‘stewardship’ as does Taiwan.”⁸³

The spread of stewardship codes can be attributed to their attractiveness to both government regulators and institutional investors. To government regulators, publishing stewardship codes is an easy and convenient way to transfer any blame to institutional investors.⁸⁴ Moreover, stewardship codes being soft law, government regulators do not necessarily need to push through lengthy legislative processes, and once published, government regulators will not bear the responsibility to enforce the stewardship code. To institutional investors, stewardship codes are a relatively loose regulation and allow them to continue business as usual.⁸⁵ The threat of harsher and stricter intervention from the government regulators will then incentivize institutional investors to comply with the stewardship codes.

2. Rise of Institutional Investors in Taiwan

Taiwan is not an exception to the rise in institutional investors. The ownership share percentage of institutional investors, along with their influence on the market, has risen dramatically in the past several decades. The TWSE Corporate Governance Center mentioned the rise of institutional investors in its press release for launching the Taiwan Stewardship Code. They pointed out that “foreign investors comprise nearly 40% of market value of TWSE listed companies, while domestic and foreign institutional investors together account for almost half of the trading value.”⁸⁶

pdf?itemId=%2Fcontent%2Fpublication%2F9789264236882-en&mimeType=pdf [https://perma.cc/ANV9-ZMJT] (“Principle III Institutional investors, stock markets, and other intermediaries: The corporate governance framework should provide sound incentives throughout the investment chain and provide for stock markets to function in a way that contributes to good corporate governance.”).

80. Directive 2017/828, of the European Parliament and of the Council of 17 May 2017 Amending Directive 2007/36/EC as Regards the Encouragement of Long-Term Shareholder Engagement, 2017 O.J. (L 132) 1, 16.

81. See generally Jennifer G. Hill, *Good Activist/Bad Activist: The Rise of International Stewardship Codes*, 41 SEATTLE UNIV. L. REV. 497 (2018).

82. Katelouzou & Puchniak, *supra* note 31, at 1.

83. *TWSE Launched the Stewardship Principles for Institutional Investors*, *supra* note 8.

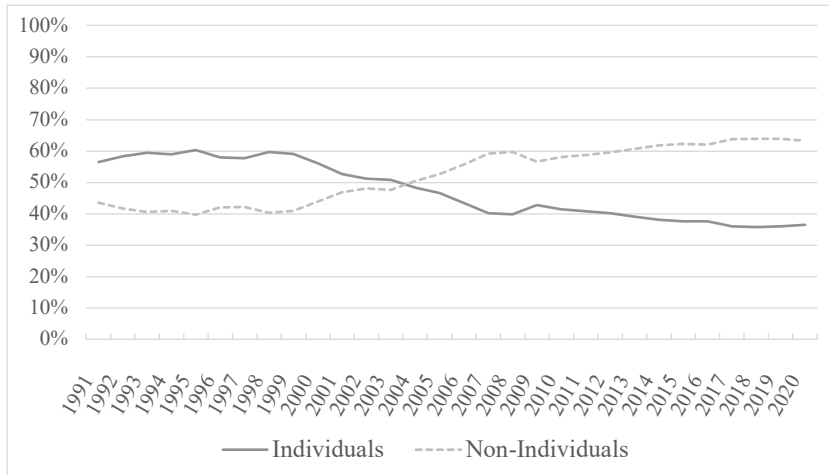
84. Reisberg, *supra* note 11, at 221.

85. Puchniak, *supra* note 7, at 30.

86. *TWSE Launched the Stewardship Principles for Institutional Investors*, *supra* note 8.

Based on the statistics of the TWSE, the percentage of the securities trading value traded by juridical persons (as opposed to natural persons) was 3.32 percent in 1990, 13.89 percent in 2000, 32.01 percent in 2010, to 37.88 percent in 2020, appearing in a steady upward trend over the past decades.⁸⁷ On the other hand, the sources of capital of TWSE-listed Companies that came from individuals (natural persons) dropped from 56.49 percent in 1991 to 36.4 percent in 2020; inversely, capital that came from financial institutions and trust funds rose from 5.92 percent in 1991 to 22.62 percent in 2020.⁸⁸ As can be seen in Chart 1, the percentage of capital of TWSE-listed companies that came from non-individuals (judicial persons) grew steadily beginning in 1991. Later it surpassed the percentage from individuals in 2004, and reached almost two-thirds in 2020. This not only shows the ever-growing influence of institutional investors in Taiwan, but also exhibits the gradual “institutionalization” of the Taiwan stock market.⁸⁹

CHART 1: 1991–2020 SOURCES OF CAPITAL OF TWSE-LISTED COMPANIES



Source: TWSE

B. *Overview of the Taiwan Stewardship Code*

Since the TWSE Corporate Governance Center expected institutional investors “to deliver positive impact, focusing more on the

87. *Securities Trading Values by Type of Investors Annual Statistics*, TWSE, <https://www.twse.com.tw/en/statistics/statisticsList?type=07&subType=262> [https://perma.cc/USY5-5LF5] (last visited Nov. 20, 2022).

88. *Sources of Capital of Listed Companies (by Year) Annual Statistics*, TWSE, <https://www.twse.com.tw/en/statistics/statisticsList?type=07&subType=256> [https://perma.cc/V5ZA-DSW4] (last visited Nov. 20, 2022).

89. Yueh-Ping (Alex) Yang, *The Corporate Governance of Public Companies, Institutional Investors, and Shareholder Activism*, 2(1) *TAIWAN FINANCIAL AND ECONOMIC LAW REVIEW* 385, 406 (2020).

long-term value for their clients and investee companies,”⁹⁰ it introduced the Taiwan Stewardship Code in 2016. The Taiwan Stewardship Code “aim[s] to leverage market mechanism [sic] along with regulations and corporate self-improvement, to enhance corporate governance quality in Taiwan.”⁹¹ To fully gauge and evaluate the Taiwan Stewardship Code, it should be noted that the Taiwan Stewardship Code was modeled after the 2010 and 2012 U.K. Stewardship Codes. Not only can the contents and structure of the stewardship principles be traced back to the U.K. Code, but also the application and comply or explain approach. Even the tiering system is taken out of the FRC’s playbook. This section offers an overview of the Taiwan Stewardship Code and comparisons with the UK Stewardship Code.

1. Application of the Code

Just like the 2012 U.K. Stewardship Code distinguishes between asset owners and asset managers, Chapter 1 of the Taiwan Stewardship Code classifies institutional investors as either asset owners or asset managers. According to Chapter 1 of the Taiwan Stewardship Code, asset owners, such as insurance companies and pension funds, are institutions who “invest with their proprietary capital or funds collected from clients or beneficiaries”; asset managers, such as investment trusts or investment consulting companies, are institutions who “provide assistance to clients on management and investment/utilization of funds.”⁹² However, the Taiwan Stewardship Code currently lacks an extra set of principles for service providers which were included in the 2020 U.K. Stewardship Code. But according to the “Corporate Governance 3.0 - Sustainable Development Roadmap” (Corporate Governance 3.0 Roadmap) published by the Financial Supervisory Commission (FSC), a stewardship code for proxy advisors will be established “by reference to international norms,” and is scheduled to be released in 2023.⁹³

90. *Id.*

91. *Stewardship Principles Overview*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR., <https://cgc.twse.com.tw/frontEN/stewardship> [<https://perma.cc/MJ2Y-P4B9>] (last visited Nov. 20, 2022).

92. *Revision of Stewardship Principles for Institutional Investors*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR. 1 (Aug. 10, 2020), <https://cgc.twse.com.tw/docs/Revision%20of%20Stewardship%20Principles%20for%20Institutional%20Investors-20200810.pdf> [<https://perma.cc/4U7L-ZA6F>] [hereinafter *Taiwan Stewardship Code*]. For the original Chinese text of the Taiwan Stewardship Code, see *Revision of Stewardship Principles for Institutional Investors* (「機構投資人盡職治理守則」修正條文), TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR. (Aug. 10, 2020), <https://cgc.twse.com.tw/docs/stewardship1.pdf> [<https://perma.cc/MJ2Y-P4B9>].

93. FIN. SUPERVISORY COMM’N, CORPORATE GOVERNANCE 3.0 - SUSTAINABLE DEVELOPMENT ROADMAP 49–50 (2020), https://www.fsc.gov.tw/fckdownload?file=/Corporate%20Governance%203_0%20-%20Sustainable%20Development%20Roadmap.pdf&flag=doc [<https://perma.cc/VAL3-ZVCE>] [hereinafter CORPORATE GOVERNANCE 3.0 ROADMAP].

2. Comply or Explain Approach

Unlike the FRC requirement that U.K. domestic asset managers follow the U.K. Stewardship Code, the Taiwan Stewardship Code is entirely voluntary. Institutional investors are only “encouraged to publicly endorse the Principles to demonstrate their intention to support the Principles,”⁹⁴.

Like the 2010 and 2012 U.K. Stewardship Code, the Taiwan Stewardship Code is principle-based and is applied on a comply or explain basis. Signatories do not need to comply with all six stewardship principles. They may opt to provide reasonable explanations for non-compliance.⁹⁵ Considering the diversity of institutional investors, the ‘comply or explain’ approach offers signatories the flexibility to tailor their stewardship activities.⁹⁶ Given that Taiwan’s institutional investors have traditionally been passive and the concept of stewardship is relatively novel, flexibility in stewardship for the signatories is especially important in Taiwan. As soft law, it allows the signatories to take baby steps to gain experience in stewardship, “prevent[ing] compliance from becoming a mere formality and to encourage better practices.”⁹⁷

3. Signatories of the Taiwan Stewardship Code

As of August 10, 2022, there are 153 signatories to the Taiwan Stewardship Code, comprised of 4 government funds (Bureau of Labor Funds, National Development Fund, Chunghwa Post Co., Ltd., Public Service Pension Fund Management Board), 40 insurance companies, 39 investment trusts, 28 securities companies, 35 banks, and 7 others.⁹⁸ If we further look at the signatory rates of each type: 39 out of 39 Taiwan investment funds,⁹⁹ 40 out of 50 insurance companies (excluding reinsurance companies),¹⁰⁰ 35 out of 71 banks (including foreign and domestic),¹⁰¹ and 28 out of 69 securities companies,¹⁰² are signatories of the Taiwan Stewardship Code. Starting from only around 10 signatories in 2016 to more than 150 signatories

94. *Taiwan Stewardship Code*, *supra* note 92, at 3.

95. *Id.* at 4.

96. *TWSE Launched the Stewardship Principles for Institutional Investors*, *supra* note 8.

97. *Id.*

98. *List of Signatories*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR., <https://cgc.twse.com.tw/stewardshipList/listEn> [<https://perma.cc/J9KH-KEKV>] (last visited Nov. 20, 2022).

99. *See SITCA, 2021 ANNUAL REPORT (2021) 52*, <https://www.sitca.org.tw/ENG/SitcaData/SD2001N.aspx?PGMID=SD02> [<https://perma.cc/9PN7-AXGL>].

100. *Number of Insurance Companies and Branches*, TAIWAN INS. INST., https://www.tii.org.tw/export/sites/tii/information/files/4_144.pdf [<https://perma.cc/L9DJ-2EFU>] (last visited Nov. 20, 2022).

101. *List of Financial Institutions (End of June 2022)*, CENTRAL BANK OF THE REPUBLIC OF CHINA (TAIWAN), <https://www.cbc.gov.tw/public/data/EBOOKXLS/WLIST.pdf> [<https://perma.cc/8LB8-3F7A>] (last visited Nov. 20, 2022).

102. *Information of Securities Firms*, TWSE, <https://www.twse.com.tw/en/brokerService/brokerServiceAudit> [<https://perma.cc/8LB8-3F7A>] (last visited Nov. 20, 2022).

today,¹⁰³ the FSC and TWSE have made substantial progress and should be credited for their efforts in promoting the Taiwan Stewardship Code.

TABLE 1: 2016–2022 SIGNATORIES BY TYPE

| Year | Government Fund | Insurance | Investment Trust | Securities Company | Banking | Others | Total |
|-------|-----------------|-----------|------------------|--------------------|---------|--------|-------|
| 2016 | 4 | 4 | 19 | 1 | 0 | 4 | 32 |
| 2017 | 0 | 1 | 4 | 0 | 0 | 1 | 6 |
| 2018 | 0 | 29 | 13 | 26 | 33 | 0 | 101 |
| 2019 | 0 | 5 | 3 | 0 | 1 | 0 | 9 |
| 2020 | 0 | 1 | 0 | 1 | 1 | 1 | 4 |
| 2021 | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| 2022 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total | 4 | 40 | 39 | 28 | 35 | 7 | 153 |

Source: Compiled by the author from TWSE Corporate Governance Center website

While the growing number of signatories is one hallmark of success, a robust stewardship code must also have a protocol for removing signatories who act against the spirit of the stewardship principles. In the Taiwan Stewardship Code, there is currently no mechanism to revoke the status of a signatory once it has signed up to the Code. Despite this, there has been one case of removal. PJ Asset Management, a private asset management company controlled by a large construction group, was involved in the Labor Funds bribery scandal. It tried to justify its actions in the name of being a signatory of the Taiwan Stewardship Code.¹⁰⁴ Therefore, in a meeting, the Advisory Committee of the Taiwan Stewardship Code decided to remove PJ Asset Management from the signatory list. President Securities, Capital Securities, and Fuh Hwa Securities Investment Trust were all connected to the scandal and were placed on the watch list.

C. *Six Stewardship Principles*

The Taiwan Stewardship Code defines “stewardship” as when an institutional investor “mak[es] an investment or carry[s] out its fiduciary duty, [it] is advised to be based on fund providers’ (may contain clients, beneficiaries, or shareholders of the institutional investors) overall interests,

103. *TWSE Held Endorsement Ceremony of Stewardship Principles for Institutional Investors*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR. (Aug. 17, 2016), [HTTPS://CGC.TWSE.COM.TW/PRESSRELEASES/PROMOTENewsARTICLEEn/1293](https://cgc.twse.com.tw/pressReleases/promoteNewsArticleEn/1293). [[HTTPS://PERMA.CC/GX6A-5SE9](https://perma.cc/GX6A-5SE9)]

104. *PJ Asset Management was Removed from the Stewardship Principles Signatory List*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR. (Dec. 30, 2020), <https://cgc.twse.com.tw/pressReleases/promoteNewsArticleEn/4045> [<https://perma.cc/RK7Z-4EDT>].

monitor the operation of an investee company and participate in corporate governance”¹⁰⁵ As has been discussed above, the Taiwan Stewardship Code is based on the 2010 and 2012 U.K. Stewardship Codes. The Taiwan Stewardship Code consists of six stewardship principles listed in Chapter 4,¹⁰⁶ and detailed guidelines for those principles listed in Chapter 5.¹⁰⁷ This section examines the six stewardship principles and their corresponding guidelines. For interested readers, the principles and guidelines are provided in full in the appendix section of this Article.¹⁰⁸

1. Principle 1: Establish and Disclose Stewardship Policies

Principle 1 requires signatories to “establish and disclose stewardship policies.” In practice, stewardship policies are usually disclosed in the stewardship section on the signatories’ websites along with the signatories’ statement of compliance. The Taiwan Stewardship Code does not proscribe any binding requirements on the contents of stewardship policies, giving signatories the freedom to establish their stewardship policies and consider “its role in an investment chain, its nature of business and how to protect rights and benefits of its clients and beneficiaries.”¹⁰⁹ Guideline 1–3 only “advises” signatories to at least include: “1. A brief introduction of business; 2. Duties to clients or beneficiaries; 3. Stewardship activities, e.g. frequency and methods of monitoring investee companies, interaction with management, participation in shareholders’ meetings and voting; 4. Status and management measures of outsourcing stewardship activities; 5. Manner and frequency of status disclosure of stewardship fulfilment.”¹¹⁰

2. Principle 2: Establish and Disclose Policies on Managing Conflicts of Interest

Principle 2 requires signatories to “establish and disclose policies on managing conflicts of interest,” which “aims to ensure that an institutional investor operates in the interests of its clients or beneficiaries.”¹¹¹ Like stewardship policies, policies on managing conflicts of interest are usually disclosed in the stewardship section on the signatories’ website. Also, the Taiwan Stewardship Code does not prescribe any binding requirements on the contents of policies on managing conflicts of interest. Guideline 2–2 only “advises” signatories to at least include: “1. Possible situations of conflicts of interest; 2. How conflicts of interest in each situation are managed.”¹¹² Guidelines 2–3 and 2–4 then go on to provide

105. *Taiwan Stewardship Code*, *supra* note 92, at 6.

