ICGN Seoul Conference – *Controlling Shareholders, Corporate Value, and Minority Shareholder Rights*
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- **Anne-Marie Jourdan, Chargée de mission Direction Juridique Groupe, Caisse des Depots**
- **Dr Yoonjae Jang, Head of ESG Research, Shin&Kim**
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- **Chaired by Dr Woochan Kim, Sodality for Economic Reform & Professor of Finance, Korea University Business School**

Dr Woochan Kim:
This session will have two sub-topics, types of controlling shareholders worldwide, as families are not the only controlling shareholders, and the merits. Then we'll cover the challenges they posed to minority shareholders, how they have overcome them and what governments can do.

Rita Benoy Bushen:
Listed companies are defined as those with "ability to control and influence important decisions of companies," e.g., appointing CEOs, Directors and influencing board remuneration and their own. The family has a significant stake, many a majority, above 50%. Family businesses are essential to Malaysia's economy, approximately two thirds, whereas the developed world, e.g., UK and US, have a dispersed ownership structure. The family-owned Walton company owns 33% of Walmart, with the remainder institutionalised. Malaysian companies have a very concentrated ownership structure, mostly 50% and above. YTL Corporation, Berjaya Group, [Syed Mukta] Group, all own above 50%. These companies have good wealth creation for all shareholders from foundation to present.

Family companies are unique compared to GLC owned companies. I advise several Malaysian family-owned companies, and LEAP Market founder-based companies. I like that they're influenced by family culture, which can be strong wealth creation culture and it's their only source of income. They have risk capital, they tend to protect their own interest, thus family owners want growth and good performance, demonstrated through dividends.

As highly experienced people, they make decisions quickly, compared to companies with big committees, where decisions take several months and sometimes miss the boat. This is very important, especially with new ventures. They talk about ESG and can embrace it if they understand how to gain value. They are very open to embracing corporate governance in ESG.

Dr Yoonjae Jang:
Most companies in Korea are family controlled. Some own over 50% of shares and most use subsidiaries to control the entire group. There are two good points here. Their perspective is mostly long-term. Regarding time periods, they go through three months, so companies can be run with a long-term perspective, and using each subsidiary or company, they operate different companies simultaneously, developing group thinking. For long-term sustainability, family-controlled companies can ensure all subsidiaries embed their philosophy and vision. The most difficult thing is persuading the owner, and family-controlled companies move more easily than regular companies.

Dr Woochan Kim:
In Korea, families intend their descendants to run the company later, so they have a long investment horizon, especially important for sustainable management, etc.

Anne-Marie Jourdan:
In France we have state and family-owned companies. State holdings are managed by Agence des participations de l'État, or state shareholdings agency. APE executes the state shareholder's mission within the government guidelines framework. Under the authority of Ministry of Economy, Finance and Recovery, APE's mission is to manage the state-holding portfolio, which invests in strategic companies, stabilising capital and supporting development and transformation.

APE invests in three types of companies: strategic, contributory to the country's sovereignty, e.g., in defence and nuclear; companies participating in national or local service or general interest missions, with insufficient regulation to preserve public interest and ensure public service missions; companies in difficulty whose disappearance could cause systemic risk. There are 83 companies in the portfolio for €125 billion by end 2021, with a corporate value of 70 billion. Among these are 11 listed companies, predominantly in the energy sector, representing 53% of the market capitalisation of the portfolio, plus aeronautics defence sector, infrastructure, air transport, telecommunication, financial service and automotive.

In the CAC 40 Index, there was an increase in family and founding shareholder ownership from 10% in 2016, to 19% in 2020. Among the top ten shareholders, three families represent 13.6% of shareholdings. The Arnault family runs LVMH, which owns Dior, Guerlain, Chaumet, Tiffany, Moët & Chandon and Dom Perignon. The Dumas family own Hermes, and the Bettencourt's own L'Oréal. The Pinault family (Kering: brands Gucci, St Laurent) and Del Vecchio family (Luxottica) represent 2% of capitalisation. French states represent only 2.2% capitalisation and BlackRock 2.4%. SBF 120 Index shows increase in family ownership from 12% in 2012 to 18% in 2020.

Dr Woochan Kim:
Families aren't the only controlling shareholders. France has a great state presence, which has a benefit of contributing to state sovereignty and fixing market failure in sectors requiring government ownership.

