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Contextualising ESG Funds' Engagement Strategies in Asia

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Abstract

Studies show that funds with ESG orientation vote differently and have different investment strategies as compared to their non-ESG counterparts. Asia poses special challenges for ESG funds because of its regulatory restrictions, concentrated shareholding structure, political concerns, and questionable ESG data. In this paper, we examine the various engagement strategies that ESG funds have implemented to further their sustainability objectives in Asia by first identifying some of the major legal and structural obstacles that ESG funds, especially foreign ones, face in this region. Second, using hand-collected data on ESG funds operating in Asia, we construct an ESG Funds Engagement Pyramid to detail the strategies generally used by ESG funds. Finally, despite the engagement challenges faced by ESG funds in Asia, we demonstrate that certain notable features in Asia can address some of the difficulties and obstacles posed by Asia's investing climate and may support the engagement strategies of ESG funds.

Keywords: ESG Funds, engagement strategies, Asia, concentrated shareholding, interested party transactions, corporate governance

JEL Classifications: K20, K32, K39

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Abstract

Studies show that funds with ESG orientation vote differently and have different investment strategies as compared to their non-ESG counterparts. Asia poses special challenges for ESG funds because of its regulatory restrictions, concentrated shareholding structure, political concerns, and questionable ESG data. In this paper, we examine the various engagement strategies that ESG funds have implemented to further their sustainability objectives in Asia by first identifying some of the major legal and structural obstacles that ESG funds, especially foreign ones, face in this region. Second, using hand-collected data on ESG funds operating in Asia, we construct an ESG Funds Engagement Pyramid to detail the strategies generally used by ESG funds. Finally, despite the engagement challenges faced by ESG funds in Asia, we demonstrate that certain notable features in Asia can address some of the difficulties and obstacles posed by Asia's investing climate and may support the engagement strategies of ESG funds.

Keywords ESG funds, engagement strategies, Asia, legal obstacles, fund engagement pyramid

1. Introduction

Over the past decade, Environmental, Social and Governance ("ESG") oriented funds have gained considerable interests with investors and scholars. According to a 2020 OECD report, the amount of professionally managed portfolios that has taken into account the key elements of ESG assessments exceeded USD17.5 trillion globally in 2018.[1] ESG-related assets under management ("AuM") are expected to grow from USD18.4 trillion in 2021 to USD33.9 trillion in 2026 and will constitute 21.5% of total global AuM in less than five years. Survey results have shown that 90% of asset managers believed that integrating ESG into their investment strategy improved overall returns. Moreover, 60% of institutional investors reported that ESG investing had resulted in higher performance yields, compared to non-ESG equivalents.[2]

On the other hand, the fear of greenwashing[3] by ESG funds, especially ESG Exchange traded funds,[4] has prompted regulators in various jurisdictions, including the US,[5] the UK[6] and Singapore,[7] to set rules and guidelines on when and how a fund can use the 'ESG' label. In addition, the politicization of ESG in the US has driven some states to enact legislation to limit or discourage various kinds of ESG investing, especially those managing the state pension funds.[8] As a result, some companies have resorted to green hushing or the deliberate concealment of sustainability effort,[9] causing a set-back to the ESG movement. Nonetheless,

[1] Boffo and Patalano (2020).
[2] PwC (2022).
[3] Delmas and Burbano (2011).
[4] Flood (2023).
[5] In the US, the Federal Trade Commission (FTC) has issued Green Guides which provide guidance on how companies can make truthful and non-deceptive environmental claims and the FTC can take enforcement actions against companies that make false or misleading environmental claims: see FTC (2012). In September 2023, the U.S. Securities and Exchange Commission (SEC) made amendments to the Investment Company Act of 1940 "Names Rule" that require that 80% of a fund's portfolio matches the asset advertised by its name to prevent funds from exploiting investor interest in ESG and investing with names that do not accurately reflect its investments or strategies: see Gillison and Price (2023).
[6] Financial Conduct Authority (2023).
[7] Monetary Authority of Singapore (2022).
[8] Cifrino (2023).
[9] That said, green hushing is a universal concern: see Ku (2024).

empirical studies[10] have shown that mutual funds with ESG mandates do deliver on their promises and have portfolios tilted towards companies with high ESG scores than those held by non-ESG funds. The voting patterns of these ESG funds are different from non-ESG funds and they are more supportive of ESG-related resolutions at shareholders' meetings. In particular, ESG oriented funds have investment strategies that are different from those normal funds and their strategies "need particular tailoring in emerging markets".[11] That said, there is little literature on how ESG funds invest and engage with their target companies when operating in these emerging markets, particularly in Asia.

In this paper, we seek to contribute to this growing body of literature by examining the various engagement strategies that ESG funds have implemented to further their sustainability objectives in Asia. We define ESG funds in our paper broadly regardless of their nature as funds that integrate ESG factors, adopting either the 'double materiality'[12] (also known as impact materiality) or single materiality[13] (also known as financial materiality) framework in their key investment strategies or decisions. This means that the ESG factors are examined from 'outside-in' (financial materiality) and/or 'inside-out' (impact materiality) perspectives and they significantly influence these funds' selection of companies to invest in. In part 2, we review the various obstacles that foreign funds, including ESG funds, face while operating in Asia. Despite these challenges, we have found that ESG funds have deployed a variety of engagement strategies in Asia. In part 3, we construct an engagement pyramid to classify the

[10] Curtis, Fisch and Robertsons (2021).
[11] Boffo and Patalano (2020), p. 34.
[12] The 'double materiality' framework was first proposed by the European Commission in 2019 on guidelines on non-financial reporting. The European Sustainability Reporting Standards (ESRS), brought in by the Corporate Sustainability Reporting Directive (CSRD) and coming into effect in 2024, will be the first to introduce mandatory double materiality sustainability reporting for nearly 50,000 companies operating in the EU. European headquartered funds mentioned in this paper such as APG and Amundi will be subject to the double materiality framework.
[13] MSCI, the largest ESG rating company in the world, adopts the single materiality framework for ESG funds. See Simpson, Rathi and Kishan (2021).

different levels of engagement strategies that funds employ with respect to their target companies. We then examine various sources and hand-collected information relating to 16 ESG funds which are active in Asia to illustrate their engagement strategies in the context of the engagement pyramid. In part 4, we demonstrate how some of the ESG funds have sought to overcome the challenges posed by Asia's investing climate. Finally, we conclude our paper in part 5.

2. Regulatory and Structural Difficulties for Foreign ESG Funds in Asia

Despite being the current chief engine driving global growth,[14] Asia remains a difficult region for investment funds, especially foreign ones, to operate in. We will briefly discuss four obstacles here, namely, shareholding restrictions and disclosure requirements, concentrated shareholding structure, political concerns, and the questionable quality of ESG data.

2.1 Shareholding restrictions and Disclosure requirements

Entry obstacles apply generally to foreign funds. When present, these obstacles can deter the operation of ESG funds in Asia by imposing entry restrictions on the sectors in which these funds can invest. The severity of such entry restrictions varies from jurisdiction to jurisdiction and may come in the form of a disclosure requirement or foreign shareholding caps. Restrictions specifically targeting foreign investment is sparce in Singapore[15] with there being restrictions only on foreign ownership in specific sectors. Meanwhile, legal obstacles of varying degrees are imposed in Japan[16], the People's Republic of China ("China"),[17] South

[14] Carriere-Swallow and Srinivasan (2023).
[15] Significant Investment Review Act 2024 (Act No. 1/2024) (Sg).
[16] Mizukoshi, Hirano and Sukada (2022).
[17] Chen et al. (2022).

Korea,[18] and India.[19] In Japan, for example, the Foreign Exchange and Foreign Trade Act[20] ("FEFTA") requires foreign investors to file an ex-post shareholding disclosure report with regard to the acquisition of a listed company if their shareholding exceeds the 1% mark.[21] Similarly, in Korea, a foreign investor holding 5% or more in a security issued by a Korea Exchange ("KRX") listed company need to report such holdings to the relevant authorities within five business days from the trade date. Subsequently, reporting must be done for every 1% or more change in shareholding.[22] Such disclosure requirements may prevent foreign funds from joining forces together to vote for ESG-friendly shareholder proposals for fear of running afoul of the restriction.

China issues a Negative List for Foreign Investment Access[23] that sets out the sectors in which foreign investment is capped by shares or outright prohibited. For the uncapped sectors, China also issues a Catalogue of Encouraged Industries for Foreign Investment that indicates to foreign investors the sectors where investment will be given preferential treatment.[24] In addition, foreign institutional investors and hedge funds in China must first seek approval from the China Securities Regulatory Commission ("CSRC") before they can even enter the market.[25] Similar strict entry bottlenecks can be seen in India where foreign funds must first seek such regulatory approval from the Securities and Exchange Board of India

[18] Clearstream (2023).
[19] Gaggar et al. (2022).
[20] For a technical overview of the FETA, see Withersworldwide (2023).
[21] Withersworldwide (2023) at Q5(B).
[22] Financial Investment Services and Capital Market Act (2007) (Act No. 8635) (Kor.), art 147. See also Clearstream (2024).
[23] NDRC and MOFCOM (2021).
[24] NDRC and MOFCOM (2022). See also Zhou (2022).
[25] Lin L (2024).

before entry[26] which is likewise qualified by caps on shareholdings.[27] These entry obstacles impose compliance costs for ESG funds operating in Asia.

2.2 Concentrated Shareholding Structure

Firms in Asia are usually closely held by various groups with controlling shareholding,[28] like the Korea's *chaebols*, Japan's *zaibatsu*, India's industrial houses and the state (or entities controlled by the state) in China and Singapore. Moreover, in South Korea, Japan, and India, cross shareholding structures are common.[29] Both controlling and cross shareholding market structures curtail shareholder activism, since funds, which usually take a minority position, depend very much on convincing other shareholders to vote with them to effect change. As such, funds usually can only deploy their capital effectively in a minority of firms in the market which are without controlling shareholders or significant cross shareholding. For example, in China, most A-share[30] companies have a dominant controlling shareholder (who is either the state or family/founder) and institutional investors are minority shareholders. Thus, it is difficult for funds to engage with listed companies in China, and it also explains why one survey found that 76.7% of the firms targeted by funds in shareholder activist campaigns in China from 1994 to 2021 generally lacked a dominant controlling shareholder.[31]

[26] Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations (2019), Chapter 3.
[27] Gaggar et al. (2022), p. 149.
[28] Heugen et al. (2009).
[29] For Korea, see Rho and Kim (2012); for Japan, see Buchan et al. (2012); for India, see Balakrishnan and Santhakumar (2017), p. 452.
[30] A-shares refer to shares issued by Chinese companies incorporated in China, listed in the domestic stock market and open to foreign investors via the Qualified Foreign Institutional Investor (QFII), RMB Qualified Foreign Institutional Investor (RQFII), or the Stock Connect programs.
[31] Lin and Puchniak (2022), pp114-115.

