

上海证券交易所 上市公司治理指引

上海证券交易所

2000 年 10 月

目 录

第一章 总则	2
第二章 股东与股东大会	3
第三章 董事和董事会	5
第四章 监事和监事会	7
第五章 经理	8
第六章 薪酬制度	10
第七章 公司治理的信息披露	11

第一章 总则

第一条 公司治理的目标

- 1、保护股东的合法权益，实现股东价值和长期投资回报最大化，增强投资者的信心；
- 2、规范公司股东、董事、监事、高级管理人员的权利和义务，降低公司运作成本；
- 3、建立有效的控制机制，对公司的组织、资源、现金及其他资产、投资和整个公司的运作进行风险控制，提高公司整体运作效率和抗风险能力。

第二条 公司治理的基本原则

- 1、明确股东、董事、监事和经理人员的权利与责任，所有股东权利与义务一致，强化董事与公众股东之间的信息沟通；
- 2、强化董事个人及整个董事会的责任，包括完善董事会的结构与决策程序，确保董事会对公司的战略领导和对管理人员的有效监督，并确保董事会对公司和股东负责，使董事会的决策和运作真正符合全体股东的根本利益，避免内部人控制或大股东操纵。
- 3、保持董事会的独立性，强化董事会下属委员会的责任、作用及其独立性。强化监事会的独立性及其对董事、经理的监督作用。
- 4、建立并健全董事会对公司内部管理风险控制制度，强化董事会、监事会对高级管理人员业绩的评估和行为的监督。
- 5、建立和执行有效的、可操作的信息披露标准，保证公司运作的透明度。

第三条 《指引》的目的

- 1、形成并强化良好的公司治理理念，促进公司治理文化建设；
- 2、推动与公司治理有关的法治框架、监管框架和自律框架的完善；
- 3、推进公司治理机制的改革，引导公司治理机制的演进方向，促使上市公司规范运作。

第四条 《指引》的性质与特点

《指引》是指导性的。

《指引》只是粗线条地突出公司治理的核心理念、基本原则和基于中国目前的环境实现这些理念与原则所需的努力方向，而非集中于细致、完整的具体做法。

上市公司可以根据《指引》并结合公司的实际，制订、实施和向公众披露本企业的公司治理（或治理的某个/某些方面）具体做法，以增强投资者对公司的信心。

随着时间的推移，《指引》将会不断地调整、修改、补充和完善。在时机成熟时，《指引》的内容将融入《上市规则》之中，或作为上市协议的有机组成部分。

第二章 股东与股东大会

第五条 股东大会的召开、提案的审议与表决必须符合法律法规和本所有关规则的规定。

第六条 投票程序和规则应确保对同类别股东一视同仁，并不应因此而给股东、公司增加不合理的开支。

第七条 股东可亲自或委托他人代理投票，二者具有同等效力。公司可以在章程中规定其他形式的投票，如书面投票等。

股东委托他人投票时，只能委托一人为其代理人。

代理投票程序应遵循高效、准确的原则。

第八条 任何机构或个人在股东大会召开前可以依法向股东征集委托代理投票权。

投票委托书征集应采取无偿的方式。投票委托书征集者应向被征集者提供充分的信息，并向上海证券交易所备案。

第九条 公司可在章程中规定董事和监事的选举是否采取累积投票制。

第十条 被公司持有 20% 或以上股份的子公司，同时持有公司股份达 10% 或以上者，应回避表决。

第十一条 董事会应通过股东大会等途径同股东进行交流。股东有权向董事会、董事会下设委员会、监事会和高级管理人员等提问，并可就股东大会议程中的事项向董事、监事和高级管理人员提出质询，董事会应向股东提供提问、质询的机会。

第十二条 董事会应就前次股东大会决议中应由董事会办理的各项的执行情况向股东大会作出说明；由于特殊原因股东大会决议事项不能执行的，董事会应作出说明。

第十三条 股东对公司公布的年度报告有异议时，可以聘请有证券从业资格的会计师事务所、律师事务所对上市公司及其下属公司财务状况和董事、高级管理人员的行为进行检查，费用由股东自理。

第三章 董事和董事会

第十四条 董事应诚信、勤勉尽职。

第十五条 董事对公司全体股东负责，根据公司整体利益行事。

第十六条 公司应有正式、透明的程序来提名和选举董事。董事会应向新董事提供必要培训和相关资料。

独立董事候选人可以由股东、董事会提名委员会提出。合计持有公司 5% 股份的股东可以联合提名独立董事候选人。对公司有控制权的股东不宜提名独立董事候选人。

第十七条 公司宜至少拥有两名独立董事。当公司董事长由控制公司的股东的法定代表人兼任，或公司董事长兼任总经理，或公司董事长之亲属担任总经理时，独立董事占董事总人数的比重宜达到 30% 以上。

