

Transforming Taiwan's Director Disqualification into the Optimal Model

Pro. Andrew Lin

National Taiwan University College of Law

Asian Corporate Law Forum

SMU, Singapore

12 April 2024



Research Methodology

- Define Disqualification (Scope of Discussion)
 1. Negative Qualification
 2. Judicial Removal of Director (Discharge Litigation)
 3. Ancillary Disqualification Legal Effect Collateral to Discharge Judgment (Taiwan's Special Regime)
 4. Disqualification by Trial (N/A)
 5. Disqualification Undertaking (Voluntary Disqualification) (N/A)

Historical Evolution

- Scope of Negative Qualification (Unfitness)
 1. Changes of the Scope in the Past
 2. Implication for Future Changes



Historical Evolution

- Judicial Removal of Directors

1. Company Act 200
2. Securities Investors and Futures Traders Protection Act (Investor Protection Act or SFIPA) Article 10-1 (May 2009 ~ July 2020)
3. SFIPA, §10-1, para. 1 & para. 7. (1 August 2020)

- SFIPC has brought 100 Discharge Cases against Directors and Supervisors of Publicly Traded Companies (2009 ~March 2024)

SFIPC Judicial Removal of Directors Suits

Pending Cases: 37 (2009 ~ 31 March 2024)

| <p>Applying New Law 2020 SFIPA</p> <p>Ancillary Disqualification Legal Effect Collateral to Discharge Judgment</p> | <p>Applying Old Law 2009-2020</p> <p>No Disqualification Effect Discharge Only</p> |
|--|--|
| <p>31</p> | <p>6</p> |

SFIPC Judicial Removal of Directors Suits **Closed Cases: 63** (2009 ~ 31 March 2024)

| Applying New Law | Applying Old Law | | |
|--|--|---|---|
| 8 | SFIPC Revoked: 31 | Judgment for SFIPC: 20 | Judgment for Defendants: 7 |
| Judgment for SFIPC: 7 | Resignation: 13 | | 1.4 cases not guilty; no other evidence of wrongdoing. |
| Registration record disqualification: cannot be directors, supervisors and representatives. | Discharged by Shareholders' Meeting: 2 | 1.SFIPC → FSC → MOEA 2.Discharged director can be re-elected. 3.One case: Director was discharged by court on 5 Nov. 2016 but juridical person appoint new representative to perform director duties. | 2.No retrospective effect. 3.Not a director when wrongdoing occurred . |
| Judgment for Defendant: 1 | Automatic Disqualification: 2 (not re-elected) | | |
| Commercial Court Case No. 111 Commercial-Suit 16 | Re-election Discontinue: 10 | | |
| Supreme Court Case No. 112 Tai-Shang 1110 (2023) | Juridical Person (Company Act §27)Appointing New Representative: 3 | | |
| Resigned before discharge suit. | Criminal Not guilty Appealed and revoked: 1 | | |
| Note: 3 cases double counted: (1) 2 cases have two defendant with different results; (2) 2 case J for defendant; SFIPC appealed and revoked. | | | |

Legal Issues Arising from Past Litigations

- A. Issues Related to the Automatic Disqualification Regime
1. Scope: changes: Eg. Treason crime was replaced with organized crime. Fraud, breach of trust, misappropriation...
 2. Whether there is a data bank to store the records of negative qualification? Notification of NQ related judgment of the Company Registry? Personal Information Protection?
 3. Cases related to the legal effect of corporate conducts by disqualified persons.

Legal Issues Arising from Past Litigations

- B. Issues Related to Judicial Removal of Directors between 2009 and 2020 SFIPA Amendment
- (a) Removing a Director Based on the Wrongdoing in Previous Term
- (b) Grounds for Removing a Director
- (c) Resignation of Directorship During or before Discharge Litigation

Legal Issues Arising from Past Litigations

- C. Issues Related to Judicial Removal of Directors Connecting to the Ancillary Disqualification Effect—after August 1, 2020
- (a) Whether the Wrongdoing in Other Companies Can Be Used to Discharge the Director?
- (b) Whether Resignation of Directorship During Litigation Would Cease the Discharge Litigation?
- (c) Whether Resignation or Leaving the Position before the SFIPC Instituting the Litigation Would Cease the Discharge Litigation?

Legal Issues Arising from Past Litigations

D. The Legal Consequence for Ignoring the Legal Effect of Disqualification (Automatic Discharge, Discharge by the Competent Authority, Judicial Removal, and Ancillary Disqualification Effect Collator to the Judicial Removal)

Comparative Studies

A. The U.K. Corporate Director Disqualification Act

(a) Introduction

(b) Scope of Unfitness

(c) Procedures of Disqualification

(d) Registration and the Search of Disqualified Persons

(e) Disqualification Sanction and Penalties for Violation of Court Order or Disqualification Undertaking

B. The U.S. Models: Federal Securities Laws

Proposed Reform

- Consolidation and Integration of Existing Regimes
 1. Maintaining the Automatic Disqualification Regime.
 2. Scope of Application: What types of companies? All? Public Companies? Affiliated companies?
 3. Scope of Unfitness: Types of crimes? Behaviors? Circumstances?



Proposed Reform

4. Disqualification Effect: Bar from serving as ...?
5. Who Can Be Disqualified? De facto, shadow?
6. Juridical Person Director: How to apply?



Proposed Reform

7. Notification, Registration, and Access of the Records.
8. Disqualifying Directors of Winding-up & Bankrupt Companies?



Proposed Reform

9. Power to Request Anyone to Produce Information.
10. Whistle Blower into Play.
11. Commercial Court Exclusive Jurisdiction.