Similarly, in India, controlling shareholders, or promoters as they are commonly called, generally hold around 50% shares in listed companies and have significant influence over the board of directors. In contrast, institutional investors hold so few shares that their engagement effort is unlikely to have any impact on the outcome of the proposals at shareholders' meeting. Even in the top 30 listed companies, where big institutional investors such as Blackrock and Vanguard are named as the top five shareholders, the percentage of shares held by these institutions remains in the single digit.[32] While there may be statutory provisions in the Indian Companies Act that potentially engage minority shareholders as their approvals are necessary for these corporate actions (such as squeeze out provisions[33] and minority oppression provisions[34]), these only represent a fraction of corporate decisions.[35]

Thus, the concentrated shareholding structure of most public firms in Asia remains the biggest obstacle preventing ESG funds from effectively using the traditional engagement strategies that would otherwise be available to funds operating in a dispersed shareholding environment, as we shall describe in part 3 later. That said, ESG funds have and could come up with distinctive strategies to overcome the obstacles, as we will explain in part 4.

2.3 Political Concerns

Another unique feature of the Asian market is the huge presence of public companies owned by the state ('State-owned Enterprise' or SOE) and a large degree of investment by Asian sovereign wealth funds ('SWF') in jurisdictions other than their own. Regarding SOEs, it has

[32] Lim (2020), p. 173.
[33] Companies Act 2013 (Act No. 18 of 2013) (In.), section 235(1) (which requires 90 per cent of minority shareholders to accept a compulsory acquisition offer).
[34] *Id.*, section 188(1) (which requires approval of a majority of the minority shareholders in relation to material related party transactions).
[35] Mandal (2022), p. 135.

been suggested that they might ignore activist ESG-related campaign as they have to adhere to the nation's political and social agenda.[36] Further, SWFs who invest in SOEs or other companies may hesitate to promote ESG related agenda due to fear of accusation of political interference.[37] Perhaps due to these concerns, it has been noted that SWFs are generally passive investors and only peruse exit activism rather than voice activism for their financial or social goals/demands.[38]

2.4 Questionable Quality of ESG Data

Finally, ESG funds in Asia face the problem of interpreting inconsistent and questionable ESG reporting data which may deter them from participating in the market. As the countries in Asia are at different stages of development and the legal structures vary significantly across the jurisdictions, investors need to navigate through "a confusing landscape of disclosure frameworks, incentive structures, data collection methods, and external assessments developed and implemented in various markets and jurisdictions by both the public and private sectors."[39]

The quality and integrity of data provided by companies operating in Asia also pose challenges. As noted in one report, an international power utility may provide only metrics of its carbon emissions in one market that it operates, where standards may be higher (e.g. Hong Kong), whereas metrics from other markets (e.g. China) representing the majority of its activities may be excluded. This can present a distorted and misleading account of its activities.[40]

[36] Milhaupt and Pargendler (2017).
[37] Mutsaers (2019), pp 21-25.
[38] Yin (2018), pp 115-6. Singapore's Temasek Holdings appears to stand as the only Asian SWF that is an exception to this trend: see Yin (2018), p. 117.
[39] ASIFMA (2020), pp 17-8.
[40] ASIFMA (2020).

Likewise, in India, while the Securities and Exchange Board of India led the way for sustainability reporting within Asia in 2012, these reporting requirements are not benchmarked against global standards like those from the Task Force on Climate-Related Financial Disclosures ("TCFD").[41] While exceptions to this rule exist, with significant improvements being made annually, "disclosure rates in [Asia] still lag behind that of Europe, which remains the leading region for TCFD disclosures at 60 per cent".[42] Thus, data obstacles may act as a significant impediment to ESG funds considering Asian operations since they would be operating with imperfect information.

3. Fitting ESG Funds engagement strategies into the Engagement Pyramid

Despite the challenges ESG funds faced due to regulatory restrictions, concentrated shareholding structure, political climate, and questionable ESG data, they have a variety of engagement strategies in their arsenal to engage target companies in Asia and beyond. The engagement strategy employed must be tailored to the individual target company and specific issue targeted. This will depend heavily on factors such as the economic, cultural, and societal structures in the relevant countries and markets in which the target company operates. Most of the existing literature classify fund engagement strategies via binaries (e.g. private and public engagement, inside and outside shareholders meeting engagement)[43] or describe the various strategies in an *ad hoc* manner. We attempt to build a unified and hierarchical typology of investment funds' engagement strategies to facilitate our understanding of how ESG funds

[41] Varottil (2023).
[42] Lim (2022).
[43] Bowley et al. (2024).

operate in Asia. To do so, we draw insights from the literature in organizational behavior and engagement theories.

The Engagement Pyramid, developed by Gideon Rosenblatt for civic or mission-driven engagement, is "an integrated approach to spanning engagement" which enables organizations to "think more holistically about the range of engagement strategies and tactics they have at their disposal. It also provides a framework for matching these opportunities with those constituents most likely to succeed in carrying them out."[44] We argue that the Engagement Pyramid can be modified to provide investment funds with a framework of strategies of engagement with the target company in order to fulfill their mandate. While the original Engagement Pyramid by Gideon Rosenblatt describes engagement from the viewpoint of the company/target entity, our adaptation of the model will look at the engagement activities from the perspective of the investment funds. We demonstrate that there are varying levels of engagement involved in each strategy from passive engagement at the bottom to fully active at the top. We define "level of engagement" as the degree by which a fund is involved in the formal corporate process of the target entity. Therefore, we would argue that a fund holding a minority share in the target company and turning up to vote at the annual general meeting would be less engaged (i.e. more passive) than another fund which puts in a shareholder's proposal or resolution at the annual general meeting (i.e. more actively engaged). In the same vein, under our engagement pyramid framework, a fund that has the power to amass enough votes to remove directors and to take litigation against directors whom they believe have breached fiduciary duties are very involved with the corporate process of the company and therefore more actively engaged as compared to a fund that merely appoints one or two directors onto the board. Finally, the level or degree of engagement is not necessarily the same as the degree of effectiveness. As we will suggest in part III, in some contexts, comparatively

[44] Rosenblatt (2014).

less active engagement (such as private dialogues or voting in certain transactions) may be more effective than highly active engagement (such as bringing lawsuits) in achieving the objectives of the ESG funds due to the unique nature of the Asian legal landscape.

We construct our investment funds Engagement Pyramid using data collected by hand obtained from various sources. We focus on ESG funds in this paper, although our proposed framework can be applied to any activist investment fund intending to engage with the target company. We first began our search by looking at the list of the top 20 largest ESG funds published by MSCI in 2021.[45] We also ran searches on the internet and various databases such as Factiva and Bloomberg using keywords such as 'ESG fund', 'activist fund', 'divestment', 'sustainability' etc. to come up with a list of 34 funds. Next, we read through their annual reports to see if their portfolios included Asian companies. We then filtered and discarded funds that did not include ESG objectives in their mission statement or did not talk about their investment and engagement criteria or process. We only included those that gave detailed descriptions about their engagement processes with named examples. We also did further research on some of the examples by combing news reports and articles. After this process, we ended up with 16 funds listed in Appendix 1. In addition to this screening, we conducted an in-depth interview with one of the funds[46] to understand better the thought-process behind some of the strategies involved.

Below is the diagram of our proposed ESG Funds Engagement Pyramid:[47]

[45] Mahmood (2021).

[46] APG Asset Management (APG), a Dutch pension investment company based in the Netherlands. As described on its website on Responsible Investment, they 'take [ESG] factors into account in *every* investment [they] make' (emphasis added) and they list out clear criteria as to how they go about in doing so. https://apg.nl/en/about-apg/asset-management/responsible-investment/.

[47] Based on Rosenblatt's pyramid of engagement, see Rosenblatt (2014).

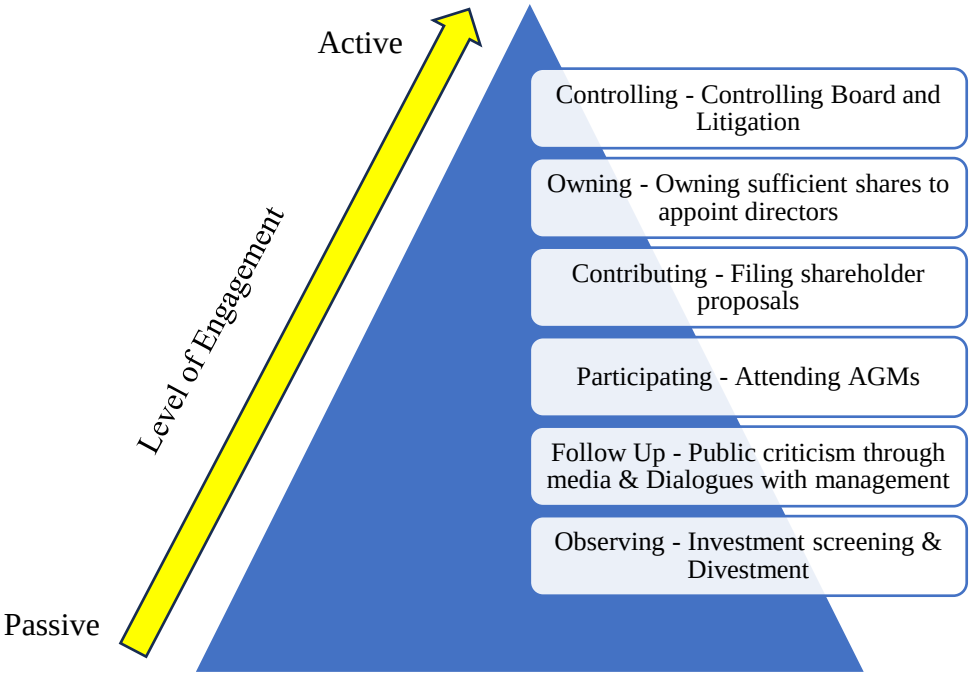


Diagram 1: The ESG Funds Engagement Pyramid

3.1 Observing – Investment Screening & Divestment

The first level of the engagement pyramid is ***observing***, where one is "[i]nterested in the cause and [is] aware of the organization."[48] This forms the base level of engagement where funds become interested and are aware of ESG related matters and begin to integrate sustainability criteria into their investment strategies.

