Protection of Minority Shareholders in Listed Issuers

Final Report

TECHNICAL COMMITTEE
OF THE
INTERNATIONAL ORGANIZATION OF SECURITIES COMMISSIONS

in consultation with the OECD

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Introduction

Origins of the Task Force

The IOSCO Technical Committee Task Force on Corporate Governance (the Task Force) was created as a result of recommendations contained in the Technical Committee Report dated February, 2005 entitled "Strengthening Capital Markets against Financial Fraud" (the Financial Fraud Report).

The Financial Fraud Report recommended that the Technical Committee work jointly with the Organisation for Economic Cooperation and Development (OECD) to undertake additional analyses of (i) the definition and role of independent directors on the boards of issuers, and (ii) the additional protections required in situations where issuers are controlled by a dominant shareholder.

The Task Force completed its work on board independence and published its report in March 2007. The Task Force then began work on the second part of its mandate dealing with the protection of minority shareholders. The mandate was to carry out a fact-finding process rather than to develop or recommend best practices. The Task Force prepared and circulated to all Task Force members a questionnaire (a copy is attached as Appendix C to this report). As authorized by the Technical Committee, the questionnaire was prepared to broadly capture *all* protections afforded to minority shareholders in listed issuers,[1] not only issuers controlled by a dominant shareholder. The Technical Committee considered it appropriate given that protections available to all shareholders will apply equally to shareholders in issuers controlled by a dominant shareholder.

In preparing the questionnaire and this report, the Task Force attempted to limit any overlap with the earlier work of the Task Force on board independence.

Composition of the Task Force

The Task Force is composed of eighteen member jurisdictions: Australia, Brazil, Canada[2], Germany, Hong Kong, Israel, Italy, Japan, Mexico, the Netherlands, Poland, Portugal, Spain, Switzerland, Thailand, Turkey, the United Kingdom (U.K.) and the United States of America (U.S.).

Purpose of the questionnaire and report

The purpose of the questionnaire was to gather information on the relevant protections and standards in each jurisdiction, regardless of whether such protections and standards take the form of statutory or common laws, rules, principles, policy or guidance. Protections and standards can originate in securities or corporate legislation, stock exchange rules or other generally applicable requirements.

The questionnaire did not survey the general level of substantial or controlling shareholder concentration in public companies across jurisdictions. The Task Force was also not requested to conduct any empirical work to assess how different protections and standards are implemented or applied in practice. However, Task Force members were asked to comment on practices, where applicable.

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1 The terms "issuer", "corporation" and "company" are used interchangeably throughout the report.

2 Canada was represented by the Ontario Securities Commission and the Autorité des marchés financiers (Québec).

This report is a summary of the information gathered by the Task Force, based on the responses provided by the eighteen jurisdictions that completed the questionnaire. In the report, the OECD Principles and Methodology on Corporate Governance[3] have been used as a reference point for framing the responses to the questionnaire across jurisdictions. However, the report is not intended to be an assessment of a jurisdiction's corporate governance regime against the OECD Principles and Methodology, nor is it intended to suggest corporate governance best practices or draw conclusions about such practices.

The references in the report to a particular jurisdiction's legislation, regulations or practices have been provided as examples that may be of interest to the reader. We have not attempted to refer to all relevant examples or to suggest by an example any comment on a jurisdiction's corporate governance framework or practices.

In the process of drafting the report, it became apparent that, in many cases, there is no simple summary of responses possible. In reviewing this report, it is important to recognize that we have attempted to provide a relatively simple summary of often more complex matters. The report does not provide a complete or exhaustive explanation of each jurisdiction's corporate governance regime.

The information contained in this report is based on the responses provided by members of the Task Force over the course of the 2008 calendar year. The responses provided by Task Force members have not been approved by their respective commissions, commissioners, governments or other relevant entities. The report has been prepared by securities regulators who may not be directly responsible for all aspects of a jurisdiction's corporate governance framework (including, for example, corporate law matters). In addition, there may be different state or provincial securities and/or corporate laws that are relevant to a particular matter, and responses do not necessarily refer to all relevant laws.