Dr Ashraf Gamal El-Din:
It's challenging to talk about a region encompassing so many countries. I will concentrate on my experience in North Africa and Gulf States. Listed companies are characterised by concentrated ownership, usually one or two owners controlling 50-70% of shares of companies. The biggest shareholder, directly and indirectly, is

governments. There are a small percentage of family-controlled listed companies and many non-listed family businesses, some quite large.

State-ownership varies, sometimes investment funds, but oftentimes state-owned companies or banks invest in companies. When reviewing shareholders, you may find banks, insurance companies, but they're all state-owned, not directly. Listed family businesses follow rules, have good governance structures, separation of management and ownership. One or two family members may be on boards, but they have professional management and regulation. Whereas non-listed companies have many challenges here.

Some investment authorities are very sophisticated and push good governance through professional Boards of Directors, ensure good standards and reporting compliance, but others aren't as professional. State-owned companies owning shares don't have as advanced governance structures. Regulations and corporate governance codes have clauses to protect minority and small shareholders and rights are outlined. Many complaints to them are from small shareholders without information access, who are unable to give opinions in general assemblies. Despite regulations, in practice it's not always as clear. We have many investment companies who appear not to be, such as oil companies, who in reality, invest in other companies.

Dr Woochan Kim:
What are the challenges for minority shareholders?

Rita Benoy Bushen:
Family-owned firms have unique challenges. They tend to be hierarchical and don't discuss mortality with Founders. Succession issues are a real problem. I've seen many disputes between family members, which destroy shareholders' value. I mediated in a conflict between two brothers who owned a port, which dominated the company. Family enterprises must understand these issues and form their own family governance, which I now provide, creating protocols.

Investors view these companies in a skewed way. History shows related party transactions and conflicts of interest. To deal with this, we must have regulations, shareholder activism and stewardship principles. Asian companies have unique challenges from Western companies. Although good in the long-term, the transition to poll voting, over show of hands, with 50-60% of companies family-owned, means many no longer attend AGMs to hear the retail minority raise issues. This was intended to be overtaken by institutional investors with the Principles of Stewardship, but they don't either. Resolutions are passed on just 50%.

Thankfully, the Security Commission recognised the importance of governance structure for all listed companies. Long serving Independent Directors, over 12 years, who often aren't independent, but family friends, must undergo the two-tier voting process, since 1st January 2022. Those who wish not to have this process, after nine years must be renamed Non-Independent, Non-Executive Director and not affect Risk and Audit Committees. There is a two-year grace period before two-tier voting and many decline directorships, meaning they don't wish to face shareholder scrutiny. Majority shareholders are Tier One, and all minority shareholders are Tier Two, both agreeing on potential Independent Directors.

Governance codes ensure separation of CEOs and Chairman, who cannot also be Chairman of Governing Committees. They need more Independent Directors.

MACC Guidelines on Corruption are mandatory, with all listed companies, especially LEAP Market, requiring adequate policies. If these are not in place, the personal liability for corruption is on Directors. The whistleblowing protection is a reason many issues appear in the media and are escalated to regulators. Minorities and underprivileged people are passionate about issues.

All companies having one female Independent Director is mandatory. Futureproofing is important, especially for agile, well-structured family-owned companies, who can embrace digital transformation quickly. They must also embrace sustainability.

Dr Woochan Kim:
In the two-tier voting system all newly elected Directors must go through two votes, majority and minority shareholders?

Rita Benoy Bushen:
Tier One is anyone with a stake over 33%, tier two is everyone else, and the votes are taken after nine years. There are many long-serving Independent Directors. Their status had to be converted from Independent to Non-Independent Director, so they can't hit the Risk and Audit Committees. Three years later you must pass the test to vote in AGMs.

Dr Woochan Kim:
Korea's system adopted in 2020 is similar. External Directors of listed companies can only serve six years in a company and nine years for the entire group. They must leave at this time and cannot return.

Rita Benoy Bushen:
I think we have a cooling period.

Dr Woochan Kim:
What are Korea's challenges and remedies?

Dr Yoonjae Yang:
This is my personal, not company, perspective. At KCGS for assessments, or NPS with investments and evaluations, I speak liberally, but now the companies are my clients, I can't name them. Minority shareholders may be sacrificed, especially for succession. Among many subsidiaries, some want succession, some don't. If they must merge with other companies, their share price can deteriorate. To acquire ownership, the ratio of merger is focused more on major shareholders.

