



## **ICGN Principles for a Model American Depositary Receipt Agreement**

**February 2004**

### **Preamble**

In 2002, the ICGN endorsed a report presented by the ADR Subcommittee of the Cross-Border Voting Practices Committee on the problems of voting American Depositary Receipts. In the report, the ADR Subcommittee recommended that as a short-term priority, improvements should be made in depositary agreements, including removal of certain standard terms that hinder the ability of ADR holders to vote effectively.

As a first step in promoting improvements in depositary agreements, the Subcommittee developed principles for a model depositary agreement to focus on areas in which ADR agreements can be improved, including the voting rights of ADR holders. In 2003, the ICGN published a draft of the principles for comments from both ICGN members as well as the ADR community.

The ICGN now endorses the final set of principles, which reflects comments received. These principles are intended to be a useful guide to depositary banks and issuers in formulating terms of the depositary agreement that will facilitate rather than impede the ability of ADR holders to vote. Although the principles are based on the work relating to ADRs, the ICGN believes that these principles are relevant to agreements in other jurisdictions.

## **Principles**

### **1. Notice and Voting Materials:**

A. Depositary agreements should include a provision specifying the minimum time period for delivery of voting materials to ADR holders. The minimum time period in which materials should be delivered to ADR holders is 21 days from the date of the shareholder meeting. The agreements should specify that the depositary banks will forward the voting materials as soon as practicable (e.g., within three days of receipt).

B. Depositary agreements should obligate issuers to provide a complete set of information to the depositary bank and should specify that the depositary bank will forward to the ADR holders a complete set of information from the issuer.

C. Depositary agreements should require issuers to provide depositary banks with notices of meetings that include the place, date, time of the meeting, and the proposals to be voted upon at the meeting and should obligate the depositary banks to forward this information to ADR holders.

D. Depositary agreements should obligate issuers and depositary banks to specify clearly in the voting materials the deadlines and procedures for ADR holders to send in voting instructions. Depositary agreements also should require issuers and depositary banks to specify in the voting materials any procedural requirements for ADR holders to exercise shareholder rights (e.g., submission of shareholder proposals or attendance at shareholder meetings).

### **II. Right to Vote:**

A. Depositary agreements expressly should permit ADR holders to vote either directly or through the depositary (depending on the law of the jurisdiction regulating the issuer).

B. Depositary agreements should not include a term that would permit ADR holders to vote only if the issuer formally requests the depositary to ask ADR holders for their vote.

C. Depositary agreements should obligate depositary banks to vote according to the instructions provided by ADR holders and not to change any voting instructions.

### **III. Autoproxy:**

Depositary agreements should not provide management with the votes of ADR holders that do not vote. Depositary agreements should not permit the discretionary voting of uninstructed shares of ADR holders by issuers or depositary banks.

### **IV. Shareholder Rights:**

Depositary agreements should recognize explicitly ADR holders as shareholders of the underlying securities. In this regard, depositary agreements should include specific provisions requiring the depositary to submit shareholder proposals at the request of ADR holders and permitting ADR holders to attend shareholder meetings.

**V. Disclosure of Depositary Agreements:**

Depositary agreements should be available for review to ADR holders and prospective ADR holders.

**VI. Disclosure of Compliance with Principles:**

If the principles outlined above are not followed, the depositary banks and the issuers should disclose their reasons for their noncompliance to ADR holders.

**ADR Subcommittee**

Jennifer S. Choi (Chair)

David Dando

Harry Frost

Paul Lee

Pierre-Henri Leroy

Ted Rothschild