106. *Id.* ch. 4.

107. *Id.* ch. 5; *TWSE Launched the Stewardship Principles for Institutional Investors*, *supra* note 8.

108. *See infra* app.

109. *Taiwan Stewardship Code*, *supra* note 92, at 7.

110. *Id.*

111. *Id.* at 8.

112. *Id.*

examples of “situations of conflicts of interest” and “measures of managing conflicts of interest.”¹¹³

3. Principle 3: Regularly Monitor Investee Companies

Principle 3 requires signatories to “regularly monitor investee companies” to ensure “impacts of relevant information on long-term values of investee companies, clients or beneficiaries may be assessed, so that an institutional investor’s manner and time of further dialogue and interaction with the investee companies can be determined.”¹¹⁴ But Principle 3 does not specify what exact measures should be taken to monitor investee companies; rather, Guideline 3–2 only advises signatories to “consider its purposes of investment, cost and benefits” when “determining the content, extent and frequency of monitoring investee companies.”¹¹⁵

4. Principle 4: Maintain an Appropriate Dialogue and Interaction with Investee Companies

Principle 4 requires signatories to “maintain an appropriate dialogue and interaction with investee companies” so they “may better understand the views of management of the investee companies regarding material issues and obtain mutual feedback, so as to strengthen corporate governance.”¹¹⁶ Examples of manners of dialogue and interaction are listed in Guideline 4–2, including: “1. Written or verbal communications with management; 2. Public statements on specific issues; 3. Expression of opinions at shareholders’ meetings; 4. Submitting motions at shareholders’ meetings; 5. Casting votes at shareholders’ meetings.”¹¹⁷ But it is noteworthy that signatories are “advised” to consider the “cost and benefits of the investment,”¹¹⁸ this seems to stem from the emphasis on the institutional investors’ fiduciary duties, as stewardship should be taken in the interest of the clients or beneficiaries.¹¹⁹ Also, Guideline 4–3 empowers signatories to “act collectively with other institutional investors” when necessary.¹²⁰

113. *Id.* (Guideline 2–3: “Situations of conflicts of interest may include the following: 1. Where an institutional investor, for its own benefits, makes a decision or carries out an activity to the disadvantage of clients or beneficiaries. 2. Where an institutional investor, for benefits of certain clients or beneficiaries, makes a decision or carries out an activity to the disadvantage of other clients, beneficiaries or stakeholders.” Guideline 2–4: “Measures of managing conflicts of interest may include training, delegation of duties, information security, firewalls, control mechanisms regarding detection and monitoring, reasonable remuneration policies, and remedial measures.”)

114. *Id.* at 9.

115. *Id.*

116. *Id.* at 10.

117. *Id.*

118. *Id.*

119. *Id.* at 6 (“Stewardship” of an institutional investor: “An institutional investor, when making an investment or carrying out its fiduciary duty, is advised to be based on fund providers’ (may contain clients, beneficiaries or shareholders of the institutional investors) overall interests . . .”).

120. *Id.* at 11.

5. Principle 5: Establish and Disclose Clear Voting Policies and Voting Results

Principle 5 requires signatories to “establish and disclose clear voting policies and voting results.” The voting policies and voting results, again, are usually disclosed in the stewardship section on the signatories’ website. There are no binding requirements for voting policies, but Guideline 5–3 suggests that they may include: 1. Threshold for exercising voting rights; 2. Prudently evaluate each motion and communicate with the management when necessary; 3. Define types of motions to support, oppose or abstain in principle; 4. A statement that it does not necessarily support the management; 5. Whether it obtains or adopts proxy advisors’ voting recommendations.¹²¹ The signatories may set thresholds for exercising voting rights in their voting policies “in contemplation of cost and benefit.” In circumstances where the costs outweigh the benefits of exercising voting rights, fiduciary duties stipulate that institutional investors should not vote. Lastly, Guideline 5–4 “advises” signatories to “carefully record and analyze voting rights exercised in accordance with relevant policies, so as to facilitate disclosure of the voting activities, which may be disclosed in aggregate.”¹²²

6. Principle 6: Periodically Disclose the Status of Fulfilment of Stewardship Responsibilities

Principle 6 requires signatories to “periodically disclose the status of fulfilment of stewardship responsibilities.” As Guideline 6–1 “advises,” signatories should “carefully record its stewardship activities to form a basis of assessment and improvement for its stewardship policy, action and disclosure.”¹²³ Most signatories comply with Guideline 6–4 and disclose their stewardship reports on their websites.¹²⁴ Consistent with the other principles, there are no hard requirements concerning the contents of the stewardship reports, Guideline 6–4 only “advises” it to include: 1. A statement on the Stewardship Code and explanations for non-compliance; 2. Information of the company’s internal resources and organizational structure to implement stewardship; 3. Statistics of the engagement activities; 4. Case description of the dialogue and interaction; 5. Cases of cooperation with other institutional investors; 6. Attendance at shareholders’ meetings; 7. Voting activities; 8. Contact channel for stakeholders; 9. Other material events.¹²⁵ In light of the complicated investment chains of today, if stewardship is not performed by the signa-

121. *Id.* at 12.

122. *Id.*

123. *Id.* at 13.

124. *Id.* (Guideline 6–4: “Under a situation where clients and beneficiaries are vast in number or the provision of status of fulfilment of stewardship duty is not specified in an agreement, an institutional investor is advised to publish a stewardship report annually on its website or disclose its stewardship activities in its reports such as the business report and annual report”).

125. *Id.*

tory itself but entrusted to other asset managers, Guideline 6–5 advises the signatory to explain “measures taken to ensure the trustee’s compliance with a stewardship policy.”¹²⁶

Examples of Stewardship Reports are provided on the website of TWSE Corporate Governance Center to offer signatories references of ideal reports, which included the stewardship reports of major international institutional investors BlackRock, Vanguard, and SSGA.¹²⁷ To induce better stewardship reporting, similar to the tiering system of the FRC, the TWSE Corporate Governance Center has implemented a public evaluation mechanism that produces a list of signatories with better institutional investor stewardship disclosure starting from 2021.¹²⁸ The TWSE Corporate Governance Center established a Rating Criteria for the public evaluation mechanism.¹²⁹ The evaluation is separated into groups of domestic and foreign institutional investors. For domestic institutional investors, it evaluates the stewardship activities performed in Taiwan or practices and disclosures of engagement with domestic companies. For foreign institutional investors, it evaluates the stewardship activities performed and disclosed.¹³⁰ The purpose of the public evaluation mechanism is to offer more incentive to the signatories for them to enhance their stewardship activities and the quality of their disclosure.

D. 2020 Revision and ESG

In a similar vein to the FRC’s 2020 revision of the UK Stewardship Code, the Taiwan Stewardship Code was revised only months later.¹³¹ However, unlike the U.K. Stewardship Code which was sub-

126. *Id.* at 14.

127. *Stewardship Report Examples*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR., <https://cgc.twse.com.tw/stewardshipReports/listEn> [<https://perma.cc/JS9B-D5NS>] (last visited Nov. 20, 2022).

128. *TWSE Encourages Institutional Investors to Fulfill Stewardship and Enhance the Quality of Information Disclosure*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR. (Dec. 30, 2021), <https://cgc.twse.com.tw/pressReleases/promoteNewsArticleEn/4150> [<https://perma.cc/L86S-ZJ5M>].

129. *Rating Criteria for Signatories with Better Disclosures 2022*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR., https://cgc.twse.com.tw/static/20220811/8a828e1782011f9201828afbd57b002f_Rating%20criteria%20for%20signatories%20with%20better%20disclosure%202022.pdf [<https://perma.cc/8JN5-TERM>] (last visited Nov. 20, 2022).

130. *Operation Plan for 2022 List of Companies with Better Institutional Investor Stewardship Disclosure (111年盡職治理資訊揭露較佳名單評比作業規劃)*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR., https://cgc.twse.com.tw/static/20220720/8a828e1782011f9201821af4021e0009_%E9%99%84%E4%B%B%20%E4%B8%80%E3%80%81111%E5%B9%B4%E7%9B%A1%E8%81%B7%E6%B2%BB%E7%90%86%E8%B3%87%E8%A8%8A%E6%8F%AD%E9%9C%B2%E8%BC%83%E4%BD%B3%E5%90%8D%E5%96%AE%E8%A9%95%E6%AF%94%E4%B-D%9C%E6%A5%AD%E8%A6%8F%E5%8A%83.pdf [<https://perma.cc/7W9B-5WGM>] (last visited Nov. 20, 2022).

131. *Revision of Stewardship Principles for Institutional Investors Released*, TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR. (Aug. 11, 2020), <https://cgc.twse.com.tw/>

stantially revised in 2020, the Taiwan Stewardship Code did not make any structural changes and only made minor changes in its first and only revision to date.¹³² The revision expanded the scope of stewardship to include other asset classes, required signatories to disclose voting policies, required signatories to explain the reasons for their votes in major motions, and strengthened the disclosure requirements of stewardship information.¹³³ But perhaps the most significant change is to include ESG issues and sustainable development of the investee companies as factors to consider when carrying out stewardship activities.¹³⁴

The Taiwan Stewardship Code's newfound focus on environmental issues can be found in a section titled "Take into account the sustainable development of an investee company" which was added to Chapter 5 of the Taiwan Stewardship Code.¹³⁵ It advises the signatories to "consider the risk and performance of an investee company in terms of environment, social and governance, and integrate them into the investment evaluation process and decision making," as it recognizes "the sustainable development of an investee company [enhances] long-term interests of clients and having a positive impact on the society."¹³⁶ The shift towards ESG and sustainable development is also realized in the addition of Guidelines 1–2 and 3–3 and the amendment of Guideline 4–3. Guideline 1–2 advises signatories "to integrate environmental, social, and corporate governance (ESG) factors into the investment evaluation process";¹³⁷ Guideline 3–3 advises signatories to "use environmental, social, and corporate governance (ESG) factors to monitor, analyze, and evaluate the related risks and opportunities of an investee company";¹³⁸ and Guideline 4–3 encourages signatories to "participate in relevant advocacy organizations for specific environmental, social, and corporate governance 'ESG' issues."¹³⁹

E. *Analysis and Comparisons with the U.K. Stewardship Code*

1. Stewardship Principles

Since the Taiwan Stewardship Code is heavily influenced by the 2010 and 2012 U.K. Stewardship Codes, it is not surprising that the stewardship principles of the Taiwan Stewardship Code resemble that of the U.K. Stewardship Code in terms of order and wording. In both the U.K.

pressReleases/promoteNewsArticleEn/3940 [https://perma.cc/4E2S-HTTA].

132. *Stewardship Principles for Institutional Investors Revisions Comparison Table* (「機構投資人盡職治理守則」修正條文對照表), TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR. (Aug. 10, 2020), <https://cgc.twse.com.tw/docs/stewardship2.pdf> [https://perma.cc/4X3Y-NVG8].

133. *Revision of Stewardship Principles for Institutional Investors Released*, *supra* note 131.

134. *Id.*

135. *Taiwan Stewardship Code*, *supra* note 92, at 6.

136. *Id.*

137. *Id.* at 7.

138. *Id.* at 9.

139. *Id.* at 11.

and Taiwan Stewardship Codes, Principle 1 is on stewardship principles; Principle 2 is on the management of conflicts of interest; Principle 3 is on monitoring investee companies. Principle 6 of the U.K. Stewardship Code on voting policies and disclosures corresponds to Principle 5 of the Taiwan Stewardship Code; Principle 7 of the U.K. Stewardship Code on periodical disclosures corresponds to Principle 6 of the Taiwan Stewardship Code. Notwithstanding the minor differences in the wording, these principles are almost identical.

The main difference between the U.K. and Taiwan Stewardship Codes comes from the mismatch between Principles 4 and 5 of the U.K. Stewardship Code and Principle 4 of the Taiwan Stewardship Code. Principle 4 of the U.K. Stewardship Code is on the escalation of stewardship activities,¹⁴⁰ and Principle 5 is on the collective action with other investors.¹⁴¹ The corresponding Principle 4 of the Taiwan Stewardship Code only required “appropriate dialogue and interaction with investee companies” which applies less pressure on the investee companies, making it more conservative compared to the U.K.. While the Taiwan Stewardship Code mentioned the possibility of collective action in Guideline 4–3,¹⁴² the escalation of stewardship activities was omitted in the Taiwan Stewardship Code. One plausible explanation for this difference is that shareholder activism, has not been traditionally prevalent among Taiwan’s institutional investors compared to the U.K.’s,¹⁴³ hence the Taiwan Stewardship Code stopped short of the more proactive principles of the U.K. Stewardship Code, i.e., escalation of stewardship activities or collective action that may be potentially more confrontational. Instead, the Taiwan Stewardship Code only requires appropriate dialogue and interaction.

The current six principles of the Taiwan Stewardship code also expose its lack of concreteness. The 2020 revision of the U.K. Stewardship Code expanded the original seven stewardship principles for asset owners and asset managers twelve more detailed and specific principles. Furthermore, the wording of the Taiwan Stewardship Code is weaker and more restrained such that the principles or guidelines only “advise” signatories, compared to the U.K. Stewardship Code’s more compelling “should”. Since all principles and guidelines are merely “advisory” the issue of non-compliance will never arise. Thus, the signatories will

140. 2010 UK STEWARDSHIP CODE, *supra* note 21, at 7 (Principle 4: “Institutional investors should establish clear guidelines on when and how they will escalate their activities as a method of protecting and enhancing shareholder value.”).

