



ICGN

International Corporate Governance Network

European Commission

Unit F2: Corporate governance, social responsibility

By email Only: jeroen.hooijer@ec.europa.eu

4 November 2014

Dear Mr Hooijer

Re: European Commission Shareholder Rights Directive

The International Corporate Governance Network (ICGN) is an investor-led organisation of governance professionals with members including institutional investors based in over 50 countries and collectively responsible for assets under management in excess of US\$18 trillion. Our membership also includes other stakeholders in the field of corporate governance, including company directors and secretaries, professional advisors and academics.

Established in 1995, our mission is to inspire and promote effective standards of corporate governance to advance efficient markets and economies world-wide. This is achieved through influencing public policy on corporate governance issues by engaging with regulators and responding to public consultations, connecting peers through international events, and informing members on emerging issues through guidance and education programmes. For more information about ICGN please visit www.icgn.org.

The ICGN welcomes the opportunity to comment on the European Commission's proposed revision of the Shareholder Rights Directive and draws upon the experience of our members in providing our response. In June 2014, our Members approved the revised ICGN Global Governance Principles (attached), which emphasize the governance responsibilities of boards of directors and institutional investors, respectively. In this regard, the ICGN Global Governance Principles are very much in line with the objectives of the Shareholder Rights Directive and we would encourage the Commission to continue to pursue the objective of strengthening shareholder rights and responsibilities.

In particular we would emphasize the following points:

Related party transactions

ICGN fundamentally believes that shareholders should have the right to vote on major decisions which may change the nature of the company in which they have invested. Such rights should be clearly described in the companies' governing documents, unless they are set out in applicable law, regulation or stock exchange requirements.

Therefore ICGN is supportive of the Commission's proposal to enhance transparency and shareholder oversight on related party transactions. The ICGN strongly advocates that significant related party transactions should be approved by a majority of disinterested shareholders. This approval should be sought before concluding the transaction.

Details of related party transactions necessary for investors to make an informed decision should be disclosed in the company's annual report or general meeting documentation that is made available to the company's shareholders. Disclosure on significant related party transactions should contain, among other things, the following information:

- the identity of the ultimate beneficiaries including any controlling owner and any party affiliated with the controlling owner with any direct / indirect ownership interest in the company;
- other businesses in which the controlling shareholder has a significant interest; and
- shareholder agreements (e.g. commitments to related party payments such as licence fees, service agreements and loans).

We also emphasise that the board should disclose the process for reviewing and monitoring related party transactions which, for significant transactions, includes establishing a committee of independent directors. This may be a separate committee or an existing committee comprised of independent directors, for example the audit committee. The committee should review significant related party transactions to determine whether they are in the best interests of the company and, if so, to assess the fairness of the terms. Furthermore, the conclusion of the committee's deliberations on significant related party transactions should be disclosed in the company's annual report to shareholders.

ICGN is supportive of the proposed article 9 to require related party transactions representing more than 5% of a listed company's assets to be submitted for shareholder approval and may not be unconditionally concluded without their approval. For smaller related party transactions that represent more than 1% of their assets, we are supportive of the Commission's proposal that listed companies shall accompany the announcement by a report from an independent third party. This allows our members to objectively assess whether the transaction is on market terms and confirming whether it is fair and reasonable from the perspective of the minority shareholders.

While ICGN is supportive of the proposed article 9, we also acknowledge and understand concerns from companies regarding the very broad scope of the proposals on related party transactions in the current text of the Proposal. We therefore encourage the Commission and the Working Group under the Italian Presidency to keep the proposals in article 9 in full, but to provide a clear definition of "related parties" (e.g. to exempt directors/shareholders in subsidiaries).

In order to prevent an inappropriate compliance burden on companies, we suggest that exemptions should be introduced for transactions in the ordinary course of business. Investors do not wish to vote on numerous related party transactions which are deemed to be concluded in the ordinary course of business and/or conducted on an 'arm's length basis'. This would effectively lead to less transparency and increased difficulty identifying transactions that might be a cause for real concern.