第十八条 独立董事应提出客观、公正的意见。当公司决策面临内部人控制和同控股股东等之间存在利益冲突时，独立董事可征

求外部独立顾问的咨询意见，公司应为此提供条件。

独立董事应保证投入足够的时间履行其职责，并应获得与其承担的义务和责任相应的报酬。独立董事在就职前应就其是否有足够的时间和精力履行职责向董事会作出声明。

第十九条 董事在一年内至少亲自参加 70% 的董事会会议。

第二十条 董事会召开会议宜至少提前 7 天将董事会议题的背景资料送达所有董事，并通知监事列席。董事有权在会后索取董事会决议的书面资料。

第二十一条 独立董事有权根据客观标准判断关联交易是否对公司有利，必要时可聘请专业评估师、独立财务顾问进行评估。

第二十二条 董事会可下设审计委员会、提名委员会、薪酬委员会等专业委员会。独立董事应在董事会下设委员会中发挥重要作用。

第二十三条 公司应对董事会下属委员会的重大活动予以充分和准确的披露。

第二十四条 公司可披露一年中召开董事会会议的次数、董事会议上每个董事的出席情况和董事会就重大事件的具体投票情况。

第二十五条 在有控股股东的情况下，公司宜披露独立董事对董事会能否公正地代表股东利益的判断。

第二十六条 公司可在年度报告中披露独立董事的人数、资历、与会、表决等具体情况。

第二十七条 董事会应通过指定的委员会，对董事的技能、经验和工作等情况进行年度总结，并在年度报告中披露。

第四章 监事和监事会

第二十八条 监事应诚信、勤勉地履行职责，维护股东的利益，监督董事会履行股东大会决议，督促董事和高级管理人员遵守法律、行政法规和公司章程的规定。

第二十九条 监事会的成员除股东代表和职工代表外，可以设立独立监事。由控股股东提名的监事人数在监事会中不应多于三分之一。国家公务员在公司中不宜担任监事。公司董事长或总经理之亲属不得担任公司监事。

第三十条 监事会可以根据需要设立专业委员会。

第三十一条 监事会应保持独立性。当监事会的决议与董事会的意见发生冲突，经协商无法取得一致意见时，监事会有权要求召集临时股东大会，并将有关决议和意见提交临时股东大会审议。

第三十二条 公司应提供充分必要的资源和条件，保障监事会独立有效地履行监督职能。监事会有权在必要时聘请外部机构如审计师、律师对公司及其下属公司财务状况和董事、高级管理人员的行为进行检查，其费用由公司承担。

第三十三条 监事有义务向监事会和公司声明其与董事、经

理、公司之间的利益关系，以及除担任本公司职务以外的其他任职情况。

监事不宜过多地担任其他公司的监事或董事职务，监事在就职前应就其是否有足够的时间和精力履行职责向监事会和董事会作出声明。

第三十四条 监事因未尽规定义务而给公司带来损失时应承担相应责任。

第三十五条 监事会有权要求相关董事、经理、财务负责人列席监事会议，并就有关问题对他们进行质询。

第三十六条 监事应经常与董事、经理、股东和职工交流与沟通。监事有权列席董事会会议和经理办公会议。公司应为监事与董事、经理、股东以及职工的交流提供条件，并承担相关费用。

第三十七条 监事会应对监事的技能、经验和工作等进行年度总结，并在年度报告中披露。

第五章 经理

第三十八条 经理应诚信勤勉地履行董事会的决议。

第三十九条 经理应自觉地接受董事会和监事会的监督，对董事会和监事会的质询应如实提供相关信息，并确保信息的及时、完整和准确。

第四十条 经理召开经理办公会议，应至少提前五个工作日通知监事会，以便监事会有选择地列席会议。

第四十一条 除在公司的控股公司或公司的下属子公司以外，经理不宜在其他公司担任除董事、监事以外的其他管理职务，也不宜在与本公司存在竞争关系的其他公司中担任董事、监事和其他职务。经理应如实向董事会声明其兼职情况。