141. *Id.* at 8 (Principle 5: “Institutional investors should be willing to act collectively with other investors where appropriate.”).

142. *Taiwan Stewardship Code*, *supra* note 92, at 11 (Guideline 4–3: “Under circumstances where an institutional investor judges it necessary to take action, it may act collectively with other institutional investors, so as to protect the rights and interests of clients or beneficiaries, and for the sustainable development of investee companies.”).

143. For more on the shareholder activism of Taiwan’s institutional investors, see generally Yang, *supra* note 89, at 407–414.

never need to provide reasonable explanations for non-compliance. This hollows the spirit of the comply or explain approach and renders it inoperable. Therefore, in the next revisions, the Taiwan Stewardship Code should consider adopting more assertive language by swapping out the “advises” with “should.” This would enable them to truly implement the comply or explain approach and eventually move towards the United Kingdom’s apply and explain approach.

2. Fiduciary Duty and ESG

The 2010 and 2012 U.K. Stewardship Code, which served as the blueprint for the Taiwan Stewardship Code, are based on the institutional investors’ fiduciary duties.¹⁴⁴ As can be seen in the Preface of the 2010 U.K. Stewardship Code, the aim of the Code is to “help improve long-term returns to shareholders and the efficient exercise of governance responsibilities.”¹⁴⁵ Also, the 2012 U.K. Stewardship Code stated: “Stewardship aims to promote the long term success of companies in such a way that the ultimate providers of capital also prosper.”¹⁴⁶ The reliance on fiduciary duty is evident in the 2010 and 2012 U.K. Stewardship Codes. This is also true in the Taiwan Stewardship Code, which states that the premise for stewardship is when institutional investors make an investment or carry out their fiduciary duties, and should be based on the clients’ or beneficiaries’ overall interests.¹⁴⁷ Moreover, the objectives of the Taiwan Stewardship Code is to “encourage institutional investors to . . . fulfill their duties as asset owners or managers, so as to enhance long-term value for themselves and capital providers.”¹⁴⁸ These statements illustrate Taiwan Stewardship Code’s inheritance of the concept of the fiduciary duties of institutional investors from the 2010 and 2012 UK Stewardship Codes.

But as the 2020 U.K. Stewardship Code moved its focus to the “sustainable benefits for the economy, the environment and society,”¹⁴⁹ its reliance on the institutional investors’ fiduciary duties waned and its emphasis on ESG issues strengthened. This is demonstrated in Principle 7, which requires signatories to “systematically integrate stewardship and investment, including material environmental, social and governance issues, and climate change, to fulfill their responsibilities.”¹⁵⁰ Despite the introduction of ESG issues into the Taiwan Stewardship Code in the 2020 revision, ESG issues are not mentioned in any of the stewardship principles and are only mentioned on the guidelines level. This may be a result

144. Tilba & Reisberg, *supra* note 36.

145. 2010 UK STEWARDSHIP CODE, *supra* note 21, at 1.

146. 2012 UK STEWARDSHIP CODE, *supra* note 24, at 1.

147. *Taiwan Stewardship Code*, *supra* note 92, at 1.

148. *Id.* at 2.

149. 2020 UK STEWARDSHIP CODE, *supra* note 6, at 4 (“Stewardship is the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society.”).

150. *Id.* at 15.

of the Taiwan Stewardship Code's unwillingness to fully embrace ESG issues in stewardship and disconnect fiduciary duty from stewardship. It remains to be seen whether and when the Taiwan Stewardship Code will follow in the footsteps of the 2020 U.K. Stewardship Code.

IV. INSTITUTIONAL INVESTOR STEWARDSHIP IN TAIWAN

Since the launch of the Taiwan Stewardship Code, 153 institutional investors have become signatories of the Code. But the number of signatories does not necessarily reflect upon the state of the institutional investor stewardship in Taiwan. To shed more light on the stewardship in Taiwan, this part examines the stewardship reports that were voluntarily disclosed by the signatories. Given that this methodology relies upon a limited number of stewardship reports, which utilize different standards and criteria, this part should not be considered as a rigorous empirical study. Nevertheless, by surveying stewardship reports in large volumes, it is still possible to make valuable observations on trends and issues regarding stewardship practice in Taiwan.

Hence, this part reviews the stewardship reports disclosed by institutional investors and the publicly available information from the Market Observation Post System (MOPS),¹⁵¹ the Taiwanese version of the EDGAR system.¹⁵² This part will also make reference to the Taiwan Chapter of the CG Watch 2020 Report published by the Asian Corporate Governance Association (ACGA), when necessary, to compare the findings of this part to the report.¹⁵³ The following aspects of stewardship practice will be examined: 1) stewardship-related policies; 2) voting rate; 3) pro-management voting; 4) shareholder proposal and director nomination rights; 5) engagement with investee companies; 6) use of proxy advisors; and 7) periodical disclosure.

A. *Stewardship-Related Policies*

The Taiwan Stewardship Code requires signatories to establish and disclose stewardship-related policies, such as stewardship policies, policies on managing conflicts of interest, and voting policies. These requirements correspond to Principles 1, 2, and 5 of the Stewardship Code respectively. However, the Taiwan Stewardship Code does not proscribe any binding requirements on the exact contents of these policies and only provides examples that signatories are “advised” to include or signatories “may”

151. See MARKET OBSERVATION POST SYSTEM, <https://emops.twse.com.tw/server-java/t58query> [<https://perma.cc/3YHW-UVFS>] (last visited Nov. 20, 2022).

152. EDGAR, acronym for the Electronic Data Gathering, Analysis, and Retrieval, is the system established by the U.S. SEC for companies and others to submit filings (such as registration statements, periodic reports, or other forms) that will be made publicly available to everyone. See *About EDGAR*, SEC, <https://www.sec.gov/edgar/about> [<https://perma.cc/8WW4-T28V>] (last visited Nov. 20, 2022).

153. Neesha Wolf, *Taiwan – Making It Real*, in *CG WATCH 2020: FUTURE PROMISE* 424 (Asian Corp. Governance Ass'n ed., 2021), <https://www.acga-asia.org/files.php?aid=425&id=1343> [<https://perma.cc/7ANG-RQTN>].

include (e.g., Guidelines 1–3, 2–2, and 5–3). The loose requirements mean that signatories can satisfy the requirements by simply establishing and disclosing policies as a formality, without caring about the substantive contents of the policies. For instance, a signatory can claim to be compliant with the Stewardship Code with an empty document titled “Stewardship Policy.” Unfortunately, many signatories appear to have essentially done just that. Of the stewardship-related policies reviewed by this Article, most signatories have established and disclosed the policies either as independent documents or as parts of the stewardship reports. However, looking closer, it is not hard to see that the policies are incomplete, empty words, or merely restatements of the Stewardship Code.¹⁵⁴ As for signatories that lack the policies, most of them did not set up a stewardship section on their websites, and the only available document is a statement of compliance.¹⁵⁵ From this result, it seems that the requirements to establish and disclose stewardship policies, policies on managing conflicts of interest, and voting policies are only box-ticking requirements without real-world impact. It is no surprise that one of the recommendations from the CG Watch 2020 Report is that “[i]nstitutional investors should set and disclose a meaningful voting policy.”¹⁵⁶

B. *Voting Rate*

Proxy votes are the most direct and convenient conduit to influence the decision-making of a company, and thus, the first step in performing stewardship is to participate in proxy voting at the shareholders’ meetings. Although Guideline 5–1 of the Taiwan Stewardship Code states that the purpose of exercising voting rights “is to express opinion on each motion at a shareholder’s meeting of investee companies,” Guideline 5–3 allows the signatories to consider the costs and benefits in their determination of exercising voting rights.¹⁵⁷ According to the CG Watch 2020 Report, due to the implementation of e-voting and the launch of the Taiwan Stewardship Code, institutional investor voting rate in Taiwan has risen significantly.¹⁵⁸ The 2020 statistics compiled by the Taiwan Depository and Clearing Corporation (TDCC) show that the foreign institutional investor voting rate is 97 percent, while the domestic institutional investor voting rate jumped from 62 percent in 2016 to 87 percent.¹⁵⁹ These figures are largely consistent with this Article’s findings. In all of the 2020 stewardship reports reviewed by this Article, only 59 signatories disclosed their voting rates. But of the 59 signatories, 45 have a voting rate of 100

154. *See id.* at 455 (“As for voting policies, sometimes domestic entities say they exist, but provide no further detail or merely copy and paste from the code.”).

155. *Id.* (“In the vast majority of cases . . . [a]ll that is available are statements of compliance with the Stewardship Code and even these are hard to find - often accessible only through the TWSE CG Center website.”).

156. *Id.* at 459.

157. *Taiwan Stewardship Code*, *supra* note 92, at 11–12.

158. Wolf, *supra* note 153, at 455.

159. *Id.*

percent, and the average voting rate is 97.2 percent. There is little doubt that the voting rates of Taiwan's institutional investors are high.

However, Taiwan's high voting rates are not only the result of e-voting and the Stewardship Code, but also the result of regulatory requirements of the FSC. Article 20, Paragraph 2 of the Regulations Governing Securities Firms stipulates: "Except where otherwise provided by law or regulation, a securities firm exercising voting rights of stock it holds in a public company shall dispatch a personnel member to attend and do so as its representative."¹⁶⁰ Similar provisions can also be seen in Article 23, Paragraph 1 of the Regulations Governing Securities Investment Trust Enterprises: "Except where otherwise provided by law or regulation, a SITE [securities investment trust enterprise] exercising voting rights associated with shares it holds in a securities investment trust fund shall do so through representatives appointed from among SITE personnel."¹⁶¹ Based on the above regulations, securities firms and investment trusts are principally required to exercise their voting rights.¹⁶² With shares owned by securities firms and investment trusts making up a significant proportion of the total shareholdings of Taiwan institutional investors, voting rates in Taiwan have been high.

High voting rates by themselves, however, do not lead to the conclusion that institutional investors are actively participating in shareholder meetings. The FSC in two interpretative rules allows securities firms and investment trusts to exercise their voting rights through e-voting instead of attending and voting in person.¹⁶³ As a result, most voting rights are exercised through e-voting rather than attending and voting in person. The CG Watch 2020 Report laments that "investors are missing an opportunity at AGMs [annual general meetings]," and recommends that "[i]nvestor[s] should make an effort to attend AGMs in person and ask relevant questions."¹⁶⁴ Current corporate practices in Taiwan make it difficult for investors to vote in person as AGMs are concentrated in June, with over 85 percent of listed companies holding their AGMs in June for 2020.¹⁶⁵ Therefore, the FSC, in their Corporate Governance 3.0 Roadmap, plans to set quotas for the maximum AGMs that can be held

160. Regulations Governing Securities Firms art. 20, ¶ 2, FAWUBU FAGUI ZILIAOKU, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400072> [<https://perma.cc/J76L-UPZS>].

161. Regulations Governing Securities Investment Trust Enterprises art. 23, ¶ 1, FAWUBU FAGUI ZILIAOKU, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400078> [<https://perma.cc/R3TH-3GVH>].

162. Except in cases where the share ownership of the securities firms or investment trusts is below a certain threshold and/or the investee company does not implement e-voting. See Financial Supervisory Commission, Interpretative Rule No. 1050015817 (May 18, 2016) (金管證投字第1050015817號令); Financial Supervisory Commission, Interpretative Rule No. 1050021126 (July 22, 2016) (金管證券字第1050021126號令).

163. *Id.*

164. Wolf, *supra* note 153, at 459.

165. CORPORATE GOVERNANCE 3.0 ROADMAP, *supra* note 93, at 8.

each day to disperse the dates of AGMs, making it more possible for the investors to participate.¹⁶⁶

C. *Pro-Management Voting*

Guideline 5–2 of the Taiwan Stewardship Code provides that “voting rights shall be exercised based on information obtained from investee companies by taking long-term joint interests of clients, beneficiaries and investee companies into account.”¹⁶⁷ But, again, high voting rates do not mean that voting rights are exercised carefully by the signatories. This section examines all of the available 2020 voting results disclosed by the signatories to get a clearer picture of the signatories’ voting patterns, specifically regarding pro-management voting.

1. High Pro-Management Vote Rates

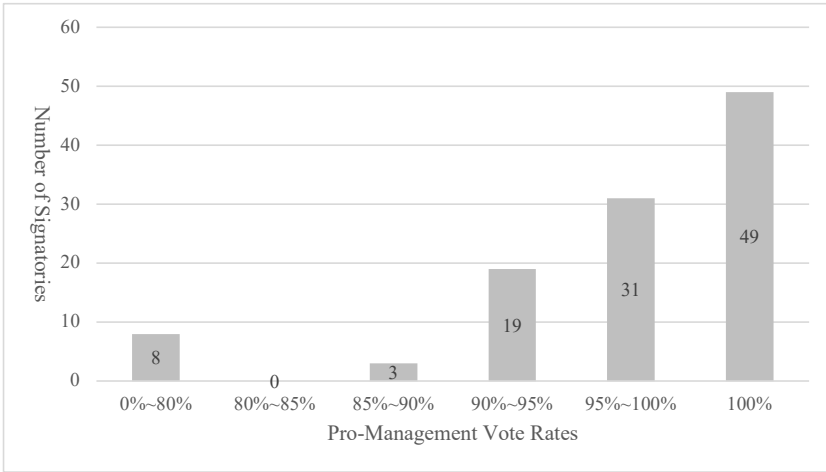
Out of the 153 signatories, only 110 disclosed the voting results in March 2022, the time when this Article reviewed the signatories’ stewardship reports. Among the 110 signatories who disclosed their voting results, 49 had a pro-management vote rate of 100 percent, 31 had a pro-management vote rate of between 95 percent and 100 percent, and only 8 were below the 80 percent mark, as shown in Chart 2. After aggregating all of the voting results that are available, there were 59,220 motions that were voted on in 2020, with 57,309 voting for the management, 111 against, and 1,800 abstaining.¹⁶⁸ The average pro-management vote rate is 96.8 percent.

166. *Id.* at 42.

167. *Taiwan Stewardship Code*, *supra* note 92, at 11.

168. Some of the signatories were excluded because they did not specify between against or abstentions. Also, because in the elections for board of directions and supervisors, votes are counted towards the nominees instead of the company’s management, some signatories did not disclose their voting results regarding the elections for board of directions and supervisors, and therefore had to be excluded.

CHART 2: DISTRIBUTION OF PRO-MANAGEMENT VOTE RATES IN 2020



Source: Compiled by the author from stewardship reports

These numbers seem to indicate that Taiwan's institutional investors are quite supportive of company management, but a benchmark will be needed to determine whether this is a result of the good performance by the company management or whether the institutional investors did not bother to vote carefully. Here, this Article selects the voting recommendations on the Taiwanese companies provided by Glass Lewis in 2020 as the benchmark. This Article acknowledges that the motions and companies are not a perfect match between the actually voted motions and Glass Lewis's recommendations, but the voting recommendations of Glass Lewis can still be a useful benchmark given its status as industry leaders. Glass Lewis provided voting recommendations for 7,136 motions in 2020, with 5,673 for the management, 1090 against, and 373 abstaining, which is 79.5 percent for pro-management votes.¹⁶⁹ As shown in Table 2, the for-vote rate of the signatories is significantly higher than Glass Lewis's voting recommendations (96.77 percent to 79.49 percent), and the against-vote rate is also significantly lower (0.19 percent to 15.27 percent). This demonstrates that the signatories rarely oppose the company management and infers less monitoring from the institutional investors. If a signatory is unwilling or unable to support the management, then the most it will do is to abstain, refraining from the more confrontational against-votes.