This is the common approach that most ESG funds adopt to promote sustainability objectives: by investing in ESG friendly companies while avoiding or divesting from companies that carry out operations that militate against these objectives. ESG funds achieve this through incorporating exclusion screening and inclusion models in their decision-making process. A good example of how this is done is demonstrated by APG in its investment portfolio building.[49] First, exclusion screens are carried out by identifying activities that companies must not be involved in, such as manufacturing of weapons prohibited by

[48] Rosenblatt (2014).
[49] APG (2021a) and (2021b).

international treaties and tobacco production. Inclusion models are then implemented by analyzing baseline metrics (in terms of return, risk, cost and the degree to which they operate responsibly) to classify companies that passed the exclusion screen based on basic ESG criteria. Companies can be identified as either a ESG leader, ESG laggard, or in the middle. By balancing all the relevant factors, APG will invest in companies that are attractive in terms of return, risk and cost perspective and are actively practicing ESG by engaging in related activities. For companies that have good returns but lag in ESG performance, APG will invest only if they are of the opinion that they can engage with the target company to improve their ESG issues, bringing their engagement level up to "following" and beyond (as described below). For example, if the target company lacks processes to evaluate the health and safety of employees, this will trigger an engagement plan within APG to bring this issue up with the company in the future so that the company will develop appropriate processes to address this issue over time. However, for those companies that do not want to improve or for those companies whose sustainability risks remain high, APG will divest these companies in their existing portfolios after some time.

An example of active divestment in Asia would be APG's divestment of its stake in Korean Electric Power Company ("KEPCO") in 2020 after KEPCO decided to move forward with the construction of new coal-fired power plants in Indonesia and Vietnam despite warnings from APG. KEPCO is a controlled company with the South Korean government holding 51% of its shares. APG had strongly opposed the coal-fired power plants building plan but was unable to stop it.[50] Even with the support of two other pension funds, APG only had a very small, combined shareholding of approximately 0.153%.[51] As APG was unable to change

[50] APG (2021c).
[51] Dolan and Leussink (2023).

the company's mind despite liaising with other investors to approach the government, it eventually decided to divest its stake in the company.

In Asia, it should be noted that this form of engagement strategy may be hindered by the fact that it is difficult to obtain accurate and reliable ESG data on the companies to make an informed decision during the screening process for reasons described in part I.

3.2 Follow Up – Public criticism through the media & dialogues with management

The original second level of engagement in Rosenblatt involves ***following***, where one "[u]nderstands and is interested in the cause" and cares about the organization.[52] In the context of ESG investing, to be clear, "following" does not mean endorsing or condoning the company's activities. What it means is that the ESG fund is sufficiently interested in the company and is prepared to increase its involvement and hold the company accountable by publicly promoting sustainability agendas, i.e. the fund will ***follow up*** with its engagement plan. Funds can adopt various avenues such as writing unsolicited letters to management, collaboration with civic organizations, and heavy reliance on the mass media to voice specific sustainability concerns and publicly criticize companies for failing ESG objectives. Public criticisms and promotion of sustainability concerns allow ESG funds to exploit the extensive reach of the media to raise significant awareness of ESG related matters.

[52] Rosenblatt (2014).

3.2.1 Engaging with Management

A good example to illustrate engagement at this level is Nordea Asset Management[53] ("Nordea") with EUR 251bn assets under management as of end 2023.[54] Nordea carries out ESG investing in Asia through its "Nordea 1 – Asian Stars Equity Fund" and engages with investee companies primarily through dialogues with management. Nordea became a signatory to the Principles for Responsible Investments (the "PRI")[55] in 2007 and has since 1988 developed policies and procedures to ensure that the companies invested meet Nordea's expectations related to ESG performance, and that ESG and sustainability risks are managed in the investment processes.[56] After the initial norm-based screening to identify financially viable companies that are allegedly involved in breaches of ESG issues, the responsible investment committee will take one of the three actions: exclusion, quarantine[57] and/or engagement. If Nordea decides to engage, it will use various engagement strategies, especially concrete dialogue with the companies, to encourage the investees to improve their ESG practices.[58]

Nordea's engagement with the Chinese tech giant Alibaba[59] in the last four years is illustrative of this strategy. Since 2020, Nordea has been engaging with Alibaba about the working conditions of gig-workers on its Ele.me platform (a widely used digital food delivery

[53] Nordea Asset Management was founded in 2001 and headquartered in Copenhagen. It is part of the Nordea Group, the largest financial services group in the Nordic region.
[54] Nordea (2023a).
[55] The PRI is a United Nations-supported international network of financial institutions working together to implement its six principles that incorporate ESG issues into investment practices.
[56] Nordea (2023a), p 14.
[57] A quarantine implies that the holdings of Nordea's portfolios in the company concerned may not be increased and a quarantine will in nearly all cases be accompanied by direct engagement with the company: see Nordea (2024), p 10.
[58] Nordea (2024), p 12.
[59] Although Alibaba is a company listed on the New York Stock Exchange, it is basically an Asian company with its main operating units in China.

platform in China) by having dialogues with the company. Working conditions for gig-workers were not well-protected by local labor regulations, which led to allegations of failure to respect the right to safe and healthy working conditions for gig-workers. Finally, in March 2023, Alibaba made changes to its corporate policies regarding gig-workers, including piloting a mandatory rest after delivering for 4 hours to protect drivers. In addition, all gig-workers would now be paid more than the local minimum wage and be protected by insurance, along with the option for annual physical checks and 24/7 counselling. They would also be offered clearer career development paths and other benefits.[60] Furthermore, disclosure has also improved with Alibaba's Ele.me Gig-worker's annual report detailing these benefits more transparently.[61]

In another example, Nordea started to engage with Samsung SDI[62] in 2017 on various ESG issues, including concerns over Samsung's product design faults leading to overheating and therefore contributing to global warming, Samsung employees' right to unionize and Samsung's handling of manufacture wastes. By the end of November 2021, it was reported that all the dialogues with the management of Samsung SDI had produced positive results.[63]

Another active ESG fund, APG, also often engages in dialogues with its portfolio companies about sustainability and good governance. One successful example would be the fund's constant engagement with the management of the Philippine company Ayala Corp. This eventually led to the company agreeing to divest all interest in coal-fired power plants by 2030.[64]

[60] Nordea (2023b), p 5.
[61] Nordea (2023b), p 5.
[62] Samsung SDI is a South Korean company specializing in developing lithium-ion battery technology for the manufacturing of liquid crystal display (LCD) components and rechargeable batteries for cellular phones, electric vehicles, energy storage systems and solar panels.
[63] Nordea (2021).
[64] APG (2020).

3.2.2 Publicity through media

Sometimes, it is more effective to communicate one's message to a company publicly, especially in Asia where reputation and public perception are known to be important cultural norms. In 2023, Anders Schelde, Chief Investment Officer of the Danish pension firm Akademiker Pension (AkaP), highlighted at Denmark's democracy festival Folkemødet that an active media strategy has become a big part of the fund's strategy for active ownership. Schelde pointed out that the fund's active engagement with the media led to the opportunity to meet the CFO of Toyota Motors Corp.[65]

Similarly, there was heavy reliance on media pressure and collaboration with civic organizations as part of APG's involvement in KEPCO. This was likely due to their small shareholding (as mentioned above) coupled with the fact that KEPCO is controlled by a majority shareholder holding more than 50% shareholding. A significant portion of APG's efforts involved writing letters to management, increasing media pressure and working together with civic organizations to change the company's mind, although in the end, APG decided to sell its shares in the company when it could not change KEPCO's direction.[66]

In 2020, AkaP objected to Samsung C&T's participation in the Vietnamese coal plant project, the Vung Ang 2 project, by delivering messages to Samsung and publicly opposing the company's plan to participate in the construction of new coal plants[67] instead of traditional avenues such as submitting shareholder proposals or voting. Again, this was likely due to the fact that high percentage of the shares in Samsung C&T are held by insiders.[68]

[65] Madsen (2023).
[66] APG (2021c).
[67] Nam (2020).
[68] As of 4 August 2024, the percentage of shares held by insiders was 44.67% according to Yahoo Finance (2024).

As we shall discuss in part III, this engagement strategy is particularly effective when dealing with "symbolic" companies in Asian countries.

3.3 Participating – Attending Annual General Meetings

In Rosenblatt's engagement pyramid, the third level of engagement is endorsing, where a person "[b]elieves in the mission and trusts the organization enough to approve the use of their name to endorse the organization, its programs or a particular campaign."[69] With respect to ESG engagement strategies, the use of "participating" (instead of Rosenblatt's endorsing) is more appropriate as this is the stage whereby the ESG funds are prepared to take the next step of immersing themselves in the formal corporate process. They begin to exercise their rights as shareholders by attending AGMs and using their voting rights to endorse resolutions that support ESG friendly policies and oppose resolutions that propose otherwise.

