



Fact vs. Fiction: Fortress Taiwan Defending Against Buy Out Funds

By: Dr. Richard L. Thurston, Vice President and General
Counsel

Taiwan Semiconductor Manufacturing Company, Ltd.

TerraLex
Asia-Pacific Regional Meeting
March 31, 2007





Introduction

- Taiwan Semiconductor Manufacturing Company, Ltd. (www.tsmc.com)
 - Established in 1987.
 - US \$50bb+ market cap.
 - Leader of foundry segment of semiconductor industry, offering advanced wafer production and unparalleled manufacturing efficiency.
 - 400+ customers; 4,000+ products manufactured.
 - Headquartered in the HsinChu Science Park with offices in Taipei, Japan, Korea, India, Netherlands, Shanghai and Beijing, PRC, and in San Jose, Orange County, Boston and Austin, USA.
 - Manufacturing facilities in: Hsinchu and Tainan, Taiwan; Songjiang, PRC; Singapore; and Camas, Washington, USA.



Background Information

- Potential Acquisitions of Taiwan firms by Private Equity Firms.
 - Market valuations are attractive and generate cash flow to amortize acquisition debt.
 - Global position of Taiwan companies.
 - PRC presence of many Taiwan companies,
 - Technological and intellectual property leadership
 - Increasingly large private equity funds with access to enormous capital – have shown interest in Taiwan firms.

- Hostile Acquisitions
 - U.S. anti-takeover protection measures highly developed.
 - In Taiwan, U.S. type anti-takeover protection is relatively underdeveloped and is a potential area for company law reform.



Standard U.S. Takeover Defenses

- Charter and By-Law Provisions
- Delaware Code §203 (Business Combinations)
- Shareholder Rights Plans



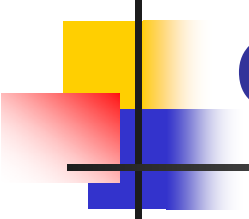
Charter and By-Law Provisions

U.S.

- Issuance of “blank check” preferred stock to thwart takeover attempt.
- Allowing fixing size of the board of directors and staggering members into staggered three-year terms.
- Prohibiting cumulative voting in the election of directors.
- Prohibiting shareholder action by written consent.
- Super-majority shareholder approval to effect amendments to board classification, size and prohibition on shareholder action by written consent.

Taiwan

- No Such Provisions Exist Under Taiwan Law
 - Exception – super majority shareholder approval to effect amendments exists to a limited extent in Taiwan.
 - Staggered Board is not prohibited by law but not favored by relevant authorities.



Delaware Code §203 (Business Combinations)

U.S.

- Provides that specified persons, who own, or within three years did own, 15% or more of the outstanding voting stock of a corporation may not engage in some “business combinations” with the corporation for a period of three years after the due date on which the person became an interested shareholder.
- Provision has anti-takeover effect with respect to transactions not approved in advance by board of directors.

Taiwan

- This Type of Statute Does Not Exist Under Taiwan Law.
- 10% reporting obligations under Taiwan Law does not prohibit stockholder from engaging in some “business combination” with corporation during specified time period.



Shareholder Rights Plans

U.S.

- Purchase of specific amount of stock by acquirer beyond specific trigger level (typically 10%, 15% or 20%) without approval of the target board may result in dramatic dilution to acquirer.
- Provides boards with significant leverage in the negotiating process with prospective acquirer.

Taiwan

- Taiwan Company Law regarding shareholder rights plan is too restrictive to be of any real use in hostile takeover situation.



Potential Defensive Measures Would Require Taiwan Legislative Change

- Classified Board (most likely requires amendment or ruling)
- Prohibition of Nominating/Electing Persons as Directors Who Have Competitive Relationships
- Moratorium By-Laws
- Control Share of Acquisition Provisions
- Social Justice Provisions
- Other Defensive Measures Available During Takeover Attempt



Classified Board

U.S.

- Companies may have three classes of members on board of directors.
- Potential acquirer cannot appoint/elect a majority of the board until at least two classes of directors come up for election.
- Does not insulate companies from change in control but serves to delay a change in control of a company's board, and deters proxy contests and tender offers.

Taiwan

- Classified Board Is Not Specifically Provided in in Taiwan Company Law.



Prohibition of Nominating/Electing Persons as Directors Who Have Competitive Relationships

U.S.

- Individuals may not serve on board if such individuals are engaged in any business that competes with company or its subsidiaries.
- Prevents competitor who has acquired significant but not controlling interest from appointing officers/directors from such competitor.

Taiwan

- Fiduciary Duties of Board Members Under Company Law
 - Duty of Loyalty and Duty of Care in conducting the business operation of the company.
 - Director cannot usurp corporate opportunity without shareholder approval.
- Companies should consider incorporating specific U.S. type provision in Articles of Incorporation or governing rules.



Moratorium By-Laws

U.S.

- Shareholder's crossing of specified threshold percentage (typically 15%) bars certain kinds of corporate transactions with company for certain period of time.
 - Unless approved by majority of the other shareholders
- Restraint on potential acquirer's ability to enter any mergers with company during prohibited period.

Taiwan

- Companies in Taiwan Should Explore If Such Rules Can Be Implemented.



Control Share Acquisition Provisions

U.S.

- Significant shareholder cannot vote its share once it has crossed a specified threshold percentage (i.e., 10% or 20%) unless approved by majority of the other shareholders.
- Applies to a large number of U.S. corporations either as matter of law or through amendments to charter provisions.

Taiwan

- Such Provisions Are Not Permitted Under Current Taiwan Law.



Social Justice Provisions

U.S.

- Authorizes company's directors to reject an unsolicited offer based on potential social/economic impact of offer.
- Provides moral bases for company's directors to reject unsolicited offer even if offer is at a premium.

Taiwan

- There Is No Such Provision Currently In Taiwan Law.



Other Available Defensive Measures

U.S.

- Defensive Acquisitions
- Placement of shares with a friendly “white knight”.
- Granting of “lock-up” options with respect to stock/assets .
- Spin-offs, reorganizations or recapitalization
- Issuance of shares with voting right in excess of the voting rights of the currently outstanding common shares.
- Execution of standstill agreements with the parties that may be viewed as potentially hostile.

Taiwan

- All Items Except “Defensive Acquisitions” Are Not Allowed Under Taiwan Law.
- Stock Option – like plans (although Stock purchase plans are limited)
- Share buy-back plans (limited)
- So, the best defense is a good offense.
- Change of control provisions.
- Proxy considerations (limited)