169. 2020 Proxy Season Review: China & Taiwan, GLASS LEWIS, <https://www.glasslewis.com/proxy-season-reviews> [<https://perma.cc/ZT9Y-QG5F>] (last visited Nov. 20, 2022).

TABLE 2: SIGNATORIES' VOTING RESULTS COMPARED WITH GLASS LEWIS'S VOTING RECOMMENDATIONS IN 2020

| | For | Against | Abstain | Total | For-Votes Rate | Against-Votes Rate |
|---|-------|---------|---------|-------|----------------|--------------------|
| Aggregated Motions Voted by Signatories | 57309 | 111 | 1800 | 59220 | 96.77% | 0.19% |
| Glass Lewis's Voting Recommendations | 5673 | 1090 | 373 | 7136 | 79.49% | 15.27% |

Source: Compiled by the author from stewardship reports and Glass Lewis Review

2. Pro-Management Voting in Different Types of Signatories

Further breaking down the voting results in different types of signatories, as shown in Table 3, only government fund and insurance signatories' pro-management vote rates are under 90 percent, which are lower compared to investment fund, securities company, banking signatories whose pro-management vote rates over 95 percent.

TABLE 3: PRO-MANAGEMENT VOTING IN 2020 BROKEN DOWN BY TYPES

| Signatory Type | For | Against | Abstain | Total | For-Votes Rate |
|---------------------------------|-------|--------------------|----------------------|-------|----------------|
| Government Funds ¹⁷⁰ | 5247 | 893 ¹⁷¹ | | 6140 | 85.46% |
| Insurances | 7010 | 9 | 1034 | 8053 | 87.05% |
| Investment Trusts | 23122 | 83 | 122 | 23327 | 99.12% |
| Securities Companies | 26361 | 9.5 ¹⁷² | 429.5 ¹⁷³ | 26800 | 98.36% |
| Banking | 4259 | 9 | 211 | 4479 | 95.09% |

Source: Compiled by the author from stewardship reports

170. Although the National Development Fund became a signatory on July 20, 2016, no disclosures has been made to date other than its statement of compliance, thus the National Development Fund was excluded.

171. As the Bureau of Labor Funds and the Public Service Pension Fund Management Board did not separately disclose their against and abstain votes, and also together, they account for the majority of the government funds' votes, the against and abstain votes of the government funds are counted collectively.

172. Cathay Securities Corporation only disclosed one instance of not supporting the company management, but did not further elaborate on whether it was against or abstain, it is therefore counted as 0.5 against-vote.

173. Cathay Securities Corporation only disclosed one instance of not supporting the company management, but did not further elaborate on whether it was against or abstain, it is therefore counted as 0.5 abstain-vote.

From these numbers, two interesting questions about the signatories' pro-management vote rate appear. The first question is: why are the government fund and insurance signatories' pro-management vote rates lower than other types of signatories? And the second question is: why are the pro-management vote rates almost identical between the investment trust and securities company signatories?

To answer these questions, a brief analysis of the institutional investors' agency problems will be needed. Lucian Bebchuk, Alma Cohen, and Scott Hirst pointed out several sources of agency problems for institutional investors in their influential article.¹⁷⁴ Fund managers can only capture a small fraction of the benefits created by stewardship because their management fees are fixed at a certain rate, which means that fund managers do not have the incentive to actively carry out stewardship.¹⁷⁵ Moreover, the competition between funds that track the same index or hold the same stocks will lead to collective action problems, where the best strategy for fund managers is to freeride on others' actions, resulting in disincentives for all fund managers to perform stewardship.¹⁷⁶ Additionally, another source of agency problems comes from the private costs for institutional investors that will arise when opposing company management. As institutional investors usually have existing business relations or are seeking future business opportunities with their investee companies, such as managing 401(k) accounts or providing consulting services, institutional investors have incentives to maintain friendly relationships with company management and refrain from opposing company management to avoid private costs.¹⁷⁷ In short, agency problems will cause institutional investors to underinvest in stewardship and avoid opposing company management.

The voting results of the Taiwan institutional investors fit neatly into the analysis framework of agency problems above. First, the lower pro-management vote rates of government investors relative to other institutional investors can be attributed to the comparative lack of agency problems the government faces. Government funds are directly controlled by the government, and the government has less incentive to maintain friendly relationships with investee companies. Hence the government may be more inclined to oppose investee companies without fearing retaliation or private costs. This explains why the government funds' pro-management vote rates are significantly lower than other signatories. However, as the Bureau of Labor Funds and the Public Service Pension Fund Management Board did not separately disclose their contrary votes and abstentions, whether they exert pressure by voting against the company management or simply abstaining is unknown. As for the insurance signatories, after a series of controversies of insurance

174. See Bebchuk, Cohen & Hirst, *supra* note 4.

175. *Id.* at 96–97.

176. *Id.* at 97–98.

177. *Id.* at 101–03.

companies getting involved in corporate takeovers, Article 146–1, Paragraph 3 of the Taiwan Insurance Act was amended to prohibit insurance companies from exercising their voting rights “in the election of directors or supervisors at the company being invested.”¹⁷⁸

Second, from the perspective of agency problems, as investment trusts invest with their clients’ capital and securities companies mostly invest with their own capital, the agency problem of the investment trusts should be more severe. From that, it can be presumed that securities companies may exercise their voting rights more carefully, because they can capture most of the benefits created by exercising voting rights carefully. However, contrary to this presumption, the findings above show that investment trust and securities company signatories have similar pro-management vote rates, with less than a 1 percent difference between them (99.12 percent to 98.36 percent). Again, the answer can be found in the above analysis of agency problems. The benefits of exercising voting rights carefully are shared among all of the shareholders of the investee company, whereas the investor has to individually bear all of the costs related to voting carefully (e.g., costs of research and attending). This consequently leads to a collective action problem where neither investment trusts nor securities companies have incentives to vote carefully.

Lastly, from the survey conducted by the ACGA on Taiwan institutional investors, the CG Watch 2020 Report concluded that “[f]oreign investors are not afraid to reject resolutions” compared to domestic investors of Taiwan, “typically vot[ing] against director elections, remuneration and share issuances.”¹⁷⁹ This phenomenon can also be explained by agency problems. Because foreign institutional investors may have fewer business ties with their local investee companies, their private costs associated with voting against company management will be lower. This results in foreign institutional investors having higher rates of against-votes compared to domestic institutional investors.

D. *Shareholder Proposals and Director Nomination Rights*

Article 172–1, Paragraph 1 of the Taiwan Company Act stipulates: “Shareholder(s) holding one percent (1 percent) or more of the total number of outstanding shares of a company may propose to the company a proposal for discussion at a regular shareholders’ meeting”¹⁸⁰

178. Taiwan Insurance Act art. 146–1, ¶ 6, FAWUBU FAGUI ZILIAOKU <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0390002> [<https://perma.cc/L54Q-K7MZ>]: “Investments made by insurance enterprises in accordance with Paragraph 1, Subparagraphs 3 and 6 may not be found with any of the following conditions: . . . II. The insurance enterprise can cast a vote in the election of directors or supervisors at the company being invested.”

179. Wolf, *supra* note 153, at 458 (“As a proportion of their [foreign investors] holdings, respondents voted against at least one management resolution in 20% to 30% of meetings - higher than Malaysia, Australia and Indonesia and not far below Singapore.”).

180. Taiwan Company Act art. 172–1, ¶ . 1, FAWUBU FAGUI ZILIAOKU, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0080001> [<https://perma.cc/>

In furtherance of this, Guideline 4–2 of the Taiwan Stewardship Code lists “submitting motions at shareholders’ meetings” as an example of the “manners of dialogue and interaction between an institutional investor and its investee company.”¹⁸¹ Ordinarily, the threshold of 1 percent ownership to submit shareholder proposals is not a high bar for institutional investors. Even if shareholders do not have the votes to pass the proposal, simply putting out a shareholder proposal at the shareholders’ meeting can have a significant influence on the company. Therefore, shareholder proposals are an important tool in the stewardship arsenal. However, shareholder proposals have not been utilized by the Taiwan institutional investors. According to publicly available information on MOPS, only 17 TWSE-listed companies and 6 TPEX (Taipei Exchange)-listed companies had shareholder proposals at their shareholders’ meeting in 2020, and the numbers dropped to 16 TWSE-listed companies and 4 TPEX-listed companies in 2021.¹⁸² As there are more than 1700 companies listed on the TWSE and TPEX,¹⁸³ it is obvious that institutional investors have been passive regarding their shareholder proposal rights.¹⁸⁴

Also, Article 192–1, Paragraph 3 of the Taiwan Company Act stipulates: “Any shareholder holding 1% or more of the total number of outstanding shares issued by the company may submit to the company in writing a roster of director candidates”¹⁸⁵ As the FSC has required all companies listed on the TWSE or TPEX to adopt the candidate nomination system for their election of the directors starting from 2021, institutional investors can exercise the right to nominate candidates in the election of directors, since 1 percent shareholding is not a high bar for institutional investors. Compared to exercising voting rights, nominating directors to monitor investee companies from the inside may be a more effective way.¹⁸⁶ However, there were no records of institutional investors exercising their nomination rights during this Article’s review of the stewardship reports.¹⁸⁷

Why institutional investors rarely exercise shareholder proposal rights and director nomination rights can first be attributed to the lack of incentives to do so. The agency problems previously discussed in

cc/9G67-ZRHE].

181. *Taiwan Stewardship Code*, *supra* note 92, at 10.

182. See *List of Shareholders Exercising Proposal Rights* (股東行使提案權情形彙總表), MOPS, <https://mops.twse.com.tw/mops/web/t144sb09> [<https://perma.cc/ZRU4-V56S>] (last visited Nov. 20, 2022).

183. *Number of TWSE Listed Companies and TPEX Companies*, SEC. & FUTURES BUREAU (Jan. 14, 2021), <https://www.sfb.gov.tw/en/home.jsp?id=272&parentpath=0%2C7%2C92> [<https://perma.cc/W6GD-D5U7>].

184. Luo, Bing-Kuan (駱秉寬), *Institutional Investors Cold on Corporate Governance, Is It Diligent?* (機構投資人冷對公司治理，是否盡職?), *COM. TIMES* (工商時報) (Dec. 7, 2020), <https://view.ctee.com.tw/monetary/25182.html> [<https://perma.cc/P29D-5BK7>].

185. Taiwan Company Act, *supra* note 180, at art. 192–1, ¶ 3.

186. Luo, *supra* note 184.

187. See also *id.*

the above section apply with greater force here in the context of shareholder proposal rights and director nomination rights, as these actions are more costly and come with more uncertainty. Even if shareholder proposals are passed or nominated directors are elected, the investor can only capture a portion of the benefits but will have to bear all of the associated costs, which may potentially outweigh the captured benefits. Moreover, proposing a shareholder proposal or nominating candidates for directors may be viewed as a challenge to the company management, potentially straining relations between institutional investors and the investee companies, which disincentivizes institutional investors from taking such actions.

Apart from the lack of incentives, regulatory restrictions are also an important reason for the institutional investors' passiveness. The aforementioned Article 146–1, Paragraph 3 of the Taiwan Insurance Act prohibits insurance companies or their representatives from serving as directors or supervisors of the investee company.¹⁸⁸ Also, Article 20, Paragraph 1 of the Regulations Governing Securities Firms adds this requirement to securities firms: “when exercising rights on any company shares that it has acquired shall do so for the greatest benefit of the company and may not directly or indirectly participate in the operation of the issuer company or other inappropriate actions.”¹⁸⁹ And similarly, Article 23, Paragraph 2 of the Regulations Governing Securities Investment Trust Enterprises provides: “A SITE exercising the voting rights . . . shall do so in the best interest of beneficial interest certificate holders, and may not directly or indirectly participate in the management of the company issuing the shares it holds or in other inappropriate arrangements.”¹⁹⁰ These regulations restrict Taiwan institutional investors from participating in the management of the investee company, which not only takes away the director nomination rights from the institutional investors, but also discourages institutional investors from exercising shareholder proposal rights to avoid any suspicion.

E. *Engagement with Investee Companies*

Principle 4 of the Taiwan Stewardship Code requires signatories to “[m]aintain an appropriate dialogue and interaction with investee companies.”¹⁹¹ Furthermore, Guideline 4–3 provides that signatories “may act collectively with other institutional investors” when they judge necessary.¹⁹² According to the CG Watch 2020 Report, most of

188. Taiwan Insurance Act, *supra* note 178, art. 146–1, ¶ 3: “Investments made by insurance enterprises in accordance with Paragraph 1, Subparagraphs 3 and 6 may not be found with any of the following conditions: I. For the insurance enterprise or a representative thereof to be a director or supervisor of the investee company.”

189. Regulations Governing Securities Firms, *supra* note 160, art. 20, ¶ 1.

190. Regulations Governing Securities Investment Trust Enterprises, *supra* note 161, art. 23, ¶ 2.

191. *Taiwan Stewardship Code*, *supra* note 92, at 10.

192. *Id.* at 11.

the Taiwan institutional investors surveyed undertook individual company engagement, but the level of engagement is still lower than in most markets.¹⁹³ Once again, this demonstrates the passiveness of the Taiwan institutional investors. Nevertheless, Taiwan institutional investors appear to be engaging with investee companies more frequently in recent years. According to the 2021 Taiwan Sustainable Investment Report published by the National Taipei University Center for Corporate Sustainability, 32 respondents reported 10,118 instances of engagement between institutional investors and investee companies, increasing from the 1,536 instances reported by 18 respondents in 2019, and 91 percent of the engagement were conducted thorough telephone calls or in-person meetings.¹⁹⁴

Based on this Article's review of 2020 stewardship reports, most signatories did make disclosures on engagements with their investee companies. However, no records of collective action by Taiwan institutional investors can be found in the stewardship reports, which is consistent with the survey conducted by the Taiwan Securities and Futures Institute.¹⁹⁵ Additionally, from these disclosures, it was not possible to assess or evaluate the quality of the signatories' engagement. Most signatories disclose engagement by the manner of engagement and the number of instances without providing any context of their engagement, and only a few signatories disclosed the actual contents and outcomes of their engagement, despite Guideline 6-4 advising signatories to disclose "case description of the dialogue and interaction with the investee company, the results of the agreement and the follow-up situation."¹⁹⁶ Just as the Rating Criteria published by the TWSE Corporate Governance Center have 7 evaluation criteria out of 30 focusing on the "implementation and disclosure of engagement,"¹⁹⁷ Taiwan institutional investors should put more effort into conducting engagement with their investee companies and make meaningful disclosures on their engagement activities.

