



ICGN

International Corporate Governance Network

By e-mail: consob@consob.it

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RE: Public Comment on Consultation Document on the Regulation of Related Party Transactions

Dear Sirs,

I am writing on behalf of the International Corporate Governance Network (ICGN) and its Shareholder Rights Committee. The ICGN is a global membership organisation of institutional and private investors, corporations and advisors from 47 countries. Our investor members are responsible for global assets of U.S. \$9.5 trillion. The mission of the ICGN is to contribute to the continuous improvement of corporate governance best practices through the exchange of ideas and information across borders. Information about the ICGN, its members, and its activities is available on our website: www.icgn.org.

As investors, the members of the ICGN have a keen interest in the quality and efficiency of capital markets and, in particular, how sound corporate governance practices can underpin corporate performance. The ICGN welcomes the work of the CONSOB's consultation document on the regulation of related party transactions. In this letter we will take the opportunity to comment on the role of independent directors in approving material related party transactions. We will also comment on CONSOB's decision to delegate to the companies the identification of the percentage of non-related shareholders necessary for the whitewash mechanisms to apply.

Requirements of independence

In order to ensure the transparency and the substantial and procedural fairness of related party transactions, it has been established that management boards or boards of directors need to adopt certain procedures (article X.2). Companies need to identify among others the requirements of independence of directors or members. The CONSOB acknowledges that this delegates the definition of directors' independence requirements to the companies. In our opinion this decision leaves excessive ambiguity and discretion with regard to the definition of directors' independence requirements. The ICGN would prefer the adoption of clearly defined independence requirements similar to the criteria included in the 'Codice di Autodisciplina'.

A stricter definition is of particular importance because independent directors play an important role in the approval of material related party transaction. They need to ensure that the interests of all shareholders are taken into account. Because of the voto di lista system, an increasing number of (foreign)

shareholders actively nominate slates of independent directors. To ensure minority shareholder protection, in our view the involvement of independent directors appointed by minority shareholders in approving material related party transactions should be clearly defined. The CONSOB only states that transactions need to be approved by independent shareholders. The situation should be avoided that the committee approving the transaction only consists of independent directors nominated by the major shareholder.

Another point of concern is that in our opinion shareholders should play a greater role in the authorisation of major related party transactions. In the current setup of the proposed regulations, shareholder approval is merely a complement of the decision made by independent directors. In line with best practice in other European countries (e.g. in the UK) we believe that shareholders' authorisation through a 'pure' whitewash mechanism should be the central element of related-party transactions authorisation.

Application whitewash mechanism


The CONSOB has made the decision to delegate to the companies the identification of the percentage of non-related shareholders necessary for the whitewash mechanisms to apply. The ICGN is of the opinion that this proposed provision is not in the best interest of shareholders. It would allow companies to set arbitrarily high thresholds for the whitewash mechanism to apply. This would undermine the effectiveness of a shareholder vote and curb shareholders rights. We are of the opinion that the Italian asset management industry and the growing presence of international institutional investors ensure the effective functioning of the whitewash mechanism in situations where related party transactions have to be authorised, as these investors make extensive use of their voting rights.

Thank you for the opportunity to provide our comments. If you would like to discuss any of these points, please do not hesitate to contact Carl Rosén, our Executive Director, by phone +44 207 612 7098 or email carl.rosen@icgn.org . Thank you for your attention and we look forward to your response on the points above.

Yours sincerely,



Bram Hendriks
Co-Chair, ICGN Shareholder Rights Committee



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