Individual shareholders may also be sacrificed. In 2021/2022 one of Korea's hottest issues was listing subsidiaries after split-offs. The buy-back request cannot be held by minority shareholders, so subsidiaries listed after split-off, the share price of the mother company decreases, leading to deterioration in overall share price. Particularly family-owned companies take a long-term perspective, and the valuation is fundamental based. The governance has ownership, so the share doesn't fully implement or embrace the actual value. Even though it's ultimately promising, the PBR is less than one, very prevalent. Many Korean companies are under-valued.

To tackle this, many corporate governance improvements were made. Independent board member limitations is one example, alongside many other improvement efforts. To improve issues of split-offs, the relevant bodies plan to enforce reporting of relevant information. These policies will be implemented this year, according to the plan. A decade on, with this legislation and implementation, minority shareholders still face many difficulties. When foreign investors intervene in mergers, there is huge improvement. Independent board members' history of experience is often short, but with foreigners the experience is very long, leading to a strict overview and supervision of such independent board members. Stewardship is weakening and shareholder activism is rising, which is a hot issue. Investors intervening more in investments should lead to greater improvements.

Dr Woochan Kim:
The companies by Yoonjae mentioned include Samsung C&T, Hankuk Glass and Tongyang Industries. We see small activist funds engaging against current companies, some stopped controlling shareholders continuing their related part transaction, which the stock market responded positively to. We hope to see more in the next shareholders meeting. A former student of mine said that her company wants to launch a corporate governance fund.

Anne-Marie Jourdan:
For state-owned company minority shareholders in France APE must apply policies and regulation on ESG, compensation, equality, social and environmental responsibility policies, important to minority shareholders. Management remuneration in state-owned companies, the maximum CEO salary is very low, €450,000. Feminisation rates on state-controlled Boards of Directors and Supervisory Boards reached 43% for the 11 listed companies in 2021, very high, and 37% for non-listed companies. The state also influences management in their shareholding companies to avoid employee dismissal. The presence of the state in company capital makes protecting advanced industries from austerity possible. The state is a very long-term shareholder and provide companies a certain stability.

There are also disadvantages. Patrimonial and strategic interests can vary between the state and minority shareholders. Management is named by the state, so they're difficult to remove if French Government established strict rules. Years ago, Renault had issues between the state and management. To gain majority control the state swapped shares just before the General Meeting, selling them after the decision went their way, strange in corporate governance terms.

More recently, with EDF, the state mentioned its intention to buy back EDF capital securities held by minority shareholders, aiming to delist the company. The project is part of the climate emergency context and while the geopolitical situation imposes a strong decision to ensure French independence and energy sovereignty, the minority shareholders maybe expropriate from EDF. Even if French laws are very productive for minority shareholders, sometimes strategic interest could be more prominent than corporate governance principles.

Shareholder rights in law and social interest of companies in law must be balanced. Sometimes minority shareholder rights could be refrained by the company's interest and our watchdog, the Monetary Authority, try to stick to these issues. Minority shareholders must exercise their rights in law, but often don't.

Dr Ashraf Gamal El-Din:
It's interesting that sustainability and responsible investment vary enormously between regions. We've seen challenges in our company and government work. Small shareholders don't often have access to full information, as larger ones do. CEOs say, "The state has 90% of the shares, I give them whatever they want. I can't really answer somebody who has 0.05%." Small shareholdings voting in AGMs cannot make significant impact. In this region, you must own 10% of shares to be

able to elect Directors to a board. Below that, there is no real influence. The law, again, differs from reality. Collectivism, gathering small shareholders, to be influential, is not observed much. You cannot place items on AGM agendas without 5%.

A big issue is conflict of interest, it's everywhere. These companies don't have independent board members. Most are nominated by government entities, some being government employees and can give directions, even on voting. They say they're not always convinced of something but get a direction to vote in a certain way. A company with two public sector banks as big shareholders, lost over 50% capital and by law, should've been liquidated. They refused because these two banks were supplying loans to the company. On the records, if made bankrupt, the loans would've vanished. Another listed company had liquidity problems, but some big shareholders wanted dividends due to their own cash problems, so tried to force money out. This happens too often. There's a lack of true independence, the maximum you see is Non-Executive, and most are government people. They are installed as compensation for something else, like they have a small salary, the company cannot afford to pay more. So, many boards are very unqualified.