F. *Use of Proxy Advisors*

As the investment chains are ever more complex, the Taiwan Stewardship Code recognizes that "institutional investors may outsource part of their stewardship activities (e.g. to provide voting advice or to cast proxy votes) to other professional service providers (e.g. proxy advisory

193. Wolf, *supra* note 153, at 459.

194. NAT'L TAIPEI UNIV. CTR. FOR CORP. SUSTAINABILITY, 2021 TAIWAN SUSTAINABLE INVESTMENT REPORT (2021臺灣永續投資調查) 24 (2021), http://www.aacsb.ntpu.edu.tw/twsvi/lyadmin/pages/uploads/file/f23f_uyhextz4u.pdf [<https://perma.cc/992G-U535>].

195. SEC. & FUTURES INST., A RESEARCH ON THE IMPLEMENTATION OF STEWARDSHIP BY TAIWAN ASSET MANAGERS (我國資產管理業者落實盡職治理之研究) 98 (2021), https://weblinesfi.org.tw/download/resh_ftp/research/FullText/f110_3.pdf [<https://perma.cc/VPJ2-6QSQ>].

196. *Taiwan Stewardship Code*, *supra* note 92, at 14.

197. *Rating Criteria for Signatories with Better Disclosures 2022*, *supra* note 129, at 10-13.

firms or custodian banks).¹⁹⁸ However, “institutional investors shall not be released from their existing stewardship responsibilities to their clients and beneficiaries” by outsourcing their stewardship responsibilities.¹⁹⁹ Guideline 5–3 thus cautions signatories that “[v]oting rights shall be exercised objectively even in the case where a voting recommendation report has been obtained from a proxy advisory firm.”²⁰⁰

This Article reviewed the 2020 stewardship reports seeking to uncover the full picture of the signatories’ use of proxy advisors. As shown in Chart 3, 71 out of 153 signatories did not disclose whether they have been using services provided by proxy advisors, even though one of the evaluation criteria for stewardship reports is to “explain if and how proxy research and proxy voting services are used and disclose usage and record.”²⁰¹ Of the 82 that did disclose, only 10 have been using services provided by proxy advisors, and the other 72 did not use proxy advisors. Of the 10 that have been using proxy advisors,²⁰² only 3 were domestic Taiwan institutional investors, while the other 7 were foreign institutional investors. All 10 signatories purchased voting recommendation services from ISS, with only one signatory also purchasing from Broadridge. It should be noted that due to the small sample size limited by the number of disclosing signatories, this finding may not necessarily reflect the real market situation, but nevertheless can provide useful insights. Two observations arise from this finding. First, with the high proportion of no disclosure, this again is a sign that the signatories have not been complying entirely with the Stewardship Code. Secondly, almost half of the signatories did not use proxy advisors and nearly all of them are domestic institutional investors, which shows that proxy advisors have limited influence on domestic institutional investors.

198. *Taiwan Stewardship Code*, *supra* note 92, at 2.

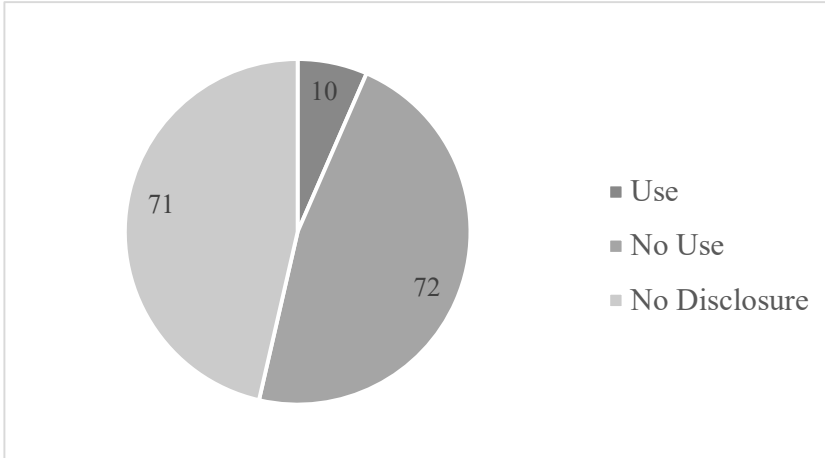
199. *Id.*

200. *Id.* at 12.

201. *Rating Criteria for Signatories with Better Disclosures 2022*, *supra* note 129, at 10–14.

202. Signatories who disclosed their use of proxy advisors are: Cathay Life Insurance, Cathay Securities Investment Trust, Schroder Investment Management (Taiwan) Limited, J.P. Morgan Asset Management (Taiwan) Limited, Aberdeen Standard Investments Taiwan Limited, Nomura Asset Management Taiwan Ltd., AllianceBernstein Investments Taiwan Limited, Manulife Asset Management (Taiwan), PineBridge Investments Management Taiwan Limited (only in overseas voting), Shin Kong Investment Trust Co., Ltd. (only in overseas voting).

CHART 3: USE OF PROXY ADVISORS BY SIGNATORIES IN 2020



Source: Compiled by the author from stewardship reports

G. Periodical Disclosure

1. Stewardship Reports

Principle 6 of the Taiwan Stewardship Code requires signatories to “periodically disclose the status of fulfilment of stewardship responsibilities.”²⁰³ And Guideline 6–4 advises signatories to “publish a stewardship report annually.”²⁰⁴ But the Taiwan Stewardship Code currently does not set a deadline for signatories to publish their stewardship reports, nor does the Rating Criteria. According to this Article’s observations, the common practice of the signatories is to first disclose the voting results of the first half (or January-August) after most AGMs have been held in June then disclose the voting results of the entire year in or with the stewardship reports in the next year. This Article reviewed the stewardship reports in March 2022, but signatories had not yet published their 2021 stewardship reports at that time, which is why this Article relies upon the 2020 stewardship reports instead.

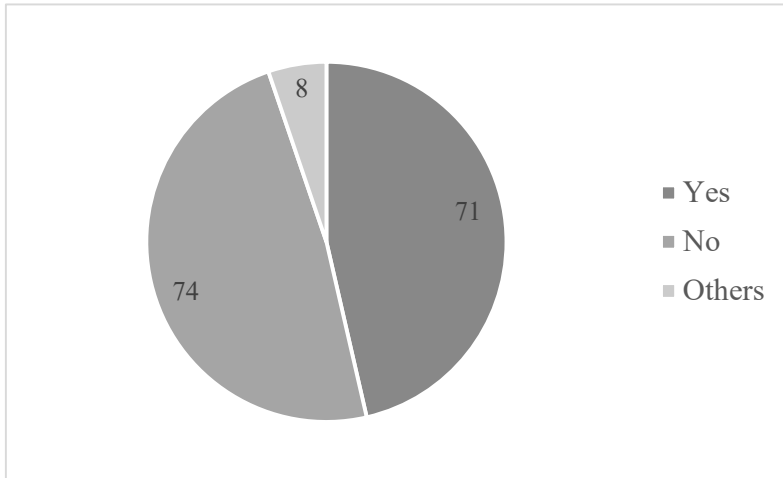
To determine whether a signatory achieves adequate periodic disclosure, this Article applies the principle that ‘stewardship reports from the next year of its signature to 2020 should be available on its website’ as the standard to ensure objectiveness and ease of judgment. For instance, an institutional investor who became a signatory in 2016 should make its stewardship reports from 2017 to 2020 available on its website to qualify as disclosing periodically. This standard should not be too difficult for signatories to achieve, since apart from the year of signature, all the signatories

203. *Taiwan Stewardship Code*, *supra* note 92, at 13.

204. *Id.*

have to do is publish their stewardship reports annually on their websites. Unfortunately, this presumption seems to be too optimistic.

CHART 4: PERIODICAL DISCLOSURE BY SIGNATORIES



Source: Compiled by the author from websites of the signatories

As shown in Chart 4, this Article looked at the website of all 153 signatories and found that only 71 signatories qualified as disclosing periodically, whereas 74 signatories did not qualify as disclosing periodically. There are also 8 signatories classified as others, because they either are foreign institutional investors who do not publish Taiwan-specific reports, or they signed the Stewardship Code in or after 2020. Furthermore, of the signatories failing to disclose periodically, 31 did not even publish their 2020 stewardship reports as of March 2022, the time of this Article's review. Of course, there will be limitations to this approach, such as the fact that this standard only looks at whether stewardship reports are available without looking at their contents to see whether the disclosures are meaningful. Nevertheless, the fact that most signatories cannot even achieve the basic level of disclosing periodically, not to mention more meaningful and comprehensive disclosures, is a disappointing result.

2. Voting Results

As the voting result is a relatively objective and straightforward parameter to measure stewardship, Principle 5 of the Taiwan Stewardship Code requires signatories to disclose their voting results.²⁰⁵ However, according to this Article's review, only 110 out of the 153 signatories have disclosed their voting results for 2020 as of March 2022. Most of the signatories disclosed their voting results using the e-voting form provided

205. *Id.* at 11.

by the TDCC,²⁰⁶ which only shows the aggregated for, against, and abstain votes in different types of motions.²⁰⁷ This form is not reader-friendly and provides little meaningful information to readers. Most signatories also did not provide reasons for why they voted against the company management, despite Guideline 5–4 recommending disclosure of the reasons for their votes in important motions.²⁰⁸ Even if the signatories did provide reasons, the provided reasons are usually brief and abstract, e.g., the motion is against the signatory’s voting policy.²⁰⁹

To improve the quality of voting result disclosures, the Rating Criteria for stewardship reports includes an evaluation criterion on disclosing “voting status on a company-by-company and case-by-case basis and describes reasons for opposing proposals.”²¹⁰ However, only 38 signatories out of 153 disclosed voting results at the company and motion level. Another 3 signatories disclosed on the motion level but anonymized the companies. Most signatories belong to the lowest category C in this evaluation criterion, which “only aggregate disclosure of voting status.”²¹¹ To this result, the CG Watch 2020 Report laments that disclosing voting results at the company and motion level “is the norm in Japan and we see no reason why institutional investors in Taiwan cannot follow suit.”²¹²

H. *Ineffectiveness of the Taiwan Stewardship Code*

Although data on Taiwan institutional investors’ stewardship before the launch of the Taiwan Stewardship Code is not available to assess the effects of the Stewardship Code, based on the above discussion, it can be concluded that the effect of the Stewardship Code and the signatories’ compliance is unsatisfying. Looking at the voting results, signatories voted for the company management 96 percent of the time, and only voted against management 0.19 percent of the time. If the Stewardship Code did have an effect, that effect is minimal. Further, comparing the voting results of 2020 with that of 2018, 70 out of 80 signatories have pro-management vote rates over 90 percent in 2018,²¹³ and 99 out of 110 signatories have the same rates in 2020, showing no change between the two years. Back in 2018, it could be said that the signatories needed time

206. SEC. & FUTURES INST., *supra* note 195, at 96–97.

207. *See, e.g., Voting Results Classified by Types of Motions in First Half of 2021* (110年度上半年股東會議案分類投票統計), HUA NAN SEC., <https://www.entrust.com.tw/upload/entrust/edm/110%E5%B9%B4%E8%82%A1%E6%9D%B1%E6%9C%83%E5%88%86%E6%9E%90%E8%A1%A8.pdf> [<https://perma.cc/2VZ5-FL78>] (last visited Nov. 20, 2022).

208. *Taiwan Stewardship Code*, *supra* note 92, at 12.

209. SEC. & FUTURES INST., *supra* note 195, at 96–97.

210. *Taiwan Stewardship Code*, *supra* note 92, at 14.

211. *Id.*

212. Wolf, *supra* note 153, at 456.

213. Wei-Cheng Lin, *The Corporate Governance Role of Institutional Investors: Focusing on the Stewardship Framework for Passive Asset Managers and Investment Companies* (January 2020) (LL.M. thesis, National Taiwan University) (on file with National Taiwan University).

to adapt to stewardship, but with no improvements after two years, it is doubtful that the signatories are seriously complying with the Stewardship Code. Moreover, almost half of the signatories failed to disclose periodically, one of the central tenets of the stewardship, not to mention the more demanding requirements of active engagement with investee companies or disclosure of voting results on the company and motion level. In 2020, five years since the launch of the Stewardship Code, institutional investor stewardship has not improved, and the signatories are complying half-heartedly. Thus, it seems that the Stewardship Code is falling short of its expected effectiveness.

V. POTENTIAL IMPROVEMENTS TO THE TAIWAN STEWARDSHIP CODE

Part IV examined the institutional investor stewardship in Taiwan and found that the level of stewardship and the compliance of signatories are unsatisfying, which suggests the Taiwan Stewardship Code has not been effective in promoting stewardship among Taiwan institutional investors. To achieve that end, many aspects of the Stewardship Code and regulations of Taiwan should be improved to induce more stewardship. This part proposes and analyzes several potential improvements to the Taiwan Stewardship Code to make it more effective in promoting institutional investor stewardship in Taiwan.

A. *Encourage Proxy Voting*

Exercising voting rights carefully and effectively is at the core of stewardship activities. But as discussed in Part IV, although the signatories' voting rates are high, the voting results show that pro-management bias is prevalent among signatories.²¹⁴ It can then be inferred that the signatories are not exercising their voting rights carefully to influence the company management. Thus, encouraging proxy voting among institutional investors can lead to more monitoring of the company management and potentially improve stewardship.

1. Loosen Regulatory Restrictions

If proxy voting by institutional investors is desired, then it is paradoxical to encourage proxy voting and limit the institutional investors' exercise of voting rights at the same time. Hence, to encourage proxy voting, the first step is to loosen regulatory restrictions on the institutional investors' exercise of voting rights. The most obvious example is the aforementioned Article 146-1, Paragraph 3 of the Taiwan Insurance Act, which prohibits insurance companies from exercising their voting rights "in the election of directors or supervisors at the company being invested."²¹⁵ Prior to this provision, insurance companies were involved in corporate takeovers multiple times against the FSC's warnings. As a result, the FSC introduced this provision to solve this problem once and

214. See *supra* Part C.

215. Taiwan Insurance Act, *supra* note 178, at art. 146-1, ¶ 3.

for all. However, voting rights in the elections of directors or supervisors are one of the most effective tools to influence the investee company. If this is taken away, then the influence of the insurance companies' stewardship will diminish significantly. If the management of the investee company does not have to worry about being voted out by the insurance companies voting rights, then there will be little incentive for the company management to respond to the insurance companies.²¹⁶ Insurance companies also criticized this approach, calling on the government to allow insurance companies to vote, so that they can use the capital of the insurance funds to oversee corporate governance and ESG issues.²¹⁷

Similar but looser restrictions exist in the aforementioned Article 20, Paragraph 1 of the Regulations Governing Securities Firms²¹⁸ and Article 23, Paragraph 2 of the Regulations Governing Securities Investment Trust Enterprises²¹⁹ as well. Both require institutional investors not to "directly or indirectly participate in the operation of the issuer company or other inappropriate actions." These restrictions may cause institutional investors to avoid any actions that may be considered as "participating in the operation," such as voting against the company management, resulting in the passiveness of the institutional investors. Therefore, in this Article's view, the regulatory restrictions imposed on voting rights should be loosened to encourage proxy voting among the institutional investors. If needed, other supporting safeguards can replace the current heavy-handed restrictions.