Many funds adopt this strategy by having a set of proxy voting guidelines with sustainability objectives. For example, the Canada Pension Plan Investment Board ("CPPIB"), which has a sizeable portfolio in Asia including India's Flipkart Group, Taiwan's TSMC and Beijing's Bydance,[70] has proxy voting guidelines that support shareholder proposals requesting reasonable disclosure of information relating to ESG factors or the review or adoption of ESG policies.[71] In September 2022, CPPIB openly warned corporate board directors that it would not vote for any companies that fail to consider climate risks, adopting multiple-year term lengths or lacking in female representation. For the year ending 30 June 2022, the fund voted for the removal of 65 corporate directors at 35 companies because these organizations failed to give due consideration to physical and transition-related risks of climate change.[72] In March

[69] Rosenblatt (2014).
[70] See CPPIB's website at https://www.cppinvestments.com/the-fund/our-investments/investment-active-equities/ (Last visited July 25, 2024).
[71] CPPIB (2020).
[72] Canadian Investment Review (2022).

2022, CPPIB also stated that it would consider voting against all directors at companies where there are oversight failures related to climate change, board gender diversity and deficient corporate governance.[73]

Stewart Investors Asia Pacific Leaders Sustainability Fund is a fund that focuses on companies in the Asia Pacific region with sustainability criteria. In 2022, the fund voted against the election of a director at Dabur[74] which it considered as not truly independent and against the election of the chairman of the audit committee at Vitasoy[75] as the committee met less than four times during the last fiscal year. In 2023, the fund voted against the appointment of the auditor at Foshan Haitian Flavouring, Glodon, Telkom Indonesia and Yifeng Pharmacy Chain as they had been in place for over 10 years and the companies had given no information on intended rotation. In another case, the fund also voted against Foshan Haitian Flavouring's request to approve connected transactions entered into between the company and related entities as it did not believe these requests were made in shareholders' interests.[76]

However, relying on shareholder voting rights at the shareholders' meetings may be an impractical strategy in the context of shareholder activism in Asian countries due to the prevalence of concentrated shareholding in Asian companies as mentioned in part I. Dominant controlling shareholders will often be able to block resolutions or even push through resolutions on their own. On the other hand, ESG funds, holding only minority stakes in the companies, often find themselves with insufficient shareholding to push resolutions through.

[73] Odeh (2022).
[74] Dabur an Indian manufacturer of Ayurvedic medicine and natural health care products.
[75] Vitasoy is a Hong Kong beverage company.
[76] Stewart Investors (2024).

3.4 Contributing – Filing Shareholder Proposals

The fourth level of engagement is ***contributing***, where one "[c]ontributes significant time, financial or social capital to the organization.[77] From simply voting on shareholder resolutions, at this stage, the ESG funds begin to take more initiative and effort by filing shareholder proposals. This is particularly important when resolutions dealing with matters with significant ESG concerns are not being raised at AGMs for shareholders to vote on.

One interesting aspect of shareholder activism in Asia is the greater reliance by the ESG funds on collaboration between shareholders, especially in filing shareholder proposals.[78] This arises due to the onerous thresholds required to submit shareholder proposals or requisitions. For example, a 10% shareholding is required to call extraordinary general meetings ("EGMs") and move resolutions for publicly listed companies in India.[79] The same threshold is also required under the Singapore Companies Act.[80] In contrast, thresholds to call EGMs and move resolutions in Western markets are significantly lower. For example, only a 5% shareholding is required for to call EGMs for publicly listed companies in the UK.[81] For markets governed by the Securities Exchange Commission in the US, a shareholder is eligible to submit a shareholder proposal if it holds at least $2,000 in market value of the company's securities.[82]

That said, shareholders' proposals on ESG related filings by ESG funds have been increasing recently in Asia. For example, in Japan, shareholders filed a total of 385 shareholder proposals relating to 90 Japanese publicly listed companies in 2023, a 16% rise in the number of companies subject to shareholder proposals and a 31% rise in the total number of shareholder proposals as compared to the same period in 2022. However, filing of shareholders' proposals

[77] Rosenblatt (2014).
[78] Through our interviews with one prominent ESG Fund active in Asia and one investor NGO in Japan, this was highlighted as an important strategy for the ESG Funds.
[79] Companies Act 2013 (Act No. 18 of 2013) (In.), section 100(2)(a).
[80] Companies Act 1967 (2020 Rev. Ed.) (Sg.), section 176(1).
[81] Companies Act 2006 (Ch. 46) (UK.), section 338(3)(a).
[82] Code of Federal Regulations 17 CFR § 240.14a-8

may not always lead to a successful outcome for the activist shareholders. Although there were more proposals to improve corporate governance, support for ESG related proposals were weaker.[83]

For example, in May 2023, Amundi Asset Management (Amundi), together with HSBC Asset Management (UK), the Australasia Centre for Social Responsibility and hedge fund Man Group (UK), jointly filed two shareholder resolutions at the Japanese electricity generator Electric Power Development Co Ltd ("J-Power"), calling for amendments in the constitution of J-Power to disclose credible short and medium-term emissions reduction targets, aligned with the goals of the Paris Agreement,[84] and to disclose remuneration policy incentivizing such actions. This was the second time the group tried to push J-Power to improve its decarbonization strategy.[85] Unfortunately, the two climate-related shareholder resolutions only received 21.2% and 15.0% support, respectively, and were rejected.[86]

In another case, APG collaborated with two other European asset managers (Danish Pension Fund AkaP and Norwegian Financial Services Company Storebrand Asset Management) in co-filing a shareholder resolution for Toyota Motor Corp ("Toyota"), Japan's largest automaker, to compel the automaker to "make greater disclosure of its climate change lobbying activities" in June 2023.[87] Notably, the three funds have a combined shareholding of approximately 0.18% ($400 million weighed against market capitalization of $221.82 billion). The threshold required to file shareholder proposals for companies governed by the Japanese Companies Act is 1% of voting rights or at least 300 votes.[88] However, Toyota is primarily cross owned by related companies such as Toyota Industries Corporation (8.65%)[89] and

[83] White & Case (2023).
[84] Yamazaki and Golubkova (2023).
[85] Japan Beyond Coal (2023a).
[86] Japan Beyond Coal (2023b).
[87] Leussink (2023).
[88] Companies Act (Act No. 86 of 2005) (Jp.), section 303(2)
[89] Toyota Motor Corporation (2022), p 63.

DENSO Corporation (3.26%),[90] making it difficult for shareholder activists to push through their proposals at AGM. That was the outcome of June 2023 Toyota's GM where the shareholders ultimately rejected the demands that the company do better in fighting climate change.[91]

This engagement strategy often requires the support of other like-minded institutions because of the small stakes held by the ESG funds. However, as mentioned in part I, the stringent reporting requirements of a change in shareholding by foreign institutional investors make collaborations among the funds challenging for the fear of being regarding as one entity and triggering the relevant reporting rules.

3.5 Owning – Owning sufficient shareholding to appoint directors

The fifth level of engagement is ***owning***, where one is "[f]ully invested in the mission and success of the organization, a program or campaign." This involves investments of resources which "confer[s] a sense of ownership in the organization's work."[92] ESG funds engage in ownership by obtaining sufficient shareholding either singly or combined with other like-minded shareholders to appoint and dismiss directors to the board. This generally requires a "controlling interest" of at least a 50% or a sufficiently large shareholding and/or voting power, which enables the fund to pass ordinary resolutions at general meetings, including the appointment and dismissal of the directors in most jurisdictions.[93] Once the fund has controlling interest, it will be able to control the composition of the board and to exercise indirect influence over corporate decision-making, which includes ensuring that the

[90] Toyota Motor Corporation (2022), p 63.
[91] Kageyama (2023).
[92] Rosenblatt (2014).
[93] Corporate legislation in many Asian jurisdictions allow directors to be appointed by ordinary resolution unless otherwise provided by in the corporate constitution. (E.g., Companies Act 1967 (2020 Rev. Ed.) (Sg.), section 149B; Companies Act 2013 (Act No. 18 of 2013) (In.), section 152(2); Commercial Code (Act No, 1000 of 1962) (Kor.), article 382(1) etc.

sustainability objectives are achieved. This can be done by the removal of directors who fail to comply with sustainability objectives and the appointment of new directors who are more compliant.

The main drawback of this approach is the immense amount of capital and resources required to acquire a controlling interest in companies. In a jurisdiction where the shareholdings of the companies are largely dispersed such as in the US or UK, a small percentage of shareholding may be sufficient to gain enough control or for the investor to negotiate for a board seat especially when it is perceived as a valuable investor. However, the situation for ESG Funds operating in Asia is grimmer because of the predominately concentrated shareholding nature of the companies in this region, as mentioned in part I. For example, the market capitalization of Toyota is approximately USD$237.4 billion.[94] It is primarily cross owned by related companies as mentioned earlier. Substantial capital would be required to purchase a controlling interest in the company and a comparison to the capital available to ESG funds shows that the latter simply do not have the capital to do so.

The constraint of capital is also exacerbated by regulatory rules issued by exchanges and public authorities. One example would be mandatory offer obligations incurred when acquiring a substantial amount of shareholding within a short period of time. For instance, under the Singapore Takeover Code, any person who acquires shares which (taken together with shares held or acquired by persons acting in concert with him) carry 30% or more of the voting rights of a publicly listed company must extend the offer to all shareholders.[95] Any attempt to obtain a controlling interest of 50% or more in a listed company will almost certainly trigger a mandatory offer obligation. This exposes the fund to the potential obligation to purchase a much larger shareholding than required. The mandatory offer presents a greater

[94] As of 4 Aug 2024: see MarketWatch (2024).
[95] Monetary Authority of Singapore, Singapore Code on Takeovers and Mergers (2019), rule 14.1(a).

challenge in emerging Asian markets such as India, where the mandatory offer obligation in India is triggered at a lower threshold of 25% shareholding.[96] This renders it extremely impractical to seek a controlling interest in publicly listed companies in such emerging markets.

Further, the prevalence of concentrated shareholding in Asian companies makes it impossible for ESG funds to obtain a controlling interest from the secondary market. As mentioned above,[97] concentrated ownership structures are a common feature in Asian economies. The prevalence of concentrated shareholding makes it difficult for funds to gain a controlling interest in such companies without the risk of engaging in a power struggle with existing controlling shareholders. Therefore, obtaining a controlling interest and exerting influence through the Board through a controlling interest is generally an impractical channel for ESG funds in Asia to achieve their sustainability objectives.