Shareholders do not wish to micro-manage companies; rather our members wish to be able to prevent abusive related party transactions that will have a material and detrimental impact on

their investments. We therefore encourage the Commission to work on a solution that will balance the need for robust shareholder protection and concerns from companies that rules that are too broad in scope will make business less efficient and thus impact on long-term value creation.

Identification of shareholders

In article 3 sub 1 of the current Proposal a provision is included that Member States ensure that intermediaries offer to companies the possibility to have their shareholders identified. In the context of the EU regulatory framework, we believe that registered shareholders should provide the company with the identity of beneficial owners or holders of voting rights when requested in a timely manner.

Several EU Member States have already adopted legislation that enables companies to identify their beneficial owners or holders of voting rights. Whereas this enhances the opportunity for companies to enter into a dialogue with their investors, ICGN is also of the opinion that shareholders should have the possibility to benefit from the shareholder identification framework. Therefore shareholders that want to distribute information related to the exercise of shareholder rights to other shareholders should be provided with the opportunity to make use of available shareholder identification instruments. An example could be a situation where a shareholder has filed a shareholder proposal and wants enter into a dialogue with fellow shareholders. This is in line with the EC objectives of encouraging more cooperation between shareholders themselves.

ICGN would be supportive of having a relatively low threshold included in a provision in article 3. We support recent compromise text whereby only holders of >0.1% of a company's outstanding share capital would be identified through available instruments. This minimum threshold ensures that corporations are able to identify their main shareholders, while at the same time respects the anonymity of investors with limited exposure. This is consistent with the spirit of the Directive in terms of enhancing the effectiveness of company and shareholder engagement.

Facilitation of the exercise of voting rights

ICGN is encouraged by the proposed provisions in article 3 that aim to address the existing barriers to cross-border voting and the facilitation of the exercise of shareholder rights by intermediaries.

The exercise of share voting is an important share ownership right. The ICGN advocates that investors should seek to vote their shares held and make informed and independent voting decisions, applying due care, diligence and judgment. Over the last decade the exercise of voting rights by electronic means has been widely adopted worldwide and has enabled investors with international equity portfolios to increasingly vote their shares cross border. However, while electronic voting is increasingly facilitated to assist in the voting process, several obstacles remain leading to a vote execution chain, which can be costly, time-consuming and inefficient.

In the period 2013-2014 the ICGN organized several meetings with investors, intermediaries and companies to discuss how to improve the efficiency of cross border voting. Based on the outcome of these meetings the ICGN published a Viewpoint paper (attached) in which six issues have been identified that lead to particular problems. In addition, a number of suggestions for improvement have been recommended. The creation of a reliable vote

confirmation system was also identified as a key priority by the participants.

Remuneration

ICGN welcomes the EC proposals in draft articles 9 to strengthen the link between pay and performance. In fact, the ICGN Global Governance Principles took the Directive proposals into account when recently revised as follows:

“The board should disclose a clear, understandable and comprehensive remuneration policy which is aligned with the company’s long term strategic objectives. The remuneration report should also describe, on an individual basis, how awards are granted to senior management and the CEO were determined and deemed appropriate in the context of the company’s underlying performance in any given year....” (Principles 6.3)

In particular, we believe that shareholders should have an opportunity to vote on the remuneration policies, particularly where significant changes to remuneration structures are proposed or where significant numbers of shareholders have opposed a remuneration resolution. Share-based remuneration plans should be subject to shareholder approval before being implemented.

We are grateful for the opportunity to comment on the EC Shareholder Rights Directive. Should you wish to discuss any of the points that we have raised, please contact Kerrie Waring, ICGN’s Managing Director, by email at kerrie.waring@icgn.org or by telephone on +44 (0) 207 612 7079.

Yours sincerely,

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