2. Pass-Through Voting

If institutional investors are unable or unwilling to exercise their voting rights carefully, then another option is to adopt pass-through voting. Pass-through voting would give the voting rights back to the clients and beneficiaries, also known as the capital providers.²²⁰ As the internet and e-voting become more and more pervasive, a requirement that institutional investors institute pass-through voting becomes technologically feasible. BlackRock announced that it will expand proxy voting options for its larger institutional clients starting in 2022. Under the updated set of options, clients may choose to cast their own votes, vote on certain proposals, vote according to proxy advisors' recommendations, or have BlackRock vote on their behalf.²²¹ In fact, some form of

216. See Lucian Bebchuk & Scott Hirst, *Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy*, 119 COLUM. L. REV. 2029, 2119 (2019).

217. Luo, *supra* note 184.

218. Regulations Governing Securities Firms, *supra* note 160, at art. 20, ¶ 1.

219. Regulations Governing Securities Investment Trust Enterprises, *supra* note 161, at art. 23, ¶ 2.

220. See generally Dorothy S. Lund, *The Case Against Passive Shareholder Voting*, 43 J. CORP. L. 493, 530–31 (2018); Sean J. Griffith, *Opt-In Stewardship: Toward an Optimal Delegation of Mutual Fund Voting Authority*, 98 TEX. L. REV. 983, 1005–19 (2020); Caleb N. Griffin, *We Three Kings: Disintermediating Voting at the Index Fund Giants*, 79 MD. L. REV. 954, 990–96 (2020).

221. *Working to Expand Proxy Voting Choice for Our Clients*, BLACKROCK,

pass-through voting already exists in Taiwan. Article 181, Paragraph 3 of the Taiwan Company Act authorizes the FSC to allow shareholders of a public company that holds shares for others to choose to exercise their voting power separately.”²²² Hence, the FSC promulgated rules that allow foreign and overseas Chinese investors holding domestic securities via investment funds or overseas financial institutions to vote separately.²²³

However, some commentators have voiced concerns over pass-through voting.²²⁴ First, given the number of clients that institutional investors service, returning voting rights to clients will be extremely complex and costly to implement in practice.²²⁵ Secondly, compared to the institutional investors themselves, the clients do not have the capabilities or incentives to vote. The clients are usually made up of retail investors who invested through institutional investors simply for convenience.²²⁶ Lastly, as discussed above, taking away voting rights from institutional investors may do more harm than good, because it also takes away the leverage they have against the management of investee companies. This change risks hindering the effectiveness of stewardship activities such as private engagement.²²⁷

Notwithstanding these concerns, serious consideration should be given to instituting pass-through voting in Taiwan. Since the clients are the actual capital providers, the voting right that comes along with the shares should also serve the interest of the clients, thus the rationale of pass-through voting is consistent with the economic reality.²²⁸ To avoid unnecessary costs and complications, inspiration can be drawn from BlackRock’s practices. A minimal investment threshold could be set and only investors with assets above that threshold would be eligible for pass-through voting. Also, investors could be allowed to choose to cast their own votes or maintain the status quo, that is to have institutional investors vote on their behalf. Even if clients lack the information

<https://www.blackrock.com/corporate/about-us/investment-stewardship/proxy-voting-choice> [<https://perma.cc/JE4P-VWJE>] (last visited Nov. 20, 2022); John Foley, *BlackRock Brings Shareholder Democracy to the Few*, REUTERS (Oct. 8, 2021, 6:43 PM), <https://www.reuters.com/breakingviews/blackrock-brings-shareholder-democracy-few-2021-10-07> [<https://perma.cc/388C-3GZJ>].

222. Taiwan Company Act art. 181, *supra* note 180, ¶ 3.

223. FSC, Regulations Governing the Operation of and Compliance Requirements for Split Voting by Shareholders of Public Companies, art. 3, FAWUBU FAGUI ZILIAOKU, <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400150> [<https://perma.cc/8TLU-3VNX>].

224. *See, e.g.*, Bebchuk & Hirst, *supra* note 216, at 2118–19; Jill E. Fisch, *The Uncertain Stewardship Potential of Index Funds* 107, 122–25 (Eur. Corp. Governance Inst., Law Working Paper No. 490/2020, 2020).

225. Bebchuk & Hirst, *supra* note 216, at 2118–19.

226. Fisch, *supra* note 224, at 122–24.

227. Bebchuk & Hirst, *supra* note 216, at 2119; Fisch, *supra* note 224, at 125.

228. *See also Working to Expand Proxy Voting Choice for Our Clients*, *supra* note 221 (“BlackRock’s role is to help our clients achieve their long-term financial goals. Core to this is the fact that the money we manage is not our own; it belongs to our clients.”).

and expertise of the fund managers, which is likely given that the average pro-management vote rate of the signatories was over 96 percent in 2020, there is little downside to experimenting with pass-through voting in Taiwan. It might even be better for clients to vote using common sense than to have fund managers vote 100 percent for the company management. Based on the foregoing reasons, the managing authorities, including the FSC, TWSE, and TDCC, should assess the feasibility of pass-through voting in Taiwan.

B. *Strengthen Disclosure Requirements*

Disclosure of stewardship activities by the institutional investors is a central pillar of stewardship and is one which enables clients to know how their capital is managed. However, the signatories' current disclosures are not satisfying. Not only did more than thirty signatories not publish their 2020 stewardship reports, but also there is also a lack of standards concerning the signatories' disclosures. This diminishes the value and availability of stewardship information, and ultimately negatively impacts the effectiveness of the Taiwan Stewardship Code. To improve the effectiveness of the Taiwan Stewardship Code, the disclosure requirements should be strengthened.

1. Require Stewardship Section on Signatories' Website

Based on the CG Watch 2020 Report,²²⁹ Taiwan Sustainable Investment Report,²³⁰ and research from the Taiwan Securities and Futures Institution,²³¹ each of which surveyed institutional investors, it can be inferred that disclosures by the institutional investors are insufficient. Information on stewardship is still heavily dependent on what the institutional investors voluntarily provide. Even though the TWSE Corporate Governance Center website compiles the hyperlinks to the supposed stewardship section of each signatory's website,²³² in the cases of some signatories, the hyperlink leads to their homepage. In the cases of other signatories, the hyperlink leads to an error page or a page that is broken and has not been fixed for months (e.g., KGI Securities Investment Trust and Shin Kong Investment Trust).²³³ The National Development Fund is a particularly negative example. The hyperlink on the TWSE Corporate Governance Center website not only leads to its homepage, but the National Development Fund did not set up a stewardship section on its

229. Wolf, *supra* note 153.

230. NAT'L TAIPEI UNIV. CTR. FOR CORP. SUSTAINABILITY, *supra* note 194.

231. SEC. & FUTURES INST., *supra* note 195.

232. *List of Signatories*, *supra* note 98 (click on the signatory's name to access its stewardship section).

233. The author of this Article first attempted to access the stewardship sections of KGI Securities Investment Trust and Shin Kong Investment Trust through the TWSE Corporate Governance Center website in March 2022. At that time, KGI Securities Investment Trust's hyperlink led to an error page and Shin Kong Investment Trust's was broken. In August 2022, the author tried again and found that the hyperlinks still failed to properly work at that time.

website. The only information that can be found on its website regarding stewardship is the statement of compliance.²³⁴ Given that it is a government fund signatory, it is ironic that the National Development Fund shows little regard for the Taiwan Stewardship Code. Responding to this situation, the CG Watch 2020 Report did not mince words:

All that is available [on the signatories' websites] are statements of compliance with the Stewardship Code and even these are hard to find - often accessible only through the TWSE CG Center website. This begs the question of how strongly these investors value their code commitments if no mention of them can be found on their own websites!²³⁵

To improve the accessibility of disclosures on stewardship information, the TWSE Corporate Governance Center, which manages the Taiwan Stewardship Code, should increase its oversight on the disclosures made by the signatories. The first step is to require the signatories to set up stewardship sections that are easily accessible from the internet. And the TWSE Corporate Governance Center website must regularly authenticate and update the hyperlinks to the signatories' stewardship sections. The Rating Criteria are a good starting point as they already have evaluation criteria, including that "[s]tatements of compliance with stewardship principles, stewardship reports, and annual voting records at shareholders' meetings can all be viewed on the same web page" and "[s]tewardship-related links are found on the homepage of the institutional investor website, and stewardship-related pages can be found quickly and easily."²³⁶ If this were the case, the amount of stewardship information available would increase and the level of transparency on institutional investors would improve, so that clients would have more information to select institutional investors. As a result, the institutional investors might be more willing to invest in stewardship and make quality disclosures on stewardship activities.

2. Improve Voting Result Disclosures

As discussed above, most signatories present their voting results using the e-voting form provided by the TDCC, which only shows the aggregated for, against, and abstaining votes in different types of motions. This form provides little meaningful information to readers, only the approximate for-vote rate. Despite the voting results being classified according to the type of motion, the voting results of elections of directors and supervisors are not disclosed. This may be due to the nature of elections for directors or supervisors. Shareholders vote for the individual candidate and not for the company management as a whole, so it is not possible to disclose whether the vote is for or against the company management. Notwithstanding this reasonable explanation, voting results

234. NAT'L DEV. FUND, EXEC. YUAN, <https://www.df.gov.tw/eng> [<https://perma.cc/SK4D-JYTW>]

235. Wolf, *supra* note 153, at 455.

236. TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR, *supra* note 129, at 15.

may still be disclosed by the candidate nominators, be it the incumbents or challengers. It would not miss the forest for the trees to disclose the voting results from the elections for individual directors and supervisors.

Another point for improvement is the standardization of voting result disclosures. Currently, there is no required standard for the disclosure of voting results. Even though most signatories use the TDCC e-voting form, others use forms of their own. As a result, the disclosure of voting results may differ widely among signatories. For the voting result disclosures reviewed by this Article, differences include the criteria used to classify motions and the file formats used.²³⁷ These inconsistencies all make the process of vote tallying unnecessarily troublesome and time-consuming and make it difficult to compare the voting results among the signatories.

A rule adopted in November 2022 by the Securities and Exchange Commission (SEC) to enhance reporting of proxy votes offers many lessons for Taiwan to learn from.²³⁸ The SEC requires fund managers to disclose proxy voting records annually using Form N-PX. However, the previous Form N-PX “can be difficult for investors to read and analyze” and “may provide an incomplete picture of a fund’s proxy voting practices,” because of the inconsistency of the reports, length, and format (data language).²³⁹ Therefore, the newly adopted SEC rule aims to enhance proxy vote disclosures “to improve the utility of Form N-PX for investors.”²⁴⁰ If Taiwan can adopt similar requirements to standardize the criteria, file format, and contents, thus removing the inconsistencies, then the value of disclosing voting results could be fully utilized to promote more stewardship.

C. *Provide Incentives for Stewardship*

One of the main causes of the Taiwan Stewardship Code’s ineffectiveness is the institutional investors’ lack of incentives to carry out stewardship. As discussed above, due to agency problems between the institutional investors and their clients or beneficiaries, the institutional investors have incentives to underinvest in stewardship and to defer to company management.²⁴¹ Therefore, to improve the effectiveness of the Taiwan Stewardship Code and to promote stewardship, it is crucial to provide incentives for institutional investors to comply with the Stewardship Code. This Article proposes two potential measures, one as the carrot and the other as the stick, to provide those incentives.

237. Some signatories have four types of motions, while the TDCC e-voting form has fifteen types. Regarding file formats, some voting forms were in JPG format, while others were in PDF format.

238. SEC, *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers*, Release No. 33-11131 (Nov. 2, 2022), <https://www.sec.gov/rules/final/2022/33-11131.pdf> [<https://perma.cc/CEE7-BJ4X>].

239. *Id.* at 80–81.

240. *Id.* at 6.

241. See *supra* Part C.

1. Enforcement Mechanisms

The signatories of the Taiwan Stewardship Code, though it is a soft law, are still required to comply with the Code's requirements on a comply or explain basis. However, under the current Taiwan Stewardship Code, no enforcement mechanism exists if a signatory fails to comply with the Code. In other words, once an institutional investor becomes a signatory, it will not be removed because of non-compliance. To date, the only case of removal is PJ Asset Management, which was removed due to its involvement in the Labor Funds bribery scandal.²⁴² No signatory has been removed because of non-compliance. But the Taiwan Stewardship Code has a problem with non-compliance. Take the 2020 stewardship report, for example. When this Article conducted its review in March 2022, 31 out of the 153 signatories did not publish their 2020 stewardship report; over 20 percent of the signatories failed to comply. Hence, this Article recommends that the Taiwan Stewardship Code should establish enforcement mechanisms as a stick to ensure an institutional investor's continued compliance with the Code's requirements after it becomes a signatory.

On the issue of enforcement mechanisms, much can be learned from the U.K. Stewardship Code's practices since the 2020 revision. The list of signatories of the U.K. Stewardship Code is updated annually. To become a signatory of the U.K. Stewardship Code, institutional investors have to apply to the FRC and submit their stewardship report for assessment every year.²⁴³ Only the successful applicants can become signatories of the U.K. Stewardship Code. Compared to the U.K. Stewardship Code, it is much easier to become a signatory of the Taiwan Stewardship Code. To become a signatory of the Taiwan Stewardship Code, all an institutional investor has to do is publicly endorse the Code, that is to post a statement of compliance on its and TWSE Corporate Governance Center websites, then notify the TWSE Corporate Governance Center.²⁴⁴ After public endorsement, no further obligations are required to maintain its status as a signatory.

Adopting the U.K. Stewardship Code's practice will inevitably decrease the number of signatories, whether it is due to the signatories finding the requirements too onerous or the quality of stewardship reports failing to meet the standards. But to the institutional investors who successfully become signatories, this is a reputational incentive, as the title "signatory of the Taiwan Stewardship Code" will only be meaningful if an enforcement mechanism exists to winnow out underperforming signatories. If any institutional investor can become a signatory on a whim and will not be removed even if it does not comply, then the Stewardship Code only serves to boost the number of signatories but fails to promote institutional investor stewardship. To improve the effectiveness of the Taiwan Stewardship Code, reformers should begin by improving the signatories' compliance with the Code. This Article recommends that the

242. TAIWAN STOCK EXCH. CORP. GOVERNANCE CTR, *supra* note 104.

243. *See* FRC, *supra* note 71.

244. *Taiwan Stewardship Code*, *supra* note 92, at 3.

Taiwan Stewardship Code implement enforcement mechanisms similar to those in the U.K. Stewardship Code, so that institutional investors will only become signatories if they qualify and may be removed for failing to comply. If the TWSE Corporate Governance Center wishes to give more time to the signatories to prepare, then a watchlist for non-compliant signatories can be established during the transition period.