Nonetheless, there have been a few successful cases here in Asia. Oasis Management Company Ltd succeeded in replacing the Board of Directors of Sun Corporation, a Nagoya-based technology conglomerate, at an Extraordinary General Meeting in 2020 with a view to ending management's alleged destruction of corporate value. Despite having only a 9.2% stake, Oasis succeeded in garnering support from minority shareholders and ousted four existing directors and installing a three-person slate.[98]

3.6 Controlling – Controlling the board and litigation

The final level of Rosenblatt's engagement pyramid entails "***lead[ing]*** others in carrying out the organization's work"[99] and involves the highest degree of engagement. In the context of ESG funds, with respect to ESG engagement strategies, the use of "controlling" (instead of

[96] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011, regulation 3.
[97] Heugen et al. (2009).
[98] Insightia (2020).
[99] Rosenblatt (2014).

Rosenblatt's "leading") is more appropriate as the highest degree of engagement would involve shifting away from simply exerting pressure with a controlling interest to actively changing the composition of the board and appointing majority of the board. With majority of the board comprising friendly directors who were appointed by the fund, ESG friendly board resolutions can be passed. This is reinforced by commencing litigation against errant directors for a breach of directors' duties. Challenges arise in both limbs of this approach. Firstly, appointing a majority of the board would require a controlling interest in the company. As mentioned above,[100] acquiring a controlling interest in Asian companies poses a challenge. Secondly, the laws in most jurisdictions have yet to embrace derivative actions for a breach of directors' duties on the ground of failing to meet ESG objectives.

In a situation where the ESG fund is unable to control the board but desires to enforce its ESG agenda through derivative actions, the context of Asian companies adds a further gloss on the viability of such litigations.[101] This is again attributable to the concentrated shareholding we see in Asian companies. For example, derivative action is a rarity in Indian companies even though litigation in India is quite common.[102] This is due in part to the presence of controlling shareholders who are either patriarchs (who exercise strict control and dominant influence over the company) or the state. In either situation, it will be difficult for minority ESG funds to pose a credible challenge to the power and influence of these controllers.[103] Similarly, in Taiwan, which has a controlling shareholder system, it will be difficult for minority investors to bring derivative actions.[104] Another reason is that even if a minority investor succeeds in bringing a derivative action, the damages or compensation that the court will award will go to the

[100] Heugen et al. (2009).
[101] Lim and Varottil (2022); Lan and Wan (2023).
[102] Khanna and Varottil (2012), p. 381.
[103] Varottil (2023).
[104] Tseng and Wen (2012), p. 242.

company and not to that investor. This reduces the incentive for minority investors to pursue derivation actions.

Another obstacle confronting shareholder activists, especially those with the ESG agenda, in their attempts to utilize the derivative action to propel the company to move in a certain way, is that courts in the common law jurisdictions in Asia such as Singapore, Hong Kong, Malaysia and India, adopt the business judgment rule in one variation or another. In essence, it means that unless the claimant can prove that the directors have misused or abused their powers in their decision-making process or they have made a decision which no reasonable director could have made, courts will not readily strike down the board's decision and impose liability on directors.[105] This observation is reinforced by the recent UK decision in *ClientEarth v Shell plc* (*ClientEarth*),[106] where a non-profit environmental law organization commenced a shareholder derivative suit while holding only 27 shares against the directors of Shell plc for an alleged breach of their duties under the UK Companies Act 2006. The alleged breach was based on a failure to implement reasonable climate change risk management strategies consistent with the Paris Agreement and a failure to respond to an order made by the Hague District Court relating to the reduction of the company's emissions. The High Court held that UK company law does not impose "specific obligations on the Directors as to how the management of Shell's business and affairs should be conducted." Emphasis was placed on "the well-established principle that it is for directors themselves to determined (acting in

[105] Lim and Varottil (2022), p. 391; Lan and Wan (2023); Chun (2024).
[106] *ClientEarth v Shell Plc and others* [2023] EWHC 1137 (Ch); [2023] All ER (D) 65. *Cf*. For an exceptional and controversial case in which the derivative action succeeded in connection with directors' breach of duties relating to the meltdown at Fukushima first Nuclear Power Plant of Tokyo Electric Power Company (TEPCO), *see In re TEPCO shareholders' derivative suit*, Tokyo District Court, July 13, 2022: Goto (2024).

good faith) how best to promote the success of a company for the benefit of its members as a whole."[107]

Despite the difficulties of achieving a win in court, in the context of Asian companies, there have been successful ESG-related legal proceedings. In January 2023, South Korean activist fund Anda Asset Management successfully applied for an injunction to view and copy the shareholders' list of KT&G Corp., the world's fifth-largest tobacco maker, to intensify shareholder activism. The fund had previously sent an activist shareholder letter to the Korean tobacco firm urging actions to boost shareholder value, such as the spin-off, listing and rebranding of the company's ginseng affiliate, Korea Ginseng Corporation; hiring more outside directors of the board and global marketing professionals; increasing dividends; and setting up plans to improve the corporate governance such as retiring treasury shares. However, the company had failed to respond to the letter and this prompted the fund to apply for the injunction in response to the company's apparent unwillingness to accept shareholder proposals and demands.[108]

In October 2022, Anda Asset Management, also sought relief from the courts to grant access to the list of SK chemicals' shareholders, as the chemical company did not respond to the local asset manager's letter sent last month to request a sale of SK bioscience shares and governance reform.[109] In January 2023, Align Partners Capital Management filed proxy litigation against the founder of SM Entertainment Co., Lee Soo-Man, and seven former members of its Board of Directors for unfair business practices between the company and Like

[107] *ClientEarth* at [19]. *Cf.* the other school of thought that directors should ensure that the company acts in line with its overarching corporate purpose, including the creation of sustainable value: see Sjåfjell (2020).
[108] Park D (2023).
[109] Park J (2023).

Production, a boutique firm wholly owned by Lee. This eventually prompted the board to turn against founder Lee and ousted him from the board.[110]

In sum, ESG funds operating in Asia adopt different strategies under different circumstances in forwarding their agendas, and there does not appear to have one best engagement strategy. Further, in addition to "observing", the three most common engagement strategies that have been deployed by ESG funds in Asia are "follow up", "participating" and increasingly "contributing" as stated in the Engagement Pyramid. Seldom are the engagement strategies of "owning" and "controlling" deployed, not least because of the challenges that they face, as analyzed in part I. Despite these challenges, we will show in the next section that the ESG funds operating in Asia have developed interesting methods, taking advantage of the political, legal and cultural contexts in Asia, to partially ameliorate these difficulties and facilitate ESG funds in furthering their agendas. These methods, if utilized strategically, can strengthen the engagement strategies of "follow up", "participating" and "contributing".

4. Asia's Notable Features

In this section, we analyze how five notable features in Asia may enhance some of the engagement strategies pursued by ESG funds (as examined in part 3), despite the challenges (particularly relating to concentrated shareholding structures) that they face (as examined in part 2).

The first feature is that given that related party transactions ("RPTs") are prevalent in concentrated ownership companies, and approval for RPTs are usually required from disinterested shareholders, namely, a majority of the minority shareholders, minority ESG funds can exercise their voting power in RPTs strategically in order to extract ESG concessions

[110] Cha (2023).

from the controller or board of directors.[111] This is likely to augment the engagement strategy of "participating" in the Engagement Pyramid as ESG funds can threaten to, or actually, vote against the proposed RPTs.

Second, unusual shareholder voting mechanisms in jurisdictions such as South Korea where there are restrictions on a shareholder's exercise of voting rights to not more than 3% of the total issued shares in relation to the appointment of statutory auditors and audit committee members have enabled minority investors to affect the outcome of resolutions in general meetings.[112] This is likely to augment the engagement strategy of "participating" in the Engagement Pyramid as ESG funds can effectively vote against the auditor or audit committee members proposed by the company.

Third, because many concentrated ownership companies in Asia are susceptible to how their reputation and branding are being perceived because of their unique economic, social and political significance – which we term "symbolic companies" – public criticisms (which we categorize as "follow up" in the Engagement Pyramid) or the filing of shareholder proposals (which we categorize as "contributing" in the Engagement Pyramid) by the ESG funds can influence corporate behavior in these companies.[113]

Fourth, in jurisdictions such as China where the state exerts substantial influence over the business and personnel decisions of SOEs, foreign minority ESG funds can engage with SOEs by becoming strategic investors or collaborating with domestic strategic investors and state-backed institutional investors to pursue an ESG agenda. Such collaboration may enhance the effectiveness of the engagement strategy of "follow up" (if the ESG funds choose to

[111] See section 4.1.
[112] See section 4.2.
[113] See section 4.3.

dialogue with the board) or "participating" (if the ESG funds choose to vote for or against a proposed resolution at an AGM).[114]

Finally, while institutional investors with existing or potential business relationships with the controller, management or the investee company will usually not vote against them, minority ESG funds can publicly criticize such conflicts of interest.[115] This may indirectly strengthen the "bargaining power" of the ESG funds as they can use the threat of public criticism of these institutional investors who suffer from conflicts of interest to persuade them to support the ESG funds' proposed shareholder resolutions (categorized as "contributing" in the Engagement Pyramid) or to support their public expressions of concerns about the company (categorized as "follow up" in the Engagement Pyramid).

We elaborate on each of the above features below.

4.1 Related party transactions

Studies have shown that there is a positive correlation between concentrated ownership, state ownership and group affiliation on the one hand, and RPTs on the other. The OECD observes that the prevalence of controlled companies such as family or state-run business groups and "the informal nature of business relationships typical of the Asian business landscape facilitate RPTs".[116] For example, one study found that 57% of Chinese A-share mainboard listed companies reported controller RPT resolutions in 2019.[117] In India, a study of 246 companies revealed that 80% of the reporting companies had transactions with subsidiary companies, 47%

[114] See section 4.4.
[115] See section 4.5.
[116] OECD (2009).
[117] Xi (2023), p. 312.

had transactions with associates, and almost all companies had transactions with key management personnel.[118]

The issue with RPTs is that the controlling shareholder or its associates or entities can tunnel wealth (whether in the form of cash or assets) from the company to themselves through RPTs, which are essentially self-dealing transactions.[119] For example, a controller can acquire goods or services from the company at below market value or can sell them at above market value to the company. Or the company can provide guarantees for the debts owed by the controller. Or the associates of the controller – the board or the management – can pay themselves unjustifiably high salaries and dividends. Unsurprisingly, RPTs have been used by Korean Chaebols, PRC and Indian companies to extract private benefits at the expense of minority shareholders. [120] Nevertheless, not all RPTs are value-decreasing. RPTs in certain circumstances can be beneficial or necessary for the company, which are also known as propping.[121] The controller (or its associates or entities) transfers resources to the company when it is experiencing financial difficulties. RPTs can also promote efficiency through vertical intra-group transactions as companies can produce and deliver specialized products and services at a reduced cost to customers.