Financial Fraud Report and OECD Principles

OECD Principles – General

As noted above, the impetus for the work of the Task Force in connection with the protection of minority shareholders came from the Financial Fraud Report. In that report, the Technical Committee was asked to work jointly with the OECD to undertake additional descriptive, thematic analyses of the additional protections required in situations where issuers are controlled by a dominant shareholder. Consistent with previous IOSCO/OECD initiatives, staff at the OECD reviewed the questionnaire and report and provided comments, but the report was not officially approved by the OECD.

The Financial Fraud Report notes that corporate governance is a term used to describe a system of overlapping legal, regulatory, organizational, and contractual mechanisms designed to protect the interests of a company's owners (the shareholders) and limit opportunistic behaviour by corporate managers who control the company's operations.

The degree to which an issuer observes basic principles of good corporate governance is an increasingly important factor for investors in making investment decisions. Of particular relevance is the relation between corporate governance practices and the increasingly international character of

[3] OECD Principles on Corporate Governance (2004) and the OECD Methodology for Assessing the Implementation of the OECD Principles on Corporate Governance (2006).

investment. International flows of capital enable issuers to access financing from a much larger pool of investors.

OECD Principle III.A.2

In completing the questionnaire, Task Force members were asked to identify the mechanisms used in their jurisdictions to implement OECD Principle III.A.2 on the protection of minority shareholders. That Principle is as follows:

> *Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly; and should have effective means of redress*.

The OECD Methodology relating to OECD Principle III.A.2 states in part that:

> *The corporate governance framework provides either ex ante mechanisms for minority shareholders to protect their rights that have proved effective and/or ex post sanctions against controlling shareholders for abusive action taken against them. There are effective means of redress for minority shareholders and adequate remedies.*

The OECD Methodology recognizes that both *ex ante* and *ex post* provisions that protect minority shareholders are important. With reference to OECD Principle III.A.2, the OECD Methodology notes that it is important to examine the following *ex ante* protections:

(1) Pre-emptive rights in relation to share issues and qualified majorities for certain shareholder decisions including majority-of-the-minority approval for transactions, so that related shareholders can not be treated differently from unrelated shareholders.

(2) The ability of minority shareholders to convene a meeting of shareholders (e.g. an extraordinary or special meeting).

(3) Cumulative voting for electing members of the board.

(4) In some companies and jurisdictions, several board members (or members of an audit board or similar body) may be appointed by minority shareholders.

Chapter I. Balance between voting rights/control and financial risk for shareholders

Section 1. Definitions

As a preliminary matter, this report addresses the terminology used across jurisdictions in the concepts of "control" and "minority shareholder". Although the report explores protections available to all shareholders, it is important to understand whether the concepts of "control" and "minority shareholder" are understood and defined similarly across jurisdictions.

There is no uniform definition of "control" across jurisdictions. In thirteen jurisdictions, there is a general definition of "control" or "controlling shareholder" for corporate or securities law purposes. In four of the five jurisdictions where no such definition exists, there are control-related definitions, such as control person, a definition of "parent" based on the concept of control, predominant control and dominant company. In nine jurisdictions, there is no distinction made between effective and legal control. In the remaining nine jurisdictions, there is a distinction either in corporate or securities law. The definition of effective control is generally based on country-specific conditions. The following criteria, among others, are used:

- a shareholder, alone or with related parties, owns more than a specific threshold (e.g. 30% or 40%) of voting shares issued and is the largest shareholder;

- a shareholder appoints the representative director or at least half of the directors; and

- a shareholder directly or through related parties has a controlling influence over corporate strategy decisions.

In the majority of jurisdictions, there is no general definition of "minority shareholder". However, even absent a specific definition, the concept of "minority shareholder" is often defined or understood within certain specific contexts. "Minority shareholder" is frequently understood to mean a shareholder that does not exercise a substantial degree of control or influence over the issuer's affairs. In Turkey, the term "minority shareholder" is defined as a shareholder or group of shareholders holding less than 10% of a publicly held joint stock company's capital. In Thailand, "small, ordinary shareholders" are defined in the shareholder distribution rule to mean ordinary shareholders that do not "take part in management".

