In order to examine SinoPac Holdings from the aspect of ownership and control, it is important to understand Taiwan’s legal framework which may affect the misalignment between ownership and control. The controlling group(s) may adopt the following strategies to maximize their control. The following is an overview of Taiwan’s legal framework and factors which may impact on the separation of ownership and control.

3.1 Owners’ identity

According to a research done by Yeh, Lee and Woidtke, over 76% of Taiwan’s public companies are family-controlled and 53% of their board of directors are appointed by the controlling family. Moreover, The research conducted by Claessens et al. (2000) reaches similar conclusion by identifying Taiwan as a country where large family controlled companies display a significant wedge between ownership and control. The Hong family is defined as the ultimate owner in control in this research, who seems to fit the profiles concluded by both Yeh et al. and Claessens et al.

3.2 Voting power

3.2.1 Types of Shares

In Taiwan the types of shares can be categorized into two groups, i.e. preferred stocks and common stocks. When a company issues preferred stocks, it has to specify

---

1 See 許崇源 et al., 2003.
the following items in their articles of incorporation as per section 157 of the Company Law:

i. The order, fixed amount or fixed ratio of allocation of dividends and bonus on preferred shares;

ii. The order, fixed amount or fixed ratio of allocation of residual assets of the company;

iii. The order of, or restriction on, or non-voting right on the exercise of voting power by preferred shareholders;

iv. Other matters concerning rights and obligations of preferred shares.

Moreover, there are no restrictions as to the number of preferred shares that a company can issue.2

3.2.2 ‘One-share-one-vote’ principle

Under Taiwan’s current Company Law regime, ‘one-share-one-vote’ is the principle. Section 179 clearly states that a shareholder shall have one voting power in respect of each share in his/her possession although section 157 does grant companies the right to issue non-voting preferred stocks. Thus, companies cannot issue preferred shares with multiple voting rights. Each preferred share is only allowed to be accorded with either one voting power or less.3

3 See 曾淑瑜, 2003.
3.2.3 Voting cap

As discussed above, voting cap is prohibited under Taiwan’s Company Law owing to the ‘one-share-one-vote’ principle. Thus, any attempts to implement flat or scaled voting caps will be contrary to the fundamental principle of ‘one-share-one-vote’ enshrined in the Company Law.

3.2.4 Multiple voting rights

Companies are not allowed to issue multiple voting rights shares under the current Company Law regime. Thus, it is impossible for companies to grant more voting powers to certain shareholders than others so as to perpetuate the controlling block’s control.

3.2.5 Restrictions on share transfers

Section 163 of the Company Law stipulates that assignment or transfer of shares of a company shall not be prohibited or restricted by any provision in the articles of incorporation of the issuing company. The rationale behind this section is that company is prohibited from buying back shareholders’ stocks due to the capital maintenance principle, as set out in section 167 of the Company Law: a company may not at its own discretion redeem or buy back any of its outstanding shares except on certain grounds, such as treasury stocks or preferred stocks. Therefore, the only way that shareholders can exit is to dispose of their shares through assignment or transfer.
However, the Company Law does not specifically prohibit the restrictions of assignment or transfer of stocks on the ground of agreements made between companies and shareholders. Thus, as long as the content of the agreement is not against public policy, the court will uphold the agreement. Nevertheless, a company cannot claim that such assignment or transfer is invalid against the third party, i.e. assignee or transferee, on the ground of the existence of a binding agreement between the company and the transferor. Under this situation, the only recourse for the company is to sue the other party to the agreement for breach of contract.  

3.3 Proxy rules

Rules Governing the Use of Proxies for Attendance at Shareholder Meetings of Public Companies are designed to regulate proxy voting of public companies. According to Article 5 of this regulation,

- A shareholder is entitled to seek proxy votes if the shareholder holds more than 50,000 shares of the outstanding shares of the company provided that the election of directors or supervisors is not proposed in the shareholders’ meeting.

- A shareholder needs to have continuously held the company shares for a period of more than six months and meet one of the following two conditions if the election of directors or supervisors is in the agenda of the shareholders’ meeting. First, the

---

4 See 曾淑瑜, 2003.
shareholder holds at least 0.2% of the total number of issued and outstanding shares of the company and not less than 100,000 shares. Second, the shareholder holds 800,000 or more shares of the issued and outstanding shares of the company.

Nevertheless, Article 20 imposes restrictions on the number of proxy votes that a shareholder is entitled to solicit under two conditions.

i. If a solicitor of proxies is a candidate for directorship or supervisorship, or no election of directors or supervisors is proposed in the shareholders meeting, the solicitor shall not seek proxy votes which are more than 3% of the total number of issued and outstanding shares of the company.

ii. If a solicitor of proxies supports another candidate for the directorship or supervisorship, the solicitor shall not seek proxy votes which are more than 1% of the total number of issued and outstanding shares of the company.