2. Government Funds Selecting Investment Managers

To provide maximum incentives for institutional investors to perform stewardship, not only should a stick be utilized, but a carrot should also be offered. Here, the carrot for institutional investors is the chance to be selected as the investment manager for a government fund. Government funds, especially the larger Labor Funds and Public Service Pension Fund, periodically select investment managers to manage their assets.²⁴⁵ To the institutional investors, given the size of the mandated assets, being selected as the investment manager for these funds is a lucrative business. Therefore, if stewardship was a criterion in the selection of investment managers, it would be a strong incentive for institutional investors to engage in more stewardship.

The FSC has laid out plans to promote stewardship by adding stewardship to the selection criteria for the government funds' mandate in the Corporate Governance 3.0 Roadmap.²⁴⁶ The FSC suggested that the authorities of the government funds take into account the institutional investors' evaluation results from their stewardship reports.²⁴⁷ Moreover, both the stewardship reports of the Labor Funds and Public Service Pension Fund have mentioned stewardship as a criterion for selecting investment managers.²⁴⁸ However, looking closer, the actions and statements by the FSC and government funds only scratch the surface and lack substance. For instance, the Public Service Pension Fund only requires the selected investment managers to be signatories of the Taiwan Stewardship Code and does not look at the actual stewardship

245. See, e.g., *Investment Manager Selection for 2022 Second Overseas Discretionary Investment of Labor Pension Fund by Bureau of Labor Funds*, BUREAU OF LAB. FUNDS (July 5, 2022), https://www.blf.gov.tw/media/cspldixf/%E5%85%AC%E5%91%8A%E5%85%A7%E5%AE%B9_111%E5%B9%B4%E5%BA%A6%E7%AC%AC2%E6%AC%A1%E5%9C%8B%E5%A4%96%E5%A7%94%E4%BB%BB%E6%8A%95%E8%B3%87-announcement.pdf [https://perma.cc/23PS-Q5PY]Error! Hyperlink reference not valid..

246. CORPORATE GOVERNANCE 3.0 ROADMAP, *supra* note 93, at 52.

247. *Id.* at 52–53.

248. See *2020 Stewardship Report and Voting Result (2020年履行盡職治理暨投票情形)*, BUREAU OF LAB. FUNDS 19 (2021), <https://www.blf.gov.tw/media/4w4oum-kn/2020.pdf?mediaDL=true> [https://perma.cc/K74D-4HVP]; *Pub. Serv., 2020 Stewardship Report (109年盡職治理報告)*, PUB. SERV. PENSION FUND MGMT. BOARD 12–13 (2021), <https://ws.fund.gov.tw/Download.ashx?u=LzAwMS9VcGxvYWQvOC9yZWxmaWxlLzExNzU2LzE4NTEyL2NkMmY4Yjg5LTZiOWMtNDU3NC04NzdjLTFkNzIxZTc2NDVvMy5wZGY%3d&n=5pys5pyDMTA55bm055uh61G35rK-755CG5aCxSZGKLnBkZg%3d%3d&icon=.pdf> [https://perma.cc/6G9D-DFHW].

activities. If the selection of investment managers is intended to be an incentive for institutional investors, the selection criterion on stewardship should be more detailed and stringent.

The Japan's Government Pension Investment Fund's (GPIF) experiences can provide Taiwan with some insights on the role that government funds can play in stewardship. The GPIF became a signatory of the Japan Stewardship Code in 2014. Later in 2017, the GPIF itself also established its own Stewardship Principles and Proxy Voting Principles.²⁴⁹ The GPIF requires the external asset managers to follow the GPIF's Stewardship Principles and Proxy Voting Principles on a comply or explain basis, in addition to the Japan Stewardship Code.²⁵⁰ The GPIF monitors the stewardship activities of their external asset managers, including proxy voting and engagement with investee companies.²⁵¹ When selecting external asset managers, the GPIF gives preference to the asset manager with better stewardship performance if other conditions are the same.²⁵² Here, the stewardship of the GPIF includes monitoring the external asset managers' stewardship performance.

Because the GPIF started earlier in the implementation of stewardship, its experience is a valuable lesson for Taiwan. Taiwan's government funds can follow GPIF by establishing their own Stewardship Principles and Proxy Voting Principles. This way, the government funds can take into account their long-term investment and tailor the principles to accommodate their business model. The government funds can also set higher stewardship standards for the investment managers. In turn, this will incentivize the investment managers to invest more in stewardship, thus achieving the goal of promoting institutional investor stewardship.

D. *Facilitate Collective Actions Among Institutional Investors*

Despite Guideline 4–3, which states that signatories “may act collectively with other institutional investors” if necessary,²⁵³ no collective action has been observed so far. Based on the above analysis of the institutional investors' agency problem, due to the competition for capital and the cost-cutting among institutional investors, institutional investors face a collective action problem when performing stewardship. If institutional investors can overcome this and act collectively, then institutional investor stewardship could be more active and vibrant. Collective actions could distribute the costs of stewardship more evenly among institutional investors. Moreover, by cooperating, institutional investors might have

249. *Stewardship Principles & Proxy Voting Principles*, GPIF (Feb. 6, 2020), https://www.gpif.go.jp/en/investment/pdf/stewardship_principles_and_proxy_voting_principles.pdf [<https://perma.cc/86C9-A2N4>].

250. See Akio Otsuka, *The Global Progress of Stewardship and Corporate Governance by Passive Investors*, 30 *TRANSNAT'L L. & CONTEMP. PROBS.* 205, 244–47 (2021).

251. *Id.* at 247.

252. *Id.*

253. *Taiwan Stewardship Code*, *supra* note 92, at 10–11.

a larger influence on the company management because of their consolidated voting power. Hence, to improve stewardship, Taiwan should facilitate collective actions among institutional investors. To achieve that end, this section provides two recommendations.

1. Establish Investor Group or Forum

Facilitating collective action among institutional investors is not an easy task as it involves economic incentives, regulatory compliance, and expertise.²⁵⁴ For instance, collective actions may trigger reporting obligations or require professional knowledge of the investee company. Hence, to facilitate more collective actions, institutional investors should be encouraged to establish an investor group or investor forum to coordinate and lead collective actions.²⁵⁵ Examples of investor groups or investor forums include the Council of Institutional Investors (CII) in the US, the Investor Forum in the U.K, the Assogestioni in Italy, and the Eumedion in the Netherlands.²⁵⁶

The CII consists of over 140 US institutional investors with approximately four trillion dollars in combined assets under management.²⁵⁷ The CII coordinates between its members to form a consensus on whether to act. By consolidating the institutional investors, the CII wields significant power over the investee companies. If private engagements with investee companies yield no results, then the CII can use its large voting power to pressure company management. Across the Atlantic, the U.K. Investor Forum plays a similar role in facilitating collective actions. The origins of the Investor Forum can be traced back to the Kay Review published in 2012.²⁵⁸ The Kay Review noted that the competition between asset managers disincentivizes them to engage constructively and recommended that “[a]n investors’ forum should be established to facilitate collective engagement by investors in U.K. companies.”²⁵⁹ As a result, the Investor Forum was established in 2014. The Investor Forum “has 54 Full Members, representing approximately 34.2 percent of the FTSE All Share market capitalization” as of August 2022.²⁶⁰ Members of the Investor Forum can propose plans to engage with any UK-listed company. If the proposal meets the criteria of the Collective Engagement Framework and has the support from a “critical mass of shareholders,” then the Investor Forum

254. See generally Gaia Balp & Giovanni Strampelli, *Institutional Investor Collective Engagements: Non-Activist Cooperation vs Activist Wolf Packs*, 14 OHIO STATE BUS. L.J. 135, 183–87 (2020).

255. See *id.* at 175–83.

256. *Id.* at 139.

257. *About CII*, COUNCIL OF INSTITUTIONAL INVS., <https://www.cii.org/about> [<https://perma.cc/S85V-47WE>].

258. JOHN KAY, THE KAY REVIEW OF UK EQUITY MARKETS AND LONG-TERM DECISION MAKING (2012) [Error! Hyperlink reference not valid.](#)

259. *Id.* at 50–51.

260. *Members*, INV. F., <https://www.investorforum.org.uk/membership-summary> [<https://perma.cc/3W9Q-HGN3>] (last visited Nov. 20, 2022).

will formulate and execute the plan.²⁶¹ As of 2021, the Investor Forum conducted forty-seven instances of collective engagement; and in 2021, thirteen plans were proposed and five of them were adopted.²⁶²

In Taiwan, different types of institutional investors have formed their associations, including the Non-Life Insurance Association, the Life Insurance Association, the Securities Investment Trust & Consulting Association, and the Bankers Association. However, unlike the CII or the Investor Forum, which focus on engagement with investee companies, these associations only focus on issues within their business scope. Additionally, not all types of institutional investors are members of the same association. In total, it is difficult to expect these associations to facilitate collective actions. Thus, the FSC should encourage institutional investors to take the lead, by establishing an investor group or investor forum that covers all types of institutional investors to coordinate and facilitate collective actions. Government funds and resources can play a crucial role in this. Through these organizations, the collective action problem could be mitigated, and the voting powers of the institutional investors consolidated, thus improving the effectiveness of stewardship.

2. Lower Regulatory Risks and Burdens

Even if institutional investors take collective action through an investor group or investor forum, they may still face regulatory risks or burdens that thwart their efforts. To facilitate collective action, beyond establishing an investor group or investor forum, the legal environment should be made more friendly by lowering regulatory risks and burdens.

Under American law, Section 13(d) of the Securities Exchange Act of 1934 requires any person who “acquir[es] directly or indirectly the beneficial ownership” of more than 5 percent of any equity security class of a company to file the Schedule 13D to the SEC within ten days of its acquisition.²⁶³ Similar requirements exist in Taiwan. Article 43–1, Paragraph 1 of the Taiwan Securities and Exchange Act, which was modeled after Section 13(d) of the U.S. Securities Exchange Act, also requires that, “[a]ny person who acquires, either individually or jointly with other persons, more than ten percent of the total issued shares of a public company shall report such acquisition to the Competent Authority and make a public announcement”²⁶⁴ Article 27, Paragraph 14 of the Taiwan Business Mergers and Acquisitions Act requires that “[f]or the purpose of the merger/consolidation and acquisition to acquire the shares of the

261. *Member Led Initiation*, INV. F., <https://www.investorforum.org.uk/activities/collective-engagement/member-led-initiation> [<https://perma.cc/73C7-22VA>].

262. *2021 Collective Engagement Review*, INV. F., <https://www.investorforum.org.uk/annual-review-2021/collective-engagement-review> [<https://perma.cc/6CFR-JMRX>].

263. 15 U.S.C. § 78m(d) (2015).

264. Taiwan Securities and Exchange Act art. 43–1, ¶ 1, FAWUBU FAGUI ZILIAOKU <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=G0400001> [<https://perma.cc/2K5P-RHDR>].

company whose shares have been publicly issued, in case more than ten percent of the total shares that the company had issued are acquired, the acquirers shall report to the competent securities authority . . . within ten days of the acquisition of the shares . . .”²⁶⁵ In short, Taiwanese law requires any person acquiring more than 10 percent of a publicly traded company’s shares to file a report with the FSC.

Whether the requirements of the Taiwan Securities and Exchange Act or Business Mergers and Acquisitions Act apply to institutional investors’ collective actions is not entirely clear. Based on the legal wording, acquiring shares “individually or jointly with other persons” will trigger the obligation to report. But will institutional investors be considered as jointly acquiring shares when they are acting collectively? Moreover, the exact scope and meaning of the “purpose of the merger/consolidation and acquisition” is unclear. If the institutional investors’ collective action is to discharge an unsuitable director, will that action be considered for the purpose of the merger, consolidation or acquisition? These legal uncertainties create regulatory risks that may hold back institutional investors from collective action and lower their incentives for stewardship. Therefore, during collective actions by institutional investors should be exempt from reporting obligations when collectively acting through independent investor groups or investor forums. Having this exemption lowers the regulatory risks and burdens of the institutional investors and increases the incentives for collective action.

Lastly, some scholars point to the disclosure requirements of Regulation FD²⁶⁶ and the disgorgement of short-swing profits of Section 16 of the Securities Exchange Act of 1934²⁶⁷ as impediments to collective action in the U.S.²⁶⁸ Although similar laws also exist in the Taiwanese legal system, they do not present such a problem in Taiwan as in the U.S. In Taiwan, the threshold for statutory insiders in Articles 157 (Right of Disgorgement) and 157-1 (Regulation of Insider Trading) of the Taiwan Securities and Exchange Act²⁶⁹ was set at 10 percent of the company’s shares, and does not apply to “persons jointly acquiring.” These articles should theoretically not apply to institutional investors’ collective actions. Also, the scale of share ownership of Taiwanese institutional investors is much smaller than their U.S. counterparts; only in rare circumstances will an individual investor cross the 10 percent threshold. As a result, there is no need to make adjustments to these regulations in Taiwan.

265. Taiwan Business Mergers and Acquisitions Act art. 27, ¶ 14 FAWUBU FAGUI ZILIAOKU <https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=J0080041> [<https://perma.cc/WC4E-8THQ>].

266. 17 C.F.R. § 243.100 (2022).

267. 15 U.S.C. § 78p(b).

268. See Balp & Strampelli, *supra* note 254, at 203–05; John D. Morley, *Too Big to Be Activist*, 92 S. CAL. L. REV. 1407, 1430–34 (2019).

269. Taiwan Securities and Exchange Act, *supra* note 264, at arts. 157, 157-1.

E. *Emphasize More on ESG Issues*

The previous points are more focused on specific issues and short-term improvements, however, there is a more fundamental problem that the Taiwan Stewardship Code must tackle. As British scholar, Bobby Reddy, pointed out, despite being promoted by the 2010 and 2012 U.K. Stewardship Codes, institutional investors have little incentive to conduct “issuer-specific engagement.” Such engagement focuses on the stewardship of a specific company and is disincentivized due to “the diversification of portfolios by institutional investors, the competitive environment in which they exist, and the uncertainties surrounding the success of any proposed engagement”²⁷⁰ To improve the effectiveness of the U.K. Stewardship Code, Reddy’s article pointed to “holistic-risk engagement” as a remedy, which focuses on systemic and market-wide risks, and is featured in the 2020 revision.²⁷¹ Because holistic-risks affect the entire portfolio of the institutional investors and cannot be hedged by diversification, institutional investors will have the incentives to carry out holistic-risk engagements.²⁷² Since the Taiwan Stewardship Code is modeled after the 2010 and 2012 U.K. Stewardship Codes, the above analysis applies to the Taiwan Stewardship Code as well. Therefore, to improve the effectiveness of the Taiwan Stewardship Code, this Article proposes to adjust the direction of the Taiwan Stewardship Code to emphasize ESG issues, which fit into the category of systemic and market-wide risks.²⁷³

Adjusting the Taiwan Stewardship Code to emphasize more ESG issues is in the interests of the institutional investors and the FSC. First, the younger generations focus more on ESG issues when investing. Therefore, to maintain their competitiveness, institutional investors will have to respond to the changing appetite of their clients, customers, and employees.²⁷⁴ A survey conducted by the 2021 Taiwan Sustainable Investment Report showed that the age group of 30–45 year-olds has the most interest in ESG-related products. They are followed by the age group of 45–60.²⁷⁵ This trend will further increase the institutional investors’ incentives to perform stewardship over ESG issues.