Section 2. Issuance of Shares

OECD Principle III.A.1 states as follows:

> *Within any series of a class, all shares should carry the same rights. All investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase. Any changes in voting rights should be subject to approval by those classes of shares which are negatively affected.*

In connection with OECD Principle III.A.1, the OECD Methodology recognizes that many countries and jurisdictions permit companies to issue shares with different rights and does not take a position on the desirability of "one share, one vote". However, the OECD Methodology states that variations in rights should not arise in an *ad hoc* manner. With full information about the rights attached to a class and series of shares available at the time of purchase, the share price should normally reflect the different balance of rights and risk.

Share attributes

In fourteen jurisdictions, there are restrictions on the attributes that issuers can attach to different classes of shares. For example, in most jurisdictions, voting, dividend and dissolution-related rights must be attached to at least one class of shares, although all such rights are not required to be attached to the same class. In two jurisdictions, no such restrictions exist.

In almost all jurisdictions, shareholders of a particular class or series of shares have a right to vote on the approval of any changes in the share attributes of that class or series. In Thailand, under corporate law, companies cannot change the attributes of any class or series of shares that have been issued.

The level of shareholder approval required to change share attributes varies across jurisdictions. It ranges from 2/3 to 3/4 approval by votes cast by the shareholders of the particular class or series affected. In Spain, the class vote may need to be supplemented by approval by a qualified majority at a general or extraordinary shareholders' meeting. In other words, the changes will not be passed if the affected class of shareholders has not first approved them.

Voting rights attached to shares

In fifteen jurisdictions, issuers are permitted to issue shares that do not follow the 'one share, one vote' model.

In most jurisdictions, shares of a particular class or series are required to carry the same rights. However, in the State of Delaware in the U.S., the rights can differ if provided for in the articles of incorporation.

In a majority of jurisdictions, issuers cannot issue shares that:

(a) have increased votes if they are held for some minimum period of time; or

(b) have increased votes in specified circumstances.

In some jurisdictions, shares that have increased votes in specified circumstances are permitted. In two jurisdictions, issuers can issue shares that have increased votes if they are held for some minimum period of time.

Multiple voting shares

In eight jurisdictions, multiple voting shares are permitted. In six of the eight jurisdictions where multiple voting shares are permitted, multiple voting and subordinate voting or non-voting share structures are common. In Germany and Italy, the use of non-voting shares is declining. In Thailand, although multiple voting shares are prohibited, non-voting depository receipts are a common feature of listed companies.

In seven of the eight jurisdictions where multiple voting shares are permitted, minority shareholders have a right to vote on or approve the creation of multiple voting shares, as well as any material changes to the attributes of such shares. In ten jurisdictions, multiple voting shares are prohibited.

In ten jurisdictions, issuers are required to provide specific protections to holders of subordinate voting, non-voting or other restricted shares where there is an offer for a superior class of multiple voting shares or if there is a proposed change of control transaction. Shareholders are given the protection of so-called “coat-tail provisions”. These provisions are intended to ensure that holders of restricted shares can participate in an offer through a right of conversion or other mechanism, subject to certain conditions. Such provisions can be embedded in the applicable statute (including relevant takeover legislation), by contract among shareholders, or in the issuer’s constating documents.

Pre-emptive rights

The objective of pre-emptive rights is to ensure that a shareholder's proportion of the voting and economic rights in the issuer is not diluted. Shareholders are given the right to subscribe for a sufficient number of the shares proposed to be issued that would maintain the shareholder’s proportionate interest in the overall class. Such rights are usually set out in the articles as one of the terms or conditions attached to a class or series of shares. Although pre-emptive rights are among the most commonly used mechanisms to protect against dilution, their effectiveness as a shareholder protection mechanism ultimately depends on the financial ability of the shareholder to whom the right is given to pay the subscription price for the shares.

In fourteen jurisdictions, pre-emptive rights are generally available to minority shareholders under applicable law or regulatory requirements. In four jurisdictions, although such rights are not generally available by statute, pre-emptive rights may be provided for through other means. In two of these jurisdictions, pre-emptive rights may be provided for in the issuer’s constating documents.

