ICGN Statement on 
Institutional Shareholder Responsibilities

Preamble

Millions of households worldwide depend on the growth in long-term value of investments made by institutional shareholders, be it for their saving schemes, life insurance, retirement provisions or otherwise. As trustees of these investments, which may include shares in listed companies, institutional shareholders have a general responsibility to use best efforts to preserve and increase this value. Improving the corporate governance of companies is increasingly understood as an important means of enhancing the long-term value of equity investments. As a result, many institutional shareholders, along with the ICGN itself, have taken steps to outline best practices for the governance of such companies. However, institutional shareholders as a class have an equal responsibility to address their own roles as fiduciaries and owners of equity on behalf of savers.

This ICGN Statement sets out a framework of best practices on the implementation of fiduciary responsibilities in relation to equity shareholdings. As such it is meant to apply to institutional shareholders and their agents around the world. Further, it addresses the entirety of those relations—not just the shareholder’s responsibility to vote shares. At the same time, the principles as described herein should be dealt with pragmatically. Different legal systems, different contractual relations and different markets will require different approaches. This Statement describes general responsibilities. Rather than taking these literally, institutional shareholders and their agents should determine the implications for them and consider the suggestions made on how to implement these responsibilities. It will be up to them to decide what action is appropriate in what situation. The Statement further describes how these decisions should be accounted for. It needs to be stressed that this Statement considers governance and investor responsibilities associated with it not ends in themselves, but means to achievement of optimum interests of beneficiaries. It should not be taken to encourage any form of rote compliance with excessively detailed guidelines that might inhibit the ability to make decisions on the merits.

This Statement outlines the general responsibilities of institutional shareholders and their agents in respect of their shareholdings. In order to facilitate the proper discharge of these responsibilities, shareholders require certain minimum rights. The ICGN intends to develop principles that describe these in a separate document.

A precondition for the proper discharge of institutional shareholders’ responsibilities is, furthermore, a well-functioning fund governance system with adequate checks and balances. Such a system should, for example, safeguard the independence of trustees and ensure that they have available adequate skills and expertise. ICGN will investigate developing global standards of best practice to give guidance to institutional shareholders in that respect.

In this Statement the term “institutional shareholder” includes pension funds, insurance companies, mutual funds and other collective investment schemes. The term furthermore includes those agents to whom the responsibilities as described herein are outsourced in any way, unless the text indicates otherwise. The term “beneficiaries” includes the beneficiaries of institutional shareholders and clients of agents respectively, unless the text indicates otherwise.

General responsibilities

1. Institutional shareholders have a general responsibility to ensure that investments are managed exclusively in the financial interests of their beneficiaries, as amplified - where relevant - by contract or law.
2. As a matter of best practice, in discharging this responsibility, institutional shareholders should contribute to improving and upholding the corporate governance of companies and markets in which they invest, with the understanding that institutional shareholders’ policies may indicate de minimis limits for reasons of cost-effectiveness or practicability and that they disclose details of all cases where this is invoked. Such limits may include the impracticability or disproportionate expenses of voting in certain jurisdictions with inefficient voting procedures.

The general objective of these activities is to stimulate the preservation and growth of the companies’ long-term value. Institutional shareholders should judge which actions are suitable and effective to that end, taking into account the specific circumstances of the case at hand.

Appropriate actions to give effect to these ownership responsibilities may include:
- Voting;
- Supporting the company in respect of good governance;
- Maintaining constructive communication with the board on governance policies and practices in general;
- Expressing specific concerns to the board, either directly or in a shareholders meeting;
- Making a public statement;
- Submitting proposals for the agenda of a shareholders meeting;
- Submitting one or more nominees for election to the board as appropriate;
- Convening a shareholders meeting;
- Consulting other investors and local investment associations either in general or in specific cases;
- Taking legal actions, such as legal investigations and class actions;
- Lobbying governmental bodies and other authoritative organisations;
- Incorporating corporate governance analysis in the investment process;
- Stimulating independent buy-side research;
- Outsourcing any or all of these powers to specialized agents, for instance in the event the institutional shareholder concludes that it does not have the ability to muster necessary skills in-house.

3. These ownership responsibilities should be dealt with diligently and pragmatically. This Statement, for instance, encourages the support of good corporate management initiatives, as much as opposition to bad ones. Furthermore, as a general rule, institutional shareholders should not interfere with the day-to-day management of companies.

4. However, it is clear that institutions risk failing to meet their responsibilities as fiduciaries if they disregard serious corporate governance concerns that may affect the long-term value of their investment. They should follow up on these concerns and assume their responsibility to deal with them properly.