第四十二条 经理不应从公司中获取除董事会规定和认可的薪酬以外的其他收入，也不宜利用职权置备超过其履行职务所需的办公用具。

第四十三条 当董事会确定的交易和合同与经理存在利害关系时，经理应向董事会声明该利害关系及其性质。

第四十四条 公司及其下属公司的经理应及时、完整、准确地向董事会和监事会提供有关公司经营业绩、重大合同、公司财务状况和经营前景等信息，以便董事会进行科学决策和监事会进行监督。

在经营管理过程中发生的对公司股价有较大影响的事项，公司及其下属公司经理应及时向公司董事会和负责信息披露事务的董事会秘书报告，以便信息及时披露。

第四十五条 经理违反有关法律、法规和公司章程规定，或未取得董事会的同意和超越董事会授权范围的情况下进行投资、资金给付或出借、处置资产、担保等行为，造成公司损失的，应承担相应责任。

第六章 薪酬制度

第四十六条 公司应建立与公司业绩和个人工作表现挂钩的薪酬制度，并予以充分披露。

第四十七条 公司应充分和清晰地披露所有涉及董事、监事和高级管理人员的薪酬安排。

第四十八条 公司应建立一套正式、公正、透明的程序和标准，来制订董事、监事和公司高级管理人员的薪酬计划。薪酬计划应易于接受股东的监督。

第四十九条 董事、监事和高级管理人员的薪酬计划可由薪酬委员会提出，并根据公司法的规定分别报股东大会或董事会决定。任何董事、监事和高级管理人员都不宜参与其自身薪酬的决定过程。

第五十条 董事会应每年检讨薪酬计划，包括制订计划的原则、过程以及与公司业绩的关系，并在年报中予以披露。

第五十一条 在公司任职的董事、监事和高级管理人员的薪酬结构应包括基本工资、年度奖金、其他现金收入以及各种形式的股权激励，其中与业绩挂钩的部分应在薪酬总额中占有显著比例。

第五十二条 股权激励计划的总体方案应获得股东大会批准，报证券交易所备案。经股东大会批准后，董事会可在有效期内，决

定认股期权计划授予的人员、涉及的股份总数(包括占已发行股本的百分比)、行权期限、行权价等相关条款。

第七章 公司治理的信息披露

第五十三条 公司应建立和健全内部信息流通控制机制，确保公司及其下属公司的重要信息及时报告公司董事会和董事会秘书，以确保公司及时履行信息披露义务。

第五十四条 公司除应按规定及时、准确地披露公司应予以披露的各种信息外，还应准确、完整、及时地公开披露可能影响投资者决策的有关公司治理状况(包括但不限于其内部控制机制及其运行状况)的重要信息。

第五十五条 公司可在年度报告中披露公司是否遵守本指引，并披露基于本指引制定的公司治理具体做法。若在实施中有重大差异，公司宜作出解释和说明。

Shanghai Stock Exchange Guidelines for Corporate Governance of Listed Companies

2000.10

Contents

PART 1	OBJECTIVES AND PRINCIPLES.....	14
PART 2	SHAREHOLDERS AND ANNUAL GENERAL MEETING (AGM).....	15
PART 3	DIRECTORS AND BOARD OF DIRECTORS	16
PART 4	SUPERVISORS AND THE BOARD OF SUPERVISORS	18
PART 5	MANAGERS	20
PART 6	REMUNERATION POLICIES.....	21
PART 7	DISCLOSURE	22

Part 1 Objectives and Principles

1. The objectives of the listed companies (the companies) include:
 - 1.1 Protect shareholders' interests, realize the maximization of shareholder value and investment return and strengthen investor confidences.
 - 1.2 Clarify the rights and duties of the market participants and lower agency costs of the companies.
 - 1.3 Build up a general structure of controlling the organization, resources, assets, investment and operation of the company in respect to the risk management. Enhance the company's efficiency through controlling and evaluating the performance of the management.
2. The companies should observe the following principles in fulfilling the objectives:
 - 2.1 Clarify the rights and duties of the shareholders, directors and the management, treat shareholders equally, and increase communication between directors and shareholders.
 - 2.2 Enhance the accountability of single directors and the Board of Directors, e.g. bettering the decision making procedures, so as to ensure that the Board has strategic influence over company's decision and effective monitoring over management. The Board should be held accountable to the company and shareholders to ensure that the decision and operation of the company are in line with the interest of the shareholders and avoid the problem of insider controlling.
 - 2.3 Maintain the independence of the Board and the committees under which.

- 2.4 Monitor the performance and conducts and the internal controlling procedures as well as the enforcement of the managerial procedures.
- 2.5 Establish and carry out effective and applicable disclosure standards that are of assistance to the corporate decision and management and ensure the transparency of the business operation.