Golden shares

In eleven jurisdictions, a golden share can be issued to one shareholder that permits that shareholder to control the election of a majority or other proportion of the board, or to control specific decisions of the board. These kinds of shares are also referred to as “founding”, “minority” or “state” shares in certain jurisdictions, and are typically issued to governments following the privatization of government-owned enterprises. In Australia, although listing rules generally prohibit the issuance of golden shares, the Australian Securities Exchange may waive this rule to allow a golden or founding share for certain entities.

In most jurisdictions where golden shares are permitted, shareholder approval is required in order to create and issue them. In Canada, minority shareholder approval is also required. In four jurisdictions, shareholders do not have any vote with respect to the creation or issuance of golden shares. In Portugal, state-owned golden shares must be disclosed in any public offering of an issuer’s shares.

In the majority of jurisdictions where golden shares are permitted, they are not common. In two jurisdictions, such arrangements are still common.

Required approvals and restrictions on issuance

In thirteen jurisdictions, the board does not have primary responsibility for determining the number of shares to be issued and to whom. In those jurisdictions, shareholder approval is always required to approve the issuance of shares. In jurisdictions where the board has the authority to issue shares, certain limits may be placed on the board’s exercise of that right.

For example:

- an issuer may need to obtain shareholder approval in some circumstances (for example, issuance of shares to insiders);
- other limits may exist under corporate law and/or listing rules; and
- special rules requiring shareholder approval can apply to certain private placements.

Restrictions on issuance of shares

A majority of jurisdictions have restrictions on the number or percentage of shares that can be issued without shareholder or minority shareholder approval.

Examples of situations where shareholder approval is required include:

- an issuance of more than 15% of an issuer's securities in any twelve-month period unless an exception is available;
- certain circumstances when related parties are involved in a transaction where the number of securities issued or issuable in payment of the purchase price exceeds 25% of the market capitalization of the listed issuer - in that case, minority shareholder approval is required;
- an increase in the aggregate number of authorized shares of a class; and
- amendments to the issuer's by-laws that could have a negative effect on a class of shares, in which case approval is required at both a general meeting of shareholders and at a meeting of the affected shareholders.

In thirteen jurisdictions, there are special or different rules that apply where shares are to be issued to a substantial or controlling shareholder, an insider or a related party. Examples of specific requirements include:

- general shareholder approval;
- minority shareholder approval where the number of securities issued or issuable in payment of the purchase price is more than 25% of the market capitalization of the listed issuer;
- preparation of an independent formal valuation of the shares;
- board approval (including the supervisory board);
- report to shareholders by the directors and auditors; and
- additional disclosure sent to shareholders, with certain prescribed details about the transaction.

In most jurisdictions, shares are not required to be issued for “fair value” as determined by the board. In one jurisdiction, the board has a duty to issue shares for fair value and voting rights are considered in determining fair value.

In thirteen jurisdictions, there are restrictions or special rules applicable to the issue of shares for property. For example, in Germany, the value of the contribution must be established by an audit report and shareholders must be fully informed about the issuance at the general meeting.

In nine jurisdictions, shares cannot be issued in bearer form. In Italy, although shares cannot generally be issued in bearer form, one exception is the “saving share”, which is a preference share without voting rights. In Poland, in practice, a share must be in bearer form in order to be listed.

In four of the jurisdictions where shares can be issued in bearer form, there are specific rules protecting the interests of the holders of those shares. For example, in Germany, there are rules to ensure that the credit institution voting on behalf of the shareholder follows the shareholder’s instructions. In the Netherlands, there is a requirement for issuers to notify holders of bearer shares about shareholders’ meetings. In four of the jurisdictions where bearer shares are permitted, there are no specific protections for holders of such shares. However, the general protections applicable to all shareholders in listed companies remain relevant. In Thailand, since all shares must be in bearer form, all shareholder protections are available to holders of bearer shares.

With respect to a requirement for share “blocking”, see the description under the right to vote by proxy at page 25.

<u>Section 3. Disclosure of relevant shareholdings and voting rights</u>

OECD Principle II.D states:

> *Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.*

This OECD Principle relies on disclosure to provide clarity to shareholders about both the control of the company and the role of “privileged” shareholders. The OECD Methodology notes that, in many jurisdictions and in a large number of companies, there is a shareholder or group of shareholders in a controlling position that is not closely related to their equity ownership. Devices such as pyramid structures, cross shareholdings and shares with limited or multiple voting rights can be used to diminish the ability of non-controlling shareholders to influence corporate policy.