There are some solutions. Many SOEs invite us to train Nominee Directors, where we explore with them company loyal and making a difference within the company. Progress has been made with Directors being prosecuted in court because of poor performance on boards, resulting in financial losses for companies. There are ambitious plans for IPOs in Saudi Arabia, Dubai. Governments try to attract foreign and institutional investors, an opportunity to influence governance and minority shareholder protection. We regularly push for awareness here.

There are ten to 15 influential investors in our region, but it requires a culture change, which takes time, changing mentality from "That's our money, we can do whatever we want," etc. In Dubai three years ago, one major sustainability company, with excellent reports, everything perfect, 97% government-owned, government then bought the remaining 3% and delisted. Nobody knows why, but we see these situations. Awareness is required. Younger generations, educated in the West, are entering government positions, coming with that governance. This must be pushed from investors and governance institutes. Things are happening, but too slowly.

Dr Woochan Kim:
Are companies with state controlling shareholders, but sovereign wealth funds having block shareholding to monitor and influence Managers' activities?

Dr Ashraf Gamal El-Din:
We have a couple of sophisticated investment companies or sovereign wealth funds. Some constantly train and manage Directors on best corporate governance and reporting, from personal and state interests. It may conflict with majority shareholders' agenda items.

George Dallas:
With the rise of dual-class shares in USA and UK, diversified companies wanting to become controlled companies, we'll face this discussion in more settings. From our sustainability and governance course, Capstone is the Volkswagen case study, which is somewhat testament to perverse outcomes caused by badly controlled structures. After Dieselgate, eight years ago, Volkswagen's governance structure was universally criticised, but nothing changed. Traditional stewardship models have portfolio investors meeting Executives or board members of portfolio companies to

present a case. Should they adapt this for controlled companies, with investors dealing with controlled owners, not necessarily company management? Volkswagen is a frustration. Controlled companies can be the best, with the right owner, but can be potentially the worst.

Dr Ashraf Gamal El-Din:
In Middle East shareholders drive corporate governance. It's their interest, not board or management, for operational issues, and definitely all strategic issues.

Rita Benoy Bushen:
We must think about stewards, not just institutional shareholders and owners. The board are the stewards, the first line of defence. Independent Directors should be stewards, with that mindset. In my previous role, I had issues with major shareholders who cared only about their interests. My perspective now, as an Advisor to majority shareholders, controlling families want to do the right thing, and feel it's for their benefit. They need more training that their role is essential, moving forward. Institutional investors, stewards, should also be there, Independent Directors and controlling shareholders. At YTL, Francis Yeoh and his board, during COVID, didn't take remuneration and ensured no retrenchment. When I explain the benefits of ESG to companies, that it's not only altruistic, but for their benefit, many implement the global standards. We must tailor the standards for each company.

Anne-Marie Jourdan:
I'm less pessimistic than George. If we see corporate governance improvements in controlled companies, it's due to investors. They should be organised with coalitions and engagement platforms. Litigation is the ultimate power, and almost 300 investors are suing Volkswagen in German courts. We should continue dialogue with controlling companies.

Dr Yoonjae Yang:
Stewardship activities relates to engagement and voting, including board member nomination. In Korea, voting is in stewardship, but not yet engagement. With controlling shareholders, many shareholders must collaborate to have more shares. For collective action for shareholders, we have legal restrictions. They must disclose their shareholdings and when sold, buy-back is mandatory. In the UK, stewardship is stricter and well-established. With such disclosure, long-term, we must show willingness to change. For shareholder engagement and activities, alongside stewardship, engagement is sometimes unsuccessful because they misunderstood Korean laws. Over 90% of listed company AGMs happen in March and advisory services can't digest everything in this short period. No all information provided can be reviewed. Engaging without these tips, they fail. It's important to know Korean culture, which will lead to changes in companies.

Dr Woochan Kim:
Engagement and stewardship can be soft and hard. Hard includes engaging in a proxy fight and winning at shareholder meetings, hard with controlling shareholders owning over 50%. With soft engagement, some controlling shareholders care about reputation, if you convince them, they will listen, this may work. In Korea, not all controlling shareholders own over 50%. They control companies with 25%, with 75% minority shareholders, who if united, can win by proxy fight. Audit Committee members have voting rights restrictions on controlling shareholders, who can only vote up to 3% when electing members. Some Korean activist funds successfully use them. Stewardship is possible, even with controlling shareholders.