



International Corporate Governance Network 12th Annual Conference

Corporate Governance – Seizing the Initiative



Hot Topic Session: Minority Protection: How Effective are Minority Rights in Closely-Held Companies?

1. Introduction

The discussion on minority rights in closely held companies was mainly directed by questions addressed to the audience in respect of the following areas:

- Board representation
- AGM's and proxy voting
- "Privatisations" (i.e. converting a public company into a private company)

The majority view on these questions, as well as the main issues raised in respect thereof, are summarised below.

2. Summary of key issues raised

2.1 **Majority view:** Independent directors should take the interests of minority investors into account.

Discussion: The general principle that directors should represent the interests of **all** shareholders and act in the best interest of the company was recognised, but with the understanding that in certain specific scenarios independent directors have a particular responsibility to protect the interests of minority shareholders. It was pointed out that in Italy there is a system whereby minority shareholders are entitled to appoint their own directors.

2.2 **Majority view:** Large institutional shareholders should have a say in the nomination of directors.

Discussion: It was explained that in Sweden the nomination committee is made up of the chairman of the board as well as representatives of the 3 largest shareholders in the company. One of the benefits of this system that was highlighted is the potential for increased interaction between the chairman and shareholders. A concern that was expressed was the possibility of shareholders being regarded as insiders.

2.3 **Majority view:** The principle of "one share one vote" is supported.

Discussion: The need for proportionality and balance was recognised. It was felt that there should be a mechanism to move to this system in instances where it is not yet practised.

2.4 **Majority view:** There was strong support for the notion to move or mandate voting by poll, but some participants still see value in show of hands.

Discussion: The impact of different rules applicable to different jurisdictions was recognised. The potential problems with voting by a show of hands, in particular the predicament this could bring for the chairman, was debated.

2.5 **View:** There were divided views as to whether minority shareholders should have strict power to approve privatisations and voluntary de-listings, or whether existing protections are adequate.

Discussion: In some jurisdictions there are adequate safeguards for minority interests in instances of this nature. The question should rather be whether minorities should in fact be able to veto such a proposed transaction.

3. **Recommendations/views for ICGN consideration/action**
- 3.1 There are extensive rules for minority protection in a large number of jurisdictions, but shareholders need to be **educated** in order to understand the relevant processes and their particular rights in this regard.
- 3.2 Investors should be **encouraged** to be more active in expecting companies to follow best practice.
- 3.3 Minority protection is largely sufficient, but should be **highlighted** more through, for example, better use of the media.
- 3.4 There is definite room for **global standardisation** of rules in respect of minority protection where possible.
- 3.5 **Best practices** in specific jurisdictions as far as minority protection is concerned need to be **identified and communicated** to enable all jurisdictions to learn from these.
- 3.6 Shareholder access for nomination of directors via proxy voting in the US.

Session Chair: Jamie Allen

Scribe: Annamarie van der Merwe