Nevertheless, because RPTs have been used by controlling shareholder to tunnel corporate wealth to the detriment of minority shareholders, many jurisdictions subject RPTs to stringent approval requirements which include approval from disinterested shareholders or what is known as "majority of minority" approval. For example, India, Hong Kong, Singapore and Malaysia require RPTs of listed companies to be subject to disinterested shareholder approval,

[118] Srinivasan (2013), p. 14.
[119] Enriques (2015).
[120] Kim (2019); Puchniak and Varottil (2019).
[121] Cheung et al. (2014); Ng et al. (2013).

among other requirements.[122] Not only is the related party prohibited from voting, but also its "associates" or "persons connected to" the related party.[123] Minority ESG funds can leverage on the fact that approval is required from them as a bargaining chip in order to pressure the controller and the board to accede to their demands. Given the prevalence of RPTs and the importance that the controlling shareholder attaches to it, minority ESG funds can and should strategically deploy this mechanism to its benefit.[124]

4.2 Unusual shareholder voting mechanisms

Shareholder resolution approval mechanisms generally consist of three kinds: ordinary resolution (simple majority approval); special resolution (approval by at least 75% of the shareholders); and disinterested shareholder approval (majority of minority). Most resolutions (such as appointment and dismissal of directors) require a simple majority approval. In certain cases and depending on the corporate constitution of companies and the listing rules of different jurisdictions, approval of certain matters (such as alteration of the corporate constitution or reduction of share capital) require approval of at least 75% of shareholders. But for exceptional matters (such as RPTs or transactions between the directors and companies), disinterested shareholder approval is required. As we have argued above, in concentrated ownership jurisdictions, minority ESG activist funds can deploy the disinterested shareholder approval mechanism for RPTs to their advantage.

That said, there is another kind of shareholder approval mechanism that allows minority ESG activist funds to pursue their agenda. Under the Korean Commercial Code, no shareholder is permitted to vote more than 3% of its total issued and outstanding shares with regard to the

[122] Lim (2019), pp 205-273.
[123] Lim (2019).
[124] Our discussions with APG indicated that this is one of their toolkits.

appointment of a statutory auditor or the appointment of audit committee members (i.e. the "3% Rule").[125] In other words, even if the shareholder owns more than 3% of shares, as is the case for a controlling or majority shareholder, it is only permitted to exercise its voting rights up to 3% of the total issued shares. As a result, this mechanism significantly minimizes the influence of controlling shareholder, and increases the minority shareholders' chances of influencing the outcome of the appointment of the statutory auditor or members of the audit committee.

To be clear, the function of a statutory auditor under Korean law is different from that of an auditor that is appointed via an ordinary resolution in an annual general meeting in most jurisdictions. The statutory auditor's role is to supervise the board of directors and it has the power to audit the company's accounts.[126] The statutory auditor can demand a report from the board of directors at any time and can investigate the affairs of the company; can attend any board meeting and can make its opinion known; can report to the board any potential or actual wrongdoing committed by any director;[127] and can issue an injunction against that director.[128] If a director breaches the statute or the articles of incorporation, and such an act is likely to cause irreparable damage to the company, the auditor, or remarkably, a shareholder who holds no less than one percent of the total number of issued and outstanding shares, may demand on behalf of the company that the relevant director stop such act.[129]

An example of how a minority shareholder who successfully made use of this 3% Rule to appoint a statutory auditor can be found in the case of SM Entertainment, a listed company in Korea that recruits and trains K-pop stars. The founder of the SM Entertainment, who held

[125] Commercial Code (Act No, 1000 of 1962) (Kor.), article 409; See also Kim and Chang (2020a).
[126] Commercial Code (Act No, 1000 of 1962) (Kor.), article 412.
[127] Commercial Code (Act No, 1000 of 1962) (Kor.), article 412.
[128] Commercial Code (Act No, 1000 of 1962) (Kor.), article 402.
[129] Commercial Code (Act No, 1000 of 1962) (Kor.), article 402.

as little as 18% of the shares then, had been accused of tunnelling corporate wealth through a consultancy service agreement that was entered into between SM Entertainment and a company that is wholly owned by the founder.[130] As much as 40% of the SM Entertainment's annual profits had been transferred to the founder's company. In 2022, despite owning as little as 1.1% of the shares of SM Entertainment, the Korean activist fund Align Partners, successfully appointed a statutory auditor at the general meeting of shareholders.[131] Align Partner's proposed shareholder resolution at AGM with respect to the appointment of a statutory auditor was supported by more than 81% of the shareholders, who included some of the world's largest pension funds, namely, the Norges Bank Investment Management and the National Pension Service.[132] Thus, that Align Partner owned only 1.1% was not an impediment because it successfully collaborated with other minority institutional investors. The outcome was the termination of the tunnelling agreement between the company wholly owned by the founder and SM Entertainment. But for the 3% Rule, a minority shareholder would not have prevailed against a controlling shareholder.

Further, in addition to the appointment of the statutory auditor, the 3% Rule also applies to the appointment of audit committee members.[133] Ordinarily, in most jurisdictions, the power to appoint members of the audit committee (or other committees such as those related to nomination or compensation) rests with the board of directors. But in Korea, the power to appoint members of the audit committee rests with the general meeting of shareholders.[134] Notably, the 3% Rule has been refined pursuant to amendments to the Korean Commercial

[130] Chung (2023).
[131] Chung (2023).
[132] Lee and Lee (2022).
[133] Commercial Code (Act No, 1000 of 1962) (Kor.), article 542-11; See also Kim and Chang (2023).
[134] This applies only to large, listed companies with total assets of KRW 2 trillion or more.

Code which further eroded the power of controlling shareholder and increased the leverage of minority shareholders.[135]

Moreover, and importantly, prior to the amendment, the 3% Rule applied to the total and outstanding shares issued to the shareholder in question. However, as a result of the amendment, for the purpose of calculating the total amount of shares under the 3% Rule, the largest shareholder is required to combine and add its shareholdings together with those of its affiliates, when electing and dismissing an audit committee member who is not an outside director in large listed companies.[136]

These amendments minimize the influence of the controlling shareholder and increase the minority shareholders chances of affecting the outcomes of the appointment of audit committee members. Similar to the disinterested shareholder approval mechanism for RPTs, minority ESG activist funds can use this 3% approval mechanism as a leverage against controlling or majority shareholders.

4.3 Symbolic companies

A key feature of the concentrated ownership companies in Asia is that many of them are "symbolic" companies. By symbolic, we mean that these companies are highly significant from an economic and political perspective.

Their reputation and performance often have an important bearing on the legitimacy of the state because of the close ties between these companies and the government. Prominent examples of "symbolic" companies include the Korean *Chaebols* (prominent family owned and run conglomerates), [137] Japanese *Keiretsus* (which include leading manufacturers,

[135] Kobre and Kim (2021), Kim and Chang (2020b), Song et al. (2020).
[136] Commercial Code (Act No, 1000 of 1962) (Kor.), article 409.
[137] Albert (2018).

suppliers, and financial institutions)[138] and Indian Industrial Houses (which include large family-owned businesses).[139]

For example, the South Korean government has provided extensive financial support (in the form of tax incentives, loans and subsidies) to the Korean *chaebols* since the early 1960s, which resulted in Korean companies such as Samsung and Hyundai achieving international prominence.[140] Japan's *Keiretsu* includes some of the largest and most well-known financial institutions such as the Mitubishi, Sumitomo and Mitsui groups.[141] Examples of the Indian Industrial Houses include Tata, Birla (AV), and Mahindra and Adani Group. The Indian government has provided economic aid or preferential treatment to these Indian industrial houses.[142]

Activist ESG funds can and have selectively targeted these "symbolic companies" with some success. For example, ESG fund APG filed shareholder proposals for the 2022 AGM of HDC Hyundai Development[143], one of the largest and most prominent Korean conglomerates, for the purpose of addressing the company's poor safety record given that HDC had been involved in two fatal accidents which resulted in serious casualties.[144] These shareholder proposals included amendments to the articles of incorporation to introduce health and safety

[138] Tomeczek (2022); Jancer (2016).
[139] For an overview of the Indian Industrial Houses, see Banaji (2022), Ghosh (1974), Zachariah (2023).
[140] For an overview of *Chaebols*, see Kim and Wakabayashi (2023), Campbell and Keys (2002).
[141] For an overview of *Keiretsu*, see Lincoln et al. (1996), Grabowiecki (2006), Miyajima (2002).
[142] One of the most controversial preferential treatments pertain to the Modi government allegedly granting a lease of six airports to Adani Enterprises for a period of 50 years allegedly in violation of the Airport Authority of India Act which prohibit any lease to any private actor for than 30 years: See Deepak (2020).
[143] HDC Hyundai is part of the Hyundai Motor Group, one of the most prominent *chaebols* in South Korea.
[144] Zhang et al. (2022).

regulations, the establishment of a health and safety committee within the board of directors and the introduction of sustainability disclosures, and the right for shareholders to make ESG proposals and recommendations. All the proposals except the proposal to introduce rights for shareholders to make ESG proposals were accepted by the management. They were subsequently approved at the AGM in March 2022.[145]

Even if the activist ESG funds have insufficient voting rights, their engagement strategies whether in the form of public criticisms (categorized as "follow up" in the Engagement Pyramid) or shareholder proposals (categorized as "contributing" in the Engagement Pyramid) can inflict sufficient reputational damage on these symbolic companies such that the boards will be motivated to take actions to address some of these ESG funds' concerns.