Disclosure by issuers

In all jurisdictions, there are rules requiring issuers to disclose the shareholdings of directors, officers and substantial or controlling shareholders in one or more of the following: offering documents, continuous disclosure documents, proxy materials and other documents such as an exchange listing application.

In a majority of jurisdictions, issuers are required to disclose the voting and other rights attached to different classes of shares. This disclosure can be contained in a variety of documents, such as offering and continuous disclosure documents, proxy materials and other documents such as the company’s constating documents. In Australia, although no specific requirement exists, as a practical matter, this information is normally disclosed and/or made publicly available in offering materials and in the issuer’s constating documents.

Substantial or controlling shareholders

In virtually all jurisdictions, a substantial or controlling shareholder is required to disclose information about its shareholdings to the issuer, the public, the securities regulatory authority or others. See Appendix A for a more detailed description of the requirement for substantial or controlling shareholders to disclose their shareholdings.

In eight jurisdictions, advance disclosure by substantial or controlling shareholders or insiders must be made for large sales of equity securities. In a number of jurisdictions, such disclosure must be made, but not in advance of the sale.

Most jurisdictions require subsequent reporting of insider trades. See the description at page 14 regarding the requirement for substantial or controlling shareholders to file insider reports with respect to changes in their share ownership.

Disclosure of material shareholders' agreements

With respect to OECD Principle II.D, the OECD Methodology notes that control disproportionate to equity ownership can be exercised through shareholder agreements. These agreements may allow groups of shareholders to act in concert so as to constitute an effective majority, or at least the largest single block of shareholders. In some jurisdictions, the shareholder or the company is required to disclose the existence of a shareholder agreement.

In four jurisdictions, issuers or shareholders are not required to publicly disclose the terms of, or to publicly file, material shareholders' agreements entered into among shareholders. In ten jurisdictions, there are no specific restrictions on the ability of shareholders to enter into such agreements or as to the terms of such agreements.

Disclosure of the acquisition of shares above a certain threshold

OECD Principle V.A.3 states that disclosure should include material information about major share ownership and voting rights. Jurisdictions often require disclosure of ownership information once certain thresholds of ownership are reached. Such information may include information on major shareholders and others that, directly or indirectly, may control the company through special voting rights, shareholder agreements, the ownership of controlling or large blocks of shares, significant cross shareholding relationships and cross guarantees.

In all jurisdictions, shareholders are required to publicly disclose acquisitions of shares above a certain percentage. There is wide variance among jurisdictions in terms of the disclosure obligation, including thresholds, timing and the shareholders that are required to report. Some jurisdictions have separate early warning (requiring accelerated reporting for shareholders acquiring shares above a specified threshold) and insider reporting requirements (which require subsequent reporting of all trades by a broader class of insiders). See Appendix A for a more detailed description of the reporting thresholds and disclosure deadlines across jurisdictions.

Material exceptions or exemptions to the disclosure requirement exist in eight jurisdictions. Examples of excepted or exempted persons include:

- certain passive institutional investors;

- banks, market makers, clearing and settlement systems;
- custodian banks; and
- insurance companies, mutual funds and provident funds held by banks and insurance companies.

The thresholds and reporting deadlines for updating reports vary across jurisdictions. For example, reporting deadlines can range from:

- immediately;
- promptly if material, otherwise within 45 days;
- within 2 days;
- 3 days after the relevant event; and
- within 10 days.

See Appendix A for a description of the requirement to amend or update reports across jurisdictions.

In Mexico, there is no requirement to amend or update the disclosure to reflect changes. However, issuers are required to disclose shareholdings by directors, officers and substantial or controlling shareholders in subsequent continuous disclosure documents.

Applicability of the reporting obligations varies across jurisdictions. For example, the obligations can apply to:

- all classes of equity or voting shares;
- voting securities;
- securities that are convertible into equity or voting shares;
- share warrants; and
- derivative instruments.