If a shareholder has continuously held 10% or more of the total issued and outstanding shares of a company for more than one year, the shareholder may consign a trust enterprise to act as the solicitor to seek proxies. Moreover, the latest revision of the regulation reduces the threshold of consigning a trust enterprise to 8% if any of the candidates for either directorship or supervisorship meets the
qualification of outside director or supervisor. By doing so, the total number of proxies sought is not subject to any restrictions.

3.4 Minimum shareholding to block major decisions

Two thirds of shareholders’ votes are required before any resolutions regarding any of the following essential business decisions can be adopted. Thus, one third of shareholders’ total votes are enough to block major decisions.

i. Enter into, amend, or terminate any contract for lease of the company's business in whole, or entrusting others to operate the business, or for regular joint operation with others.

ii. Transfer the whole or any essential part of its business or assets.

iii. Accept the transfer of another's whole business or assets, which has great effect on the business operation of the company.

If the articles of incorporation set higher requirements, then higher percentage of votes is required before resolutions regarding major decisions can be adopted. In other words, shareholders need less than one third of the total votes to block major decisions.

3.5 Minimum shareholding to call for extraordinary shareholder’s meeting

In accordance with Section 173(1) of the Company Law, any shareholder of a company who has continuously held more than 3% of the total number of outstanding
shares for a period of one year is entitled to request the board of directors to hold an extraordinary shareholders meeting.

### 3.6 Cross-shareholdings

Cross-shareholdings effectively imply holdings of own shares and increase the voting power of any existing block-holder. They promote ‘voting cartels’ where management votes in favor of each other at the respective annual general meetings. (Boehmer, Ekkehart, 2001).

Cross-shareholding and pyramid structures are commonly used by the largest shareholders in Taiwan to control public companies. The largest shareholders of 40.1% of Taiwan’s listed companies use cross-shareholding devise.\(^5\)

### 3.7 Pyramid structure

A firm’s ownership structure is a pyramid if (1) it has an ultimate owner, and (2) there is at least one publicly traded company between it and the ultimate owner in the chain of voting rights (La Porta, 1999). According to the research conducted by Yeh, Lee and Woidtke, the largest shareholders of 23.9% of Taiwan’s listed companies adopt pyramid structures.\(^6\)

### 3.8 Commercial banks’ roles

Taiwan’s commercial banks do not enjoy as much freedom as their German

---

\(^5\) See 許崇源 et al., 2003.

\(^6\) See 許崇源 et al., 2003.
counterparts. Commercial banks are disallowed to own other companies' equities. Section 74 of the Banking Law stipulates that subject to the government’s approval commercial banks are allowed to invest in non-financial related businesses in cooperation with an economic development project sponsored by the government. However, commercial banks are not allowed to be involved in the management of the business. Thus, Taiwan’s commercial banks do not play an active role as their German counterparts.

### 3.9 Board of directors

#### 3.9.1 Unitary system

Taiwan’s legal system is largely based on the civil law system. Notwithstanding, Taiwan has adopted the Anglo-American board system, i.e. unitary board system, as oppose to the German two-board system. Thus, the board of directors has to play two roles at the same time, namely being company’s supreme executive body and performing corporate governance functions.

#### 3.9.2 Outside directors

In accordance with the newly revised Company Law, the board of directors of a company shall be elected by the shareholders' meeting from among the persons with disposing capacity. Therefore, a director does not necessarily need to be a company’s shareholder. This paves the way for the introduction of the system of outside
3.9.3 Mandated minimum percentage of shareholding of board members

Section 26 of the Securities and Exchanges Act mandates the required minimum percentages of shareholdings by directors of public company. The total shares of nominal stocks held by the directors of an issuer shall not be less than a specified percentage of its total issued shares.

Rules and Review Procedures for Director and Supervisor Share Ownership Ratios at Public Companies sets out the minimum percentage of total shares owned by directors in a public company of various sizes of capitals.

Table 3.1: Minimum percentages of total shares owned by directors of public company

<table>
<thead>
<tr>
<th>Company’s Capital</th>
<th>Minimum percentage of shares owned by directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than NT$300 million</td>
<td>15%</td>
</tr>
<tr>
<td>NT$300 million</td>
<td></td>
</tr>
<tr>
<td></td>
<td>NT$1 billion</td>
</tr>
<tr>
<td>NT$1 billion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>NT$2 billion</td>
</tr>
<tr>
<td>More than NT$2 billion</td>
<td>5%</td>
</tr>
</tbody>
</table>

Note: The above percentages should be reduced by 20% in the event that a public company has simultaneously elected two or more independent directors and one or more independent supervisor.

Source: Article 2 of Rules and Review Procedures for Director and Supervisor Share Ownership Ratios at Public Companies
3.10 Subsidiaries 100% owned by FHC

Section 15(2) & (3) of the Financial Holding Company Act sets out that if a financial holding company owns 100% of its subsidiaries, then the rights and functions of the shareholders’ meetings of such subsidiaries should be exercised by the board of directors of such subsidiaries. Furthermore, the board of directors and supervisors of the subsidiaries are appointed by the FHC’s board of directors. In other words, the board of the FHC will appoint the board members of the subsidiaries.

---

7 See 彭金龍, 2003.