Part 2 Shareholders and Annual General Meeting (AGM)

- 3. The convening, voting and consideration of proposals of the AGM should be in accordance with laws and the related rules of Shanghai Stock Exchange.
- 4. The procedure and rules for voting should treat all shareholders equally, without increasing any unnecessary expenditure to the shareholders and the listed company.
- 5. A shareholder may vote in person or by proxy. The listed companies may also stipulate any other forms of voting, i.e. written vote.

A shareholder may only appoint one person for proxy voting.

The procedure for proxy voting should be efficient and accurate.

- 6. Any institution or person may recruit the appointment of proxy from shareholders according to laws. Proxy recruitment should be of no reward. The proxy recruiter should provide adequate information to the shareholders and report to Shanghai Stock Exchange at the same time.
- 7. The articles of incorporation should make clear whether shareholders have a right to accumulate votes for directors and supervisors.
- 8. The sub-companies, whose 20% of shares or over are owned by the holding company, should not be entitled to vote if they possess over 10% of the shares

of the holding company.

9. Board of Directors should communicate with shareholders through AGM. Shareholders have the right to raise questions towards Board of Directors, committees under Board of Directors and Board of Supervisors. Shareholders may also question the agenda of meeting. Board of Directors should give shareholders opportunities to raise questions.
10. The Board should report the execution results of the resolutions passed on the previous meeting on the AGM. The Board should explain why some of those resolutions have not been carried out.

Part 3 Directors and Board of Directors

11. The directors represent the interests of the whole shareholders.
12. The directors should act with due diligence. The directors are liable when culpable or frequent negligence of duty happened.
13. There should be at least two independent directors and should account for at least twenty percent of the total numbers of directors. When the Chairman of the Board posits concurrently as the CEO, this percentage should be over 30%. The independent directors should propose objective and just suggestions. Especially, when conflict of interests is involved between the company's decision making and the controlling shareholders, the independent directors should consult with external independent advisers, for which the company should provide corresponding conditions.

The independent directors should spend enough time in fulfilling his duty and get paid based on his performance.
14. The company should have formal and transparent procedures to select directors.

The Board of Directors should supply necessary training and related information.

15. The directors should attend at least seventy percent of the Board of Directors' meetings.
16. The Board should set up ad hoc committees, such as the Audit Committee, Remuneration Committee, Nominating Committee and Investment Committees. At least the Board should set up an Audit Committee. These committees should mainly consist of independent directors, and the chairmen of these committees must be independent directors.
17. The Auditing Committee should be responsible for ① inspecting accounting policies, financial positions and reporting procedures, ② communicating with accounting firms through auditing procedures, ③ recommending and appointing accounting firms, ④ inspecting internal control and auditing functions, ⑤ inspecting the company's observance of the laws and other legal duties; ⑥ monitoring risks such as financial risk and computer safety risk, ⑦ supervising company's conducts in business and ⑧ other duties specified by the Board.
18. The Remuneration Committee is responsible for drafting, supervising and checking the remuneration policies for the company's senior managers.
19. The Nominating Committee makes proposals about the scale and constitution of the Board, providing opinions on nominating new directors and senior managers. The Committee should insure that the procedures of appointing directors and senior managers are fair and transparent.
20. The Investment Committee is responsible for drafting, supervising and checking the significant policies in investment decision making.
21. The Board of Directors should appoint an independent director to verify if the connected trading is beneficial to the company. Professional assessors or independent financial advisers should be invited where necessary.

22. The company should disclose the number of the Board of Directors' meetings, the attendance of every director and the voting for significant events.
23. Under the situation that there are controlling shareholders, the company should disclose if the interests of minority shareholders are represented on the Board.
24. The company should make public in annual report the number, the qualifications, the meeting attendance and the voting etc.
25. The company should make public sufficiently and efficiently the activities and the attendance of the single directors in the annual auditing meeting.
26. The Board of Directors should appoint professional committees to evaluate the skill, experience and the working performance of every director at the end of the year and disclose in the annual report.

Part 4 Supervisors and the Board of Supervisors

27. Board of Supervisors should carry out its duty with due diligence , protect shareholders' interests , supervise directors and senior managers in executing the resolutions passed by the AGM, urge directors and senior managers to observe rules, regulations and Articles of the Corporation.
28. Besides members representing shareholders and employees, independent supervisors should be also included in the Board of Supervisors. The number of supervisors representing the state-shareholder should not be more than one third of chairs in the Board of Supervisors. The government officials should not serve as the supervisor in the company.
29. Special committees may be set up in the Board of Supervisors when needed.