Consider for example, Mizuho Financial Group, one of the largest and most prominent financial institutions in Japan. A shareholder proposal was brought by Japanese non-profit organization Kiko Network which was backed by six Nordic funds.[146] Kiko Network is a Japanese environmental NGO that seeks to address climate change.[147] The proposal initiated by Kiko Network sought to amend Mizuho Financial Group's articles of incorporation to mandate the annual disclosure of a strategy to align the Group's investments with the goals of the Paris Agreement. While the shareholder proposal was opposed by the board, the proposal attracted adverse media publicity which threatened to undermine Mizuho's reputation. As a result, prior to the shareholder meeting, Mizuho pledged to cease all financing for coal projects by 2050, which was followed a day later by Sumitomo Mitsui Financial Group's announcement that it would stop lending to new coal power plants.[148] Glass, Lewis & Co., which also

[145] Zhang et al. (2022).
[146] Kiko Network (2020).
[147] See Kiko Network's website at https://kikonet.org/en/.
[148] White & Case (2020).

supported the measure, said it could help mitigate "potential reputational risks on account of the company's significant coal financing."[149]

Consider another symbolic company in Japan, Toyota Motor Group, the world's largest automaker. In June 2023, APG collaborated with two other European asset managers (Danish Pension Fund AkaP and Norwegian Financial Services Company Storebrand Asset Management) in co-filing the first ever shareholder resolution for Toyota's annual general meeting in order to compel Toyota to disclose how its climate lobbying activities reduce climate-related risks.[150] After all, Toyota has been ranked as one of the worst companies on climate lobbying. Its climate lobbying activities include but are not limited to: suing the Mexican government to thwart proposed regulations that combat climate change; opposing the New Zealand government's proposed Co2 emissions standards; and opposing a proposed regulation to phase out internal combustion engines by 2030 in India.[151] Toyota's lobby activities stemmed in part from its reluctance to transition to electric vehicles and its attempt to push for hybrid vehicles.

At the annual general meeting, although the proposed resolution was not approved as it did not obtain the requisite two-thirds support of the majority, 15% of the shareholders supported the resolution.[152] While the shareholder proposal was not adopted, the proposal elicited intense adverse media scrutiny and provoked strong shareholder disapproval of the performance of the board chairman and chief executive. The board chairman was re-elected with a 85% vote, which fell from 96% in 2022.[153]

[149] Clark (2020).
[150] PRI (2023).
[151] Snow (2022), p. 13.
[152] Poulsen (2023).
[153] Takahashi (2023).

Moreover, the proposed resolution also had the effect of compelling Toyota to take concrete actions to placate investors' demands. The day before the annual general meeting, Toyota announced that it aimed to introduce the next generation of lithium-ion batteries from 2026 which would be more durable and charge more quickly. Although this aim does not imply that Toyota will transition to electric vehicles, it demonstrated its willingness to manufacture electric vehicle batteries, which investors considered to be in the right direction.[154]

4.4 Collaboration between the state and investors

In jurisdictions such as China where the state possesses pervasive formal power (through the exercise of voting rights) and informal power (through pressure or influence) over SOEs and non-SOEs, minority ESG investors can still play an important role in promoting sustainability. China is an extreme example in which SOEs are legally required to amend their corporate constitutions to include the Chinese Communist Party ("CCP") committee in the governance structure of the companies.[155] Boards of directors are legally required to consult the CCP committee before making any decisions on important matters.[156] This requirement virtually guarantees the state's influence over the decisions taken by the board. That, coupled with the state's voting rights where it is the controlling shareholder, render any challenge to its power

[154] Poulsen and Cacioli (2023).
[155] Notice of the Organization Department of the Central Committee of the Communist Party of China and the Party Committee of the State-owned Assets Supervision and Administration Commission of the State Council on Solidly Promoting the Requirements for Party Building in State-owned Enterprises to be Included in the Articles of Association (2017); Guiding Opinions of the General Office of the State Council on Further Improving the Corporate Governance Structure of State-owned Enterprises (2017) para 1.5.1; The Central Committee of the Communist Party of China issued the Regulations of the Communist Party of China on the Work of Grassroots Organizations of State-owned Enterprises (Trial) (2019), article 13. See Lin (2021).
[156] The Central Committee of the Communist Party of China issued the Regulations of the Communist Party of China on the Work of Grassroots Organizations of State-owned Enterprises (Trial) (2019), arts. 11, 13, 14, and 15.

nugatory. In this situation, it would not be strategic at best, and would be inefficacious at worst, for minority ESG funds to challenge the hegemony of state power through public criticisms, lawsuits, or filing shareholder proposals in SOEs (although they may deploy these engagement strategies in non-SOEs). Nevertheless, given that China represents the largest sustainable market in Asia (excluding Japan), holding over 63% of the region's asset base,[157] there is an important – and valuable – role for minority ESG funds to play. There are two kinds of roles, both of which involve collaboration with the state. The first is for the foreign (or domestic) ESG fund to become a strategic investor in an SOE, and the second is for the domestic ESG fund to be a state-backed asset manager which collaborates with SOEs and non-SOEs on ESG matters. If the foreign ESG fund chooses not to become or does not qualify to be a strategic investor, the foreign ESG fund is not permitted to become a state-backed investor as the latter must be under state control. But the foreign ESG fund can collaborate with a domestic ESG state-backed investor (asset manager). Let us consider the role of the strategic investor followed by that of the state-backed investor.

Under the CSRC regulations, listed companies can introduce strategic investors when issuing stocks. The CSRC has defined "strategic investor" as one that has not been fined or penalized by the CSRC in the last three years, that has strategic resources in an industry that is identical or similar to that of the listed company, that seeks to pursue long-term strategic interests with the listed company, that can hold shares in the listed company for a long time, that can nominate directors to the board of the listed company, that can diligently perform duties, that can improve the corporate governance of the company, and that can increase the value of the company. Importantly, a strategic investor is also required to bring strategic and

[157] Morningstar (2024), p. 4.

technical resources to the company in order to enhance the competitiveness, innovation and profitability of the company.[158]

A good illustration of how strategic investors have successfully collaborated with SOEs in relation to ESG can be found in GAC Aion New Energy Automobile Co., Ltd. ("GAC New Energy"), which is a subsidiary of the state-owned Guangzhou Automobile Group Co., Ltd. In 2022, GAC New Energy introduced 53 strategic investors from different sectors including semiconductor design, intelligent driving materials, essential battery materials, and sustainable energy solutions.[159] Specifically, one of the strategic investors, Ganfeng Lithium Group Co., Ltd. ("Ganfeng Lithium"), a leading producer of lithium carbonate and other pivotal battery raw materials, had entered into a strategic collaboration with GAC New Energy.[160] The goal of the collaboration is to leverage on Ganfeng Lithium's expertise in new energy to produce new energy power batteries. The collaboration includes lithium resource extraction, midstream lithium salt complex processing and waste battery recycling.[161] Such strategic collaborations underscore a mutual commitment to hasten the green development of both GAC New Energy and Ganfeng Lithium, which is consistent with and implements the green policies enacted by the PRC government.

The second kind of role concerns state-backed institutional investors, particularly those who actively pursue ESG agendas. To begin with, the PRC government has issued several policies to promote ESG, including the Guidelines for Establishing the Green Financial

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[158] Announcement No. 15 (2023) the China Securities Regulatory Commission - Announcement on Issuing the Opinions on the Application of the Applicable Provisions of Articles 9, 10, 11, 13, 40, 57, and 60 of the Measures for the Administration of Registration of Securities Offering by Listed Companies - Opinions No. 18 on the Application of Securities and Futures Laws (2023), para VI.1.
[159] *Guangzhou Qiche Jítuan* (2022), Gousen Securities (2022) p 5.
[160] *Id.*
[161] *Ganfeng Liye* (2022).

System.[162] As part of this initiative, the government envisaged the creation of green development funds to support the creation of local green industries.[163] These green funds are important in driving the state's ESG agenda. The government's initiatives are intended to encourage collaboration between these funds and the local governments.[164] These initiatives are instantiations of the pro-ESG approaches of the central government. For example, the 20th National Congress of the Communist Party of China in 2020 emphasized a development philosophy that aligns with ESG values, advocating for high-quality development and "Chinese-style modernization" that includes common prosperity and harmonious coexistence between humans and nature.[165] In July 2023, Chinese President Xi Jinping emphasized ecological conservation and sustainable development.[166] Thus, although China's concentrated corporate ownership structure makes it difficult for minority foreign minority ESG funds to engage effectively, these ESG funds can work together with domestic ESG funds to pursue the engagement strategies. These domestic ESG funds are often state-backed institutional investors who are seeking to implement the government's pro-ESG policies.

Let us now further consider the role of state-backed institutional investors. A recent report found that 43% of the companies that have produced ESG disclosures attributed the disclosures to investors' expectations and pressures. Indeed, 14 domestic PRC investors emerged as leading figures, urging 8 Chinese listed companies to disclose their environmental

[162] Chinalawinfo (2016).
[163] *Id.*, para IV.19.
[164] *Id.*
[165] Central Committee of the CCP (2022).
[166] Xinhua (2023). As a result of the endorsement of ESG by the CCP, various regulatory bodies, including the China Securities Regulatory Commission ("CSRC"), stock exchanges, and the State-owned Assets Supervision and Administration Commission of the State Council ("SASAC"), have integrated ESG principles into their regulations. For example, CSRC has integrated ESG into several of its guidelines, including the "Corporate Governance Guidelines for Listed Companies (2018)", "Guidelines on the Content and Format of Information Disclosure for Companies Issuing Securities Publicly No. 2 — Annual Report Content and Format (2021)".