According to this Article’s review, out of the 114 signatories that published their stewardship reports, 102 made disclosures related to ESG issues. Even though the level of detail varies significantly among the signatories’ disclosures, it nevertheless shows the signatories’ strong

270. Reddy, *supra* note 41, at 871–72.

271. *Id.* at 865–66.

272. *Id.* at 866.

273. *See generally* ERNEST LIM, SUSTAINABILITY AND CORPORATE MECHANISMS IN ASIA ch. 5 (2020); Dionysia Katelouzou & Alice Klettner, *Sustainable Finance and Stewardship: Unlocking Stewardship’s Sustainability* (Eur. Corp. Governance Inst., Law Working Paper No. 521/2020, 2020).

274. *See generally* Michal Barzuza et al., *Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, 93 S. CAL. L. REV. 1243 (2020).

275. NAT’L TAIPEI UNIV. CTR. FOR CORP. SUSTAINABILITY, *supra* note 194, at 28.

willingness to embrace ESG issues. Secondly, emphasizing ESG issues is consistent with the FSC's policy of promoting sustainability and responsible investing, which can be seen from the title of the Corporate Governance 3.0 Roadmap, "Sustainable Development Roadmap" and also the FSC's Green Finance Action Plan 2.0.²⁷⁶ Tien-Mu Huang, the chairperson of the FSC mentioned in an interview the importance of utilizing the Taiwan Stewardship Code to impact institutional investors' engagements with investee companies and thereby encourage investee companies to focus on ESG issues.²⁷⁷

To emphasize ESG issues, the Taiwan Stewardship Code should follow the footsteps of the 2020 U.K. Stewardship Code. First and foremost, despite the Taiwan Stewardship Code mentioning ESG issues in its 2020 revision, ESG issues only appear at the level of guidelines. The Taiwan Stewardship Code should elevate ESG issues to the level of stewardship principles. Secondly, as the 2020 U.K. Stewardship Code moves its focus to the "sustainable benefits for the economy, the environment and society,"²⁷⁸ the Taiwan Stewardship Code should disconnect from the fiduciary duty to allow more room for institutional investors to engage with ESG issues when carrying out stewardship. Lastly, the Taiwan Stewardship Code should require the signatories to disclose how they integrate stewardship with their investment decision-making, particularly on ESG issues. Principle 7 of the 2020 U.K. Stewardship Code serves as a great example.²⁷⁹ If the Taiwan Stewardship Code can successfully promote institutional investor stewardship on ESG issues, not only would this improve the effectiveness of the Code, but also it would ensure the Code's relevance in the future.

VI. CONCLUSION

In recent years, as international attention on institutional investor stewardship grew after the publication of the U.K. Stewardship Code in 2010, stewardship codes sprang up in the jurisdictions in the Asia-Pacific region. Modeled after the original U.K. Stewardship Code, Taiwan's stewardship code launched in 2016. To fully understand the Taiwan Stewardship Code, it is important to know its origins in the earlier U.K. Stewardship Code. Since the 2020 revision of the U.K. Stewardship Code, there is much more that the Taiwan Stewardship Code can learn from the updated U.K. version. Hence, this Article introduced the U.K. and Taiwan Stewardship Codes' background and development and conducted a comparative analysis to draw inspiration from the U.K. Stewardship Code.

276. See generally *Green Finance Action Plan 2.0*, FSC (Aug. 2020), https://www.fsc.gov.tw/userfiles/file/Green%20Finance%20Action%20Plan%2020_0.pdf [<https://perma.cc/6CV2-KF46>].

277. Qiu, Jin-Lan (邱金蘭), *FSC Supporting Responsible Investment with Two-Pronged Approach* (金管會挺責任投資 雙管齊下), *ECON. DAILY NEWS* (經濟日報), July 28, 2020, at A5.

278. 2020 UK STEWARDSHIP CODE, *supra* note 6, at 4.

279. *Id.* at 15.

Many of the Taiwanese institutional investors have signed up. As of August 2022, there were 153 signatories to the Taiwan Stewardship Code. Despite the seemingly impressive number of signatories, the actual effectiveness of the Taiwan Stewardship Code is doubtful at best. This Article reviewed the signatories' 2020 stewardship reports and found that not only did the Taiwan Stewardship Code fail in promoting stewardship, but its signatories also have not been complying with the Code's requirements. This Article's findings shed light on the reality of institutional investor stewardship in Taiwan, and are largely consistent with the ACGA's CG Watch 2020 Report on Taiwan. The signatories' voting results showed high rates of pro-management votes, and nearly half of the signatories failed even the basic requirement of disclosing periodically. From these findings, it can be concluded that the Taiwan Stewardship Code has not been effective either in promoting stewardship or in the compliance of the signatories.

To improve the effectiveness of the Taiwan Stewardship Code, significant revisions to the Code itself and the regulatory environment are needed. Hence, this Article proposed and analyzed several potential improvements to promote institutional investor stewardship in Taiwan. First, the Taiwan Stewardship Code should encourage proxy voting by the signatories; this includes loosening the strict regulations on institutional investors in proxy voting and considering the feasibility of adopting pass-through voting in Taiwan. Second, the Taiwan Stewardship Code should strengthen its disclosure requirements by requiring signatories to establish a stewardship section online and improving the usefulness of voting result disclosures. Third, as signatories currently lack incentives to perform stewardship, the FSC should provide incentives to the signatories. On one hand, enforcement mechanisms can be the stick to provide reputational incentives. On the other hand, economic incentives can be the carrot, for example, the inclusion of stewardship as a criterion in the government funds' selection of investment managers. Fourth, to overcome the collective action problem through cooperation and cost sharing, collective action among institutional investors should be facilitated. The FSC should encourage institutional investors to establish investor groups or investor forums, like the CII or the Investor Forum, to coordinate collective actions. The FSC should also lower regulatory risks and burdens by considering an exemption for institutional investors' reporting obligations arising from collective actions. Finally, because of the lack of incentive for "issuer-specific engagement," the Taiwan Stewardship Code should emphasize more ESG issues, which are more aligned with the institutional investors' incentives. In this regard, the Taiwan Stewardship Code should follow the footsteps of the 2020 revision to the U.K. Stewardship Code to transition its focus to the "sustainable benefits for the economy, the environment and society."

As the share ownership of institutional investors continues to grow in Taiwan, the institutional investors' influence on Taiwan's capital market

also increases and so too does the significance of institutional investor stewardship. By promoting \ institutional investor stewardship, investee companies will be guided toward pursuing long-term value and sustainability, so that Taiwan's corporate governance system will ultimately be strengthened. To achieve that, the Taiwan Stewardship Code should be at the center of the reforms. Just as this Article has shown, currently the Taiwan Stewardship Code has problems of ineffectiveness; however, if the Taiwan Stewardship Code's effectiveness can be improved, it will transform the future of corporate governance in Taiwan.

APPENDIX: PRINCIPLES AND GUIDELINES OF THE TAIWAN STEWARDSHIP CODE

| Principle | Guideline | |
|---|-----------|--|
| <i>Principle 1: Establish and disclose stewardship policies</i> | 1.1 | When establishing stewardship policies, an institutional investor is advised to contemplate its role in an investment chain, its nature of business and how to protect rights and benefits of its clients and beneficiaries. |
| | 1.2 | An institutional investor is advised to integrate environmental, social, and corporate governance (ESG) factors into the investment evaluation process to fulfill their stewardship responsibility and create long-term investment value |
| | 1.3 | Disclosure of stewardship policies is advised to at least include the following: 1. A brief introduction of business; 2. Duties to clients or beneficiaries; 3. Stewardship activities, e.g. frequency and methods of monitoring investee companies, interaction with management, participation in shareholders' meetings and voting; 4. Status and management measures of outsourcing stewardship activities; 5. Manner and frequency of status disclosure of stewardship fulfillment. |
| <i>Principle 2: Establish and disclose policies on managing conflicts of interest</i> | 2.1 | A policy on managing conflicts of interest aims to ensure that an institutional investor operates in the interests of its clients or beneficiaries. |
| | 2.2 | A policy on managing conflicts of interest is advised to at least include the following: 1. Possible situations of conflicts of interest; 2. How conflicts of interest in each situation are managed. |
| | 2.3 | Situations of conflicts of interest may include the following: 1. Where an institutional investor, for its own benefits, makes a decision or carries out an activity to the disadvantage of clients or beneficiaries. 2. Where an institutional investor, for benefits of certain clients or beneficiaries, makes a decision or carries out an activity to the disadvantage of other clients, beneficiaries or stakeholders. |
| | 2.4 | Measures of managing conflicts of interest may include training, delegation of duties, information security, firewalls, control mechanisms regarding detection and monitoring, reasonable remuneration policies, and remedial measures. |
| | 2.5 | An institutional investor is advised to consolidate and explain to clients or beneficiaries, either regularly or when considered necessary, about causes and handling measures for major incidents of conflicts of interest which have taken place. |

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| <i>Principle 3: Regularly monitor investee companies</i> | 3.1 | The purpose of monitoring investee companies is such that impacts of relevant information on long-term values of investee companies, clients or beneficiaries may be assessed, so that an institutional investor's manner and time of further dialogue and interaction with the investee companies can be determined. It may also form a reference for future investment decisions. |
| | 3.2 | In determining the content, extent and frequency of monitoring investee companies, an institutional investor is advised to consider its purposes of investment, cost and benefits. Information such as industry profile, opportunities and risks, shareholding structure, operational strategies, business profile, financial position, results of operation, cash flow, stock price, environmental impacts, social issues and corporate governance may be monitored. |
| | 3.3 | An institutional investor is advised to use environmental, social, and corporate governance (ESG) factors to monitor, analyze, and evaluate the related risks and opportunities of an investee company. An institutional investor is advised to understand the sustainable development strategy of an investee company. |
| <i>Principle 4: Maintain an appropriate dialogue and interaction with investee companies</i> | 4.1 | The purpose of an institutional investor's dialogue and interaction with investee companies is such that it may better understand the views of management of the investee companies regarding material issues and obtain mutual feedback, so as to strengthen corporate governance. |
| | 4.2 | An institutional investor is advised to determine the manner and time of dialogue and interaction with investee companies by taking its purpose, cost and benefits of the investment and significance of particular issues of concern to it into account. The manners of dialogue and interaction between an institutional investor and its investee company may include the following: 1. Written or verbal communications with management; 2. Public statements on specific issues; 3. Expression of opinions at shareholders' meetings; 4. Submitting motions at shareholders' meetings; 5. Casting votes at shareholders' meetings. |
| | 4.3 | Under circumstances where an institutional investor judges it necessary to take action, it may act collectively with other institutional investors, so as to protect the rights and interests of clients or beneficiaries, and for the sustainable development of investee companies. It may also participate in relevant advocacy organizations for specific environmental, social, and corporate governance "ESG" issues, jointly expand and leverage its influence as an institutional investor. |
| | 4.4 | An institutional investor should pay attention to the engagement, the impact brought to an investee company after negotiation, the formulation plan and concerns for future negotiation, so as to determine subsequent investment decisions. |

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| <p><i>Principle 5: Establish and disclose clear voting policies and voting results</i></p> | 5.1 | <p>The purpose that an institutional investor exercises its voting right is to express opinion on each motion at a shareholder’s meeting of investee companies. Specifically, the institutional investor is advised to carefully exercise voting rights of stocks it holds or manages in relation to motions which have significant impacts on rights and benefits of its clients and beneficiaries.</p> |
| | 5.2 | <p>Voting rights shall be exercised based on information obtained from investee companies by taking long-term joint interests of clients, beneficiaries and investee companies into account. An institutional investor shall not always vote in favor of, against or abstain from motions, but shall judge each motion individually. Voting rights shall be exercised objectively even in the case where a voting recommendation report has been obtained from a proxy advisory firm.</p> |
| | 5.3 | <p>An institutional investor should establish and disclose voting policies, which may include the following:</p> <ol style="list-style-type: none"> 1. Threshold for exercising voting rights as determined in contemplation of cost and benefit. For instance, voting rights will only be exercised if shareholding reaches a certain percentage or amount; 2. To the best of an institutional investors’ ability, prudently evaluate each motion of a shareholders’ meeting before casting votes and communicate in advance with the management of an investee company when necessary; 3. Define types of motions which an institutional investor may support, oppose to or may only deliver its abstention from in principle; 4. A statement that an institutional investor does not necessarily support motions proposed by management; 5. Extent to which an institutional investor obtains and adopts voting recommendation reports made by proxy advisory firms; |
| | 5.4 | <p>An institutional investor is advised to carefully record and analyze voting rights exercised in accordance with relevant policies, so as to facilitate disclosure of the voting activities, which may be disclosed in aggregate. For instance, votes cast in favor, against or abstaining from various types of motions made by investee companies, and the reason for in favor, against or abstaining of the motion which are considered important.</p> |

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| <i>Principle 6: Periodically disclose the status of fulfilment of stewardship responsibilities</i> | 6.1 | An institutional investor is advised to carefully record its stewardship activities to form a basis of assessment and improvement for its stewardship policy, action and disclosure. |
| | 6.2 | An institutional investor is advised to regularly review its stewardship policies, policies on managing conflicts of interest, voting policies and the status of fulfilment of stewardship responsibilities. An institutional investor is advised to evaluate the effectiveness in conducting stewardship activities. |
| | 6.3 | When regularly disclosing to its clients or beneficiaries a status of its fulfilment of stewardship duty according to agreement with or request of its clients or beneficiaries, an institutional investor may disclose relevant information may be made in written, electronic or any other form which can be easily accessible and readable. |
| | 6.4 | <p>Under a situation where clients and beneficiaries are vast in number or the provision of status of fulfilment of stewardship duty is not specified in an agreement, an institutional investor is advised to publish a stewardship report annually on its website or disclose its stewardship activities in its reports such as the business report and annual report. The content is advised to include:</p> <ol style="list-style-type: none"> 1. A statement on “Stewardship Principles for Institutional Investors” and explanations for non-compliance with certain principles; 2. Information of the company’s internal resources and organizational structure to implement stewardship; 3. Statistics of the engagement activities, 4. Case description of the dialogue and interaction with the investee company, the results of the agreement and the follow-up situation; 5. Cases of cooperation with other institutional investors; 6. Attendance in person or by proxy at shareholders’ meetings of an investee company; 7. Voting activities (as specified under Guideline 5–4); 8. Contact channel for stakeholders such as clients, beneficiaries, investee companies or other institutional investors to reach a signatory; 9. Other material events (e.g. major incidents of conflicts of interest which have taken place in the last year). |
| | 6.5 | If investment or stewardship activities are not directly performed by a signatory, for instance where management of a fund is fully entrusted to an asset manager by an asset owner, measures taken to ensure the trustee’s compliance with a stewardship policy is advised to be explained when disclosing the stewardship activities to the clients or beneficiaries. |

Source: Compiled by the author from the Taiwan Stewardship Code