The type of information that must be disclosed also varies across jurisdictions, and may include:

- details of security holdings, including details on voting rights attached to different classes of shares;
- source and the amount of funds used to purchase securities;
- details of any relevant agreement, arrangement or understanding;
- names of joint actors;

- description of any change in material fact;
- amount of voting power in the corporation held by the principal shareholder after the change, on an undiluted and fully diluted basis; and
- in the case of an indirect acquisition or sale, the underlying corporate structure.

In all jurisdictions, shares held through corporate groups, or by shareholders acting in concert, are required to be aggregated for reporting purposes. In nine jurisdictions, there are special rules or requirements with respect to reporting holdings that include convertible securities. In the majority of those nine jurisdictions, convertible securities are taken into account only if they are convertible within some specified period of time. The special rules or requirements can relate to both early warning and insider trading reporting requirements. For example:

- In Australia, a person must disclose a substantial holding in convertible securities if holding those securities could give rise to a "relevant interest".[4]
- In Canada and Israel, although convertible securities are generally not considered in determining whether a person is an insider or an interested party, the insider reports that are required to be filed by insiders or interested parties must reflect ownership of convertible securities.
- In EU jurisdictions, the Transparency Directive provides that financial instruments resulting in an entitlement to acquire voting rights on the holder's initiative are included for reporting purposes.
- In Thailand, the acquisition of convertible securities must be considered for purposes of insider reporting requirements.
- In the U.S., an insider is required to report holdings and transactions in derivative securities that have a fixed exercise or conversion price.

In fifteen jurisdictions, there are requirements to publicly disclose a qualified or limited holding of, or qualified or limited interest in, shares. For example, in Canada, if a person with a qualified or limited holding or interest is an insider, the insider will generally be required to file an insider report disclosing the existence and materials terms of the agreement, arrangement or understanding giving rise to that interest. An insider must also file an insider report if there is a change in the insider's "economic interest in a security" or "economic exposure" to the issuer. Similarly broad concepts of "economic interest", "relevant interest", and "interest" exist in Australia, Hong Kong and the U.K., respectively, for purposes of reporting obligations.

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4 "Relevant interest" is defined very broadly in the *Corporations Act* (Australia) to include indirect and future power over voting or disposal. A person has a "relevant interest" in securities if they:

- are the holder of the securities;
- have power to exercise, or control the exercise of, a right to vote attached to the securities; or
- have power to dispose of, or control the exercise of a power to dispose of, the securities.

In fifteen jurisdictions, substantial or controlling shareholders are required to file insider reports when their level of share ownership changes. In those jurisdictions, the deadline for filing such reports varies and ranges from:

- immediately;
- 30 minutes after the time at which the change takes place, or earlier, depending on when the decision is made to engage in the trade; and
- 2, 3, 4, 5, 10 and 30 days after the date on which the change takes place.

In fourteen jurisdictions, the reporting obligation applies to all securities held by the shareholder, including options. In Mexico, the obligation does not apply to options.

Stock lending arrangements

In seven jurisdictions, specific disclosure obligations are triggered when there is a stock lending arrangement. In jurisdictions where no specific obligation applies, general disclosure requirements are still relevant. For example, in Australia, under the Australian Securities Exchange Listing Rules, a stock lending arrangement must be disclosed if it could have a material effect on the price of the company's shares. In Hong Kong, the same general rules apply for stock lending arrangements unless the lender avails itself of a specific exemption and/or if it uses an "approved lending agent" (in which case, it would be exempted specifically from its disclosure obligation).

Chapter II: Minority shareholders' rights and protections

Section 1. Minority shareholders' rights

A. Access to information

OECD Principle V states:

> *The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company.*

The OECD Methodology notes that a robust disclosure regime that promotes transparency is integral to shareholders' ability to exercise their ownership rights on an informed basis. Experience in countries with large and active equity markets shows that disclosure can be a powerful tool for influencing the behaviour of companies and protecting investors.

The OECD Methodology states that disclosure requirements are not intended to place unreasonable administrative or cost burdens on companies (unless the information is material), or endanger their competitive position (unless disclosure is necessary for fully informed investment decisions or to avoid misleading investors). Many jurisdictions apply a concept of materiality to determine what information should be disclosed. In general, material information is information whose omission or misstatement could influence the economic decisions made by users of that information. The OECD Principles support timely disclosure of all material developments that arise between regular reports and simultaneous reporting of information to all shareholders.