impact in 2019.[167] In 2021, the number increased to 151 Chinese listed companies.[168] One state-backed domestic institutional investor, China Asset Management Company ("CAMC"), stands out for its active collaboration with Chinese companies. CAMC is a signatory of CA100+, an investor-led initiative formed for the purpose of holding the major corporate emitters of greenhouse gas accountable.[169] Since 2018, CAMC has had dialogues with company executives (including those from the oil and gas, building materials, and manufacturing sectors) on enhancing ESG disclosure and sustainability practices, thereby increasing the corporate managers' understanding of sustainability issues.[170] CAMC has also collaborated with other CA100+ members to jointly advocate for carbon emission control and disclosure in relation to a major Chinese coal mining company.[171] This successfully resulted in the company making its first voluntary disclosure to the Carbon Disclosure Project ("CDP"), a non-profit charity seeking to promote a global disclosure system to manage environmental impacts.[172] Moreover, CAMC has also engaged with the largest oil and gas as well as coal mining companies in China such as PetroChina, Sinopec and China Shenhua with respect to net zero transition plans and greenhouse gas emissions management. For example, with respect to the engagement by CAMC and other investors, PetroChina stated in its 2022 ESG report that it has engaged with institutional investors over 150 times in 2022 through shareholder meetings, media conferences, and direct communications.[173] These engagement practices cover a variety of ESG topics including carbon emissions control, new energy ventures, and hydrogen energy development.[174]

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[167] Carbon Disclosure Project (2020) p. 13.
[168] Carbon Disclosure Project (2022).
[169] Climate Action 100+, https://www.climateaction100.org/. Accessed 4 Aug 2024.
[170] PRI (2020) pp 16-17.
[171] *Id*, p. 17.
[172] *Id.*
[173] PetroChina (2023).
[174] *Id.*

In sum, minority ESG activist funds in authoritarian, concentrated ownership jurisdictions where the state plays an outsize role in companies, such as in China, should consider two collaborative rather than adversarial engagement strategies. The first is for the (domestic and foreign ESG fund) to be a strategic investor as defined by the CSRC. In addition to the eligibility criteria, a key requirement of being a strategic investor is that it must bring technical and strategic benefits to the company. Alternatively, the second strategy is for the domestic ESG fund to be a state-backed asset manager that engages with the companies through non-adversarial public and private dialogues, and actively voting at AGMs. Foreign minority ESG funds who do not fit the criteria of strategic investor can collaborate with one that satisfies the criteria. Additionally, the foreign ESG fund can collaborate with a domestic state backed ESG asset manager. Filing of shareholder proposals or bringing lawsuits do not seem to be particularly effective engagement strategies particularly where the state exercises dominant control over the company.

4.5 Conflicts of interest

The ability of ESG funds to effectively engage with concentrated ownership companies in Asia is also influenced by the existence of conflicts of interest between institutional investors and their investee company and its controlling shareholder. To be sure, conflicts of interest affecting asset managers' willingness to engage is not a phenomenon unique to Asia as the European Commission drew attention to this issue as early as 2011.[175] However, distinctive to Asia is that where the institutional investors are symbolic companies themselves or connected to symbolic companies, (as discussed above), public criticisms by ESG funds of such conflicts of interest may help to strengthen their engagement strategies in the investee companies.

[175] European Commission (2011); Wong (2011).

To begin with, investors with existing or prospective business relationships with the investee companies are not likely to vote against the controlling shareholder or management. At best, they will abstain. At worst, they are likely to vote in favor. Further, there are certain cases in which the investee company (or its controlling shareholder) holds shares in the institutional investor. Thus, the institutional investor may be reluctant to vote contrary to the wishes of the controller or management of the investee company, as there is a risk that the investee company may retaliate by voting against the institutional investor.

For example, two minority climate change activist shareholders, Kiko Network and Rainforest Action Network, filed a shareholder resolution at the annual general meeting of Mitsubishi UFJ Group ("MUFG") in 2021, urging the bank to align its business practices with global climate change targets.[176] Although this proposal received 23% of the shareholder vote (including from a leading stewardship service provider EOS at Federated Hermes), it was defeated.[177] The resolution was rejected by the board of directors and leading domestic institutional investors who deferred to the board. Among the investors that voted against the resolution were related companies within MUFG including Mitsubishi UFJ Kokusai Asset Management Co Ltd and Mitsubishi UFJ Trust and Banking Corporation.[178] Morgan Stanley abstained from voting, likely because MUFG owned approximately 22% of voting rights in Morgan Stanley and the latter had an ongoing business relationship with MUFG.[179] Morgan Stanley thus strategically chose to abstain not only because it has existing business ties with the MUFG, but also because MUFG owns a not insignificant percentage of shares in it. There is a risk that should Morgan Stanley support the proposal by Kiko Network, which was opposed

[176] Lierley (2021); Yamaguchi (2021).
[177] *Id.*
[178] Kiko Network (2021); Kiko Network (2022).
[179] Yamazaki (2023).

by MUFG's board of directors, MUFG might retaliate by voting against Morgan Stanley's management proposals.

Given the conflicts of interest, institutional investors may, in the worst-case, vote against the shareholder proposals put forward by the minority ESG funds, or in the best case, abstain. What are the engagement strategies available to the minority ESG funds then? It is suggested that minority ESG funds can publicly criticize these institutional investors for engaging in conflicts of interest. Another possible strategy is for the minority ESG funds to acquire shares in those institutional investors (who suffer from conflicts of interest), and then threaten to vote against the proposed resolutions put forward by the management of the institutional investors. In other words, minority ESG funds can use their current (or potential) shareholdings in the institutional investor as a leverage to persuade the latter to support the former's ESG shareholder proposals. Of course, whether this will work will depend to a significant extent on a cost-benefit analysis. Whether the effects of the institutional investor voting against – or abstaining from – the proposed ESG resolutions put forward by minority ESG funds is outweighed by the negative effects of the minority ESG fund voting against the proposed resolutions by the management of the institutional investor. Whether the benefits from institutional investor's existing or potential business relationships with the investee company outweigh the benefits of the ESG funds supporting the management of the institutional investor.

In short, a key question is whose relationship the institutional investor prioritizes – that with the investee company (and its controller) or with the ESG funds. This will in turn depend of course on (a) the business relationships between the institutional investor and the investee company and (b) whether the investee company (or its controller) or the minority ESG funds own any shares in the institutional investor (and if so, what the percentage is).

Nevertheless, where the conflicted institutional investor is a symbolic company or connected to one, EGS funds can use the threat of public criticisms of such conflicts of interest by extracting concessions from the institutional investor. Potential or actual public criticisms of conflicted institutional investors that are symbolic companies may carry certain sting and may result in adverse consequences that are otherwise absent where the institutional investor is not a symbolic company. Thus, ESG funds may be able to extract concessions from institutional investors that are symbolic companies. Such concessions include supporting the ESG fund's engagement strategies relating to shareholder proposals (categorized as "contributing" in the Engagement Pyramid) or relating to voting (for or against certain matters) at the annual general meeting (categorised as "endorsing" in the Engagement Pyramid).

5. Conclusion

Three key insights can be drawn from contextualizing ESG funds' engagement strategies in Asia. First, through a bottom-up approach of identifying and analyzing these engagement strategies, the Engagement Pyramid drawn from the management literature is adapted to this article which categorizes these strategies into "observing", "follow up", "participating", "contributing", "owning" and "controlling". ESG funds have used all of these strategies except "owning" (as they do not have sufficient shares alone or in collaboration with other shareholders to appoint directors). ESG funds in Asia however have increasingly resorted to the strategies of "follow up" (defined as public criticisms through media or private dialogues with management) and "contributing" (defined as filing shareholder proposals) and to some extent "controlling" (defined as legal proceedings) with mixed records of success.

The second insight is that despite the obstacles that foreign minority ESG funds face in Asia, this paper illuminates how the five notable featuresin Asia—related-party transactions,

unusual shareholder voting mechanisms, symbolic companies, collaboration between the state and investors, and conflicts of interest — can enhance minority ESG funds' engagement strategies or ameliorate some of the challenges that they face when engaging with companies in Asia. ESG funds should consider strategizing the implementation of their engagement strategies as set out in the Engagement Pyramid in the light of these five features.

Finally, for scholars and policymakers interested in conducting further research into the engagement strategies of ESG funds in Asia, a crucial but understudied topic, this article generates important future lines of inquiry including: how do the engagement strategies of ESG funds in Asia differ from those of non-ESG funds (such as hedge funds[180]) in Asia? What are the differences and similarities between the engagement strategies of ESG funds in Asia, the US and Europe[181], and which strategies are more effective and for what purposes? Do the engagement strategies of ESG funds in Asia improve their portfolio returns and the ESG performance of the investee companies? Do the engagement strategies of ESG funds in Asia lead to changes in firm behavior? These interesting questions with potentially significant ramifications are beyond the scope of this article. However, by explaining the obstacles that ESG funds face in Asia, analyzing the engagement strategies that they have deployed, and examining how certain contexts can address these obstacles and enhance their strategies, this article helps to systematically lay the foundation for future research.

[180] Lin (2024).
[181] Bowley et al. (2024).

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Appendix 1

List of ESG funds considered in the construction of the ESG Engagement Pyramid

Nordea 1 Asian Equity Stars Fund[182]

Canada Pension Plan Investment Board[183]

APG Management Fund[184]

Algemeen Burgerlijk Pensioenfonds ("ABP")[185]

Akademiker Pension ("AkaP")[186]

Stewart Investors Asia Pacific Leaders Sustainability Fund[187]

Align Partners[188]

Amundi Asset Management[189]

Storebrand ASA[190]

Kommunal Landspensjonskasse[191]

Inclusive Capital Partners[192]

Engine No. 1 Fund[193]

Oasis Management[194]

Anda Asset Management[195]

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[182] https://www.nordea.lu/en/professional/fund/nordea-stars-offering/.
[183] https://www.cppinvestments.com.
[184] https://apg.nl/en/.
[185] https://www.abp.nl/english/investments.
[186] https://akademikerpension.dk.
[187] https://www.stewartinvestors.com/uk/en/intermediary/our-strategies/our-funds/GB0033874768.html.
[188] https://www.alignpartnerscap.com.
[189] https://about.amundi.com.
[190] https://www.storebrand.no/en/.
[191] https://www.klp.no.
[192] https://www.inclusivecapitalism.com/organization/inclusive-capital-partners/.
[193] https://engine1.com.
[194] https://oasiscm.com.
[195] http://www.andaasset.com/en/.

Canadian Fund Caisse de dépôt et placement du Québec (“CDPQ”)[196]

Ontario Municipal Employees Retirement System (“OMERS”)[197]

[196] https://www.cdpq.com/fr.
[197] https://www.omers.com.

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