Such concerns may, for instance, relate to:
- The level and quality of transparency;
- The company's financial and operational performance, including significant strategic issues;
- Substantial changes in the financial or control structure of the company;
- The role, independence and suitability of non-executives and/or supervisory directors;
- The quality of succession practices and procedures;
- The remuneration policy of the company;
- Conflicts of interest with large shareholders and other related parties;
- The level and protection of shareholder rights;
- Minority investor protection;
- Proxy voting;
- The independence of third party fairness opinions rendered on transactions;
- The accounting and auditing practices;
- The composition of the audit- and remuneration committees;
- The adequacy of internal control systems and procedures;
- The management of environmental, ethical and social risks.
Voting
1. Voting forms a prominent part of institutional shareholders’ approach to corporate governance. It should be assumed that all votes cast - regardless of their number - contribute to a stronger management focus on the interests of shareholders in the case at hand, as well as in general.

2. To strengthen this focus, votes should be cast on the basis of careful analysis, consistent with an institutional shareholder’s well-considered policy and with a view towards improving and upholding the corporate governance of companies and markets. Automatic voting should be avoided.

3. In this respect, voting guidelines need to be adopted to support the applied policy. In developing these, institutional shareholders are advised to take due account of already existing international and national influential standards, including the ICGN’s own Statements.

Accountability of the institutional shareholder
1. Institutional shareholders are accountable to the beneficiaries of their investments for the way they execute their ownership responsibilities. To show how they discharge these responsibilities, institutional shareholders should as a matter of best practice disclose to these beneficiaries:
   a. Their corporate governance policy outlining how they deal with their ownership responsibilities, how corporate governance aspects are taken into account in their investment policy, and their voting guidelines;
   b. How companies in which they invest are regularly monitored, and how they periodically measure and review the effects of their monitoring and ownership activities;
   c. An annual summary of their voting records together with their full voting records in important cases, e.g. cases of conflict or controversy. Voting records should include an indication whether the votes were cast for or against the recommendations of company management. The summary should at least include the percentage of shares voted and the extent to which votes have been cast with or against management;
   d. An explanation of specific action taken in important cases;
   e. A list of all companies in which they are a shareholder, preferably together with the number of shares held;
   f. What resources they have allocated to execute their corporate governance policy;
   g. In case no (material) resources have been allocated: how they have weighed the various arguments coming to this decision and an indication of what developments would make them reconsider their position;
   h. A list of conflicts of interest that may impede an independent approach towards the companies in which they have invested;
   i. What procedures they have in place to deal adequately with these conflicts;
   j. The names of the agents to which they have outsourced ownership responsibilities together with a description of the nature and extent of this outsourcing and how it is regularly monitored.

2. Disclosures should be made at least once a year on the shareholder’s website and, preferably, simultaneously in or with the annual reports. The shareholder may choose, however, to provide voting records alternatively to requesting beneficiaries at no cost directly on an annual basis. So far as the responsibilities described herein are outsourced by the institutional investor, it should agree with the relevant agent how the disclosures to the beneficiaries of the institutional investor can be safeguarded.
Conflicts of interest
1. Some institutional shareholders have conflicts of interest that could impair an independent approach towards the companies in which they have invested, generally because they directly or indirectly have other actual or prospective relationships with the companies concerned. In all such cases, the institutional shareholder should ensure full transparency as outlined in III.1 (h) and (i) above. Where such a conflict has the potential to harm the interests of the beneficiaries of their investment in the company, they may consider as one possible solution outsourcing the power to perform their ownership responsibility to a separate independent agent or trust company set up for that purpose.
2. Institutional shareholders should also be aware of possible conflicts faced by their agents. If the casting of votes or the performance of other ownership responsibilities is outsourced (whether or not together with asset management), the institutional shareholder should ensure that the agent acts fully independently from corporate management or other conflicting business relationships. The investing institution should ensure, in particular, that votes are cast in an informed manner and on the basis of voting guidelines that are materially consistent with its own. It should furthermore regularly evaluate the performance of the agent on the basis of detailed reports and ensure that the institutional shareholder can override agent decisions if need be. In case of doubt regarding the independence of an agent, the institutional shareholder may consider as one possible solution outsourcing the power to perform the ownership responsibilities to a separate independent agent or trust company set up for that purpose.

Other Responsibilities
1. Given the large differences in market development around the world, it is apparent that the implementation of the provisions of this Statement in day-to-day practice will be more straightforward for some institutions than others. However, the ICGN believes that if institutional shareholders take their responsibilities seriously then this can contribute significantly to the creation of an environment suited for solid long-term investment. Therefore, all institutional shareholders are encouraged to establish an action plan working towards full implementation of the Statement’s recommendations as soon as is practicable.

2. Although share lending in many cases is useful and appropriate, there are negative effects and abuses that require attention. The ICGN is committed to investigate developing a Code of Best Practice to deal with these issues. The ICGN will subsequently determine whether this Statement requires any amendments in that respect.

To ensure that the Statement on Institutional Shareholder Responsibilities reflects future developments in the market, the ICGN intends to evaluate the Statement’s relevance periodically.

10/12/2003

A paper on Institutional Shareholder Rights will be issued in 2004. Further information about the International Corporate Governance Network can be found on its website: www.icgn.org.