Access to issuer information

In general, in all jurisdictions, minority shareholders have a right of timely access to the financial statements, books and/or records of an issuer. In Hong Kong, shareholders holding 2.5% of shares and shareholders holding total paid up capital of HK$100,000 can seek a court order authorizing them to inspect a company's records. In Brazil, shareholders holding 5% of shares may seek a court order to gain access to the issuer's books if they suspect any irregularities. In Japan, shareholders holding 3/100 of the votes or more may request from the issuer the account books or materials used in preparation of account books.

Minutes of board meetings are generally not required to be made available to shareholders.

However:

- In Brazil, minutes of supervisory board meetings that contain resolutions that affect third parties must be filed with the commercial registry and published.

- In Israel, shareholders have the right to view the minutes of board meetings and any other documents that deal with the approval of related party transactions.

- In the U.S., the right to inspect books and records includes the right to inspect the minutes of directors' meetings.

In a majority of jurisdictions, shareholders are entitled to obtain a current list of registered shareholders of an issuer at a reasonable cost. In six jurisdictions, the right to obtain a list of registered shareholders is not always available to minority shareholders. In Canada and the U.S., shareholders are entitled to obtain a list of non-objecting or consenting beneficial owners of shares. In the Netherlands, there are legislative amendments under consideration that would require Dutch custodians to disclose to the issuer the identity of the beneficial owners on whose behalf they hold shares.

Timely disclosure

In all jurisdictions, issuers are required to publicly disclose on a timely basis material transactions or events affecting them or the value of their outstanding shares. In nine jurisdictions, such disclosure must be made immediately. In seven jurisdictions, such disclosure must be made promptly. In Poland, disclosure must be made within 24 hours. In the U.S., issuers are required to report material corporate events on a current basis (typically, within four days).

In Italy, Consob has the power to require issuers, managers, directors, members of the controlling bodies, shareholders holding more than 2% of share capital, and persons who signed a shareholders' agreement, to disclose certain information to the public.

In Israel, if the securities regulator is of the opinion that certain information would be important to a reasonable investor's decision to purchase or sell the issuer's securities, the securities regulator can require the issuer to submit an immediate report containing such information.

Financial statement disclosure

- Annual financial statements. In all jurisdictions, issuers are required to prepare and send or make available to shareholders annual financial statements.

- Interim financial statements. In virtually all jurisdictions, issuers are required to prepare and send or make available to shareholders interim financial statements.[5]

- Audited statements. In general, annual financial statements must be fully audited and interim statements can be unaudited. In Israel, although interim financial statements are unaudited, they must be accompanied by an accountant's review.

- Electronic distribution. In twelve jurisdictions, financial statements can be distributed by electronic means only. In Hong Kong, although financial statements cannot be distributed by electronic means only, companies can seek approval from individual shareholders to do so.

Related party transactions

In all jurisdictions, issuers are required to disclose in their financial statements or in other documents, any related party or other transactions that could have adversely affected the interests of shareholders or the value of their shares.

[5] There may be jurisdictions where quarterly financial statements are required to be prepared. International Financial Reporting Standards require six month interim financial statements to be prepared.

The timing for making such disclosure varies, depending on whether the disclosure needs to be made in an immediate filing (see the description at page 16 under "Timely disclosure") or in an issuer's financial statements or other document such as the annual report.

Disclosure of material contracts

In virtually all jurisdictions, issuers are required to publicly disclose and file material contracts to which they are a party. In Israel, the issuer is required to disclose, but not file, material contracts.

Selective disclosure

In virtually all jurisdictions, there is a prohibition on selective disclosure of material information to certain market participants and not to others.

In sixteen jurisdictions, selective disclosure of material information cannot be made by an issuer to a substantial or controlling shareholder only. However, an exemption is generally available for disclosure that is made to a substantial or controlling shareholder in the necessary course of business.