30. Board of Supervisors should maintain independence. If there are conflicts between resolutions of Board of Supervisors and opinions of Board of Directors, and a unanimity could not be reached through negotiation, Board of Supervisors have rights to ask Directors to call a temporary shareholder meeting to discuss the issues.
31. Companies should provide adequate and necessary resources and facilities to ensure supervisors carry out their obligations effectively and independently. The Board of Supervisors has right to ask independent institutions such as auditors, lawyers to review financial statements, with the relevant costs undertaken by companies.
32. Supervisors should make statements to the Board of Supervisors and the company on their interests related to the Directors, managers and the company. Supervisors' posts in other companies and their social posts should be disclosed. In order to have enough time and energy to review the company affairs and fulfill their supervising obligations, supervisors should not undertake too many posts as supervisors and directors in other companies. Supervisors should make a statement to the Board whether he or she has such time and energy to fulfil obligations before taking the position.
33. Supervisors should be responsible for the losses occurred to their company resulting from their failures in obligations.
34. Board of Supervisors should ask relevant directors, executives and financial managers to attend Meetings of Supervisors if necessary and address inquiries.
35. Supervisors should communicate continuously with directors, managers and shareholders. Supervisors should be authorized as observers to attend Meetings of Directors and Executive Meetings of Manager voluntarily. Companies should provide conditions for Supervisors to communicate with directors, managers, shareholders and employees and bear the relevant costs.
36. Board of Supervisors should conclude and disclose in the annual report supervisors' skill, experience and performance etc.

Part 5 Managers

37. Managers should execute the resolutions passed by the Board of Directors in good faith and diligence.
38. Managers should be liable to monitoring from Board of Directors and Board of Supervisors, provide relevant information upon the questions of Board of Directors and Board of Supervisors voluntarily and ensure that those information are accurate, full and timely.
39. Managers should not concurrently hold positions, except as directors and supervisors, in other companies. Managers should not concurrently hold positions in other competitive companies. Managers should report their concurrently held positions to Board of Directors.
40. Managers should not acquire incomes from the listed company unless the incomes are stipulated and recognized in the remuneration policies by the Board of Directors.
41. If there are conflicts of interests between managers and the contracts or deals determined by the Board of Directors, the managers should report their interests to the Board of Directors.
42. Managers should provide information concerning performance, important deals and contracts, financial position and operational prospects of the company to the Board of Directors in time, fully and accurately.
43. Managers should be held responsible for compensating and legally liable if they commit illegal acts or breach articles of incorporation, or conduct investment, money payment, asset disposing without permission or authorization from the Board of Directors and cause losses to the company.

Part 6 Remuneration Policies

44. Corporate remuneration policies should be aligned with the performance of company and personnel.
45. Remuneration scheme of directors or supervisory board members and key executives should be disclosed fully and clearly.
46. Companies should establish formal, fair and transparent procedures and standards for developing remuneration scheme. The contents and structure should be such that all relevant participants can understand the scheme easily and shareholders can monitor the scheme conveniently.
47. The remuneration committee should be responsible for developing the remuneration scheme of directors or supervisory board members and key executives. The scheme must be approved by the Board of Directors or AGM. No directors or supervisory board members and key executives should be involved in deciding his or her own remuneration.
48. The Board of Directors should examine the remuneration scheme annually, including its principle, procedures and relationship with corporate performance. These details should be disclosed in annual report.
49. The remuneration package of executive directors or supervisory board members and key executives should consist of wage, bonus and stock-based incentive scheme. The performance-related elements of remuneration should form a significant proportion of the total remuneration package.
50. Stock-based incentive schemes must be approved by the AGM.
51. After remuneration scheme is approved by AGM, the Board of Directors has rights to determine the terms of scheme, including the participants, the total

amount of the shares subject to the scheme (together with the percentage of the issued share capital that it represents at the time) and the subscription price. Any alterations to the terms and conditions of a scheme, which are of material nature, must be approved by the AGM.

Part 7 Disclosure

52. Companies should disclose any important information truly, accurately, fully and timely about corporate governance which may affect decisions of investors.
53. In the annual reports, companies should disclose whether they have complied with these Guidelines and to what extent they have followed the best practices provided in these Guidelines. If the companies' practices are not in line with the Guidelines, they should explain why there have been such differences.