B. Shareholders' meetings

OECD Principle II.C.1 states:

> *Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting.*

In connection with OECD Principle II.C.1, the OECD Methodology observes that in many countries, law or regulation specifies a minimum notice period for shareholders' meetings, although there may be nothing to prevent companies from increasing the notice period and many codes and principles do call for notice longer than the legal minimum. With many shares now held through a chain of intermediaries, a longer period may be necessary for shareholders to make their decisions and then communicate them to the company through the chain of intermediaries. Public companies are increasingly making shareholder meeting materials available at no cost on their websites and/or there is a no cost, internet-based and easily accessible public register of public companies' meeting materials.[6]

Annual shareholders' meeting

In all jurisdictions, issuers are required to hold an annual shareholders' meeting and to provide advance notice of such meetings to all registered shareholders. Certain jurisdictions also require that the notice be published in widely distributed newspapers. In Mexico, the notice must be published both in newspapers and by the stock exchange. Timing for providing notice to shareholders before the meeting varies and ranges from 7 days to 2 months.

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[6] The Joint Working Group on General Meetings (JWGGM) released a consultation document entitled "Market Standards on General Meetings" in December 2008. The comment period closed on February 15, 2009. The Task Force understands that the JWGGM is revising the standards based on the comments received. The document sets out best practice standards in Europe for issuer/shareholder communications. These standards are intended to complement the EU Directive on Shareholder Rights. The JWGGM is a cross-sectoral working group set up to develop jointly a set of standards for processes related to general meetings. The JWGGM is composed of delegates from the main European associations representing issuers, central securities depositories, intermediaries and stock exchanges.

There is general consistency among jurisdictions with respect to the type of information that must be provided in the notice to shareholders. That information includes:

- date;
- time;
- place;
- general nature of the meeting or agenda;
- additional information if "special business" is to be conducted, or if fundamental changes are to be voted on at the meeting;
- statement about proxy voting rights;
- description of total number of shares and voting rights;
- if the meeting agenda includes matters for which there will be a proxy vote, the notice must also include the number or value of shares that confer the right to vote;
- notification about the distribution and payment of dividends;
- information about the issuance of new shares, and any arrangements for, or exercise of, conversion, cancellation and subscription rights; and
- information about the necessary quorum for holding the meeting.

In fifteen jurisdictions, there are rules with respect to the advance fixing and disclosure of record dates for voting at a shareholders' meeting. Those rules include:

- a fixed time period prior to the meeting for the record date;
- method of providing notice of the record date; and
- who should receive the notice.

In Australia and Portugal, there are no specific rules for setting record dates. There are, nonetheless, regimes for determining the shareholders entitled to vote at the meeting:

- In Australia, shareholders that are listed in the register of members at the time of the meeting are entitled to vote.
- In Portugal, requirements relating to the fixing of a record date can be set out in an issuer's articles.

In all jurisdictions, shareholders (including minority shareholders) have a right to require the board to call a shareholders' meeting. The minimum shareholding required to exercise that right varies among jurisdictions and includes:

- 3/100 of shareholders;
- 5%;
- 10%; and
- 20%.

In Australia, directors must also call and arrange to hold a general meeting on the request of at least 100 members who are entitled to vote.

In the U.S., the right of shareholders to call for a meeting depends on the issuer's governing instruments and the state corporation statute to which it is subject. There are three primary types of statutes:

(i) statutes that allow a certain number/proportion of shareholders to call a meeting without making any demand that the appropriate official or issuer call such a meeting;

(ii) statutes that allow a certain number or proportion of shareholders to call a special meeting if the appropriate official fails to do so within a specific period of time after receiving the shareholder's request; and

(iii) statutes that provide a certain number or proportion of shareholders with the right to request a special meeting to be called by the appropriate official, but which do not empower shareholders to call such a meeting upon the official's failure to do so.

In general, to requisition a meeting, shareholders must send to each director and to the registered office of the corporation material that describes the business proposed to be considered. Once the directors have received the requisition, they must call a shareholders' meeting as soon as possible or within some period to transact the business stated in the requisition. There are certain exceptions to the types of business that can be considered including, for example, if the proposed business does not relate in a significant way to the business or affairs of the corporation.

Although standards of disclosure vary across jurisdictions, most jurisdictions require any matter being submitted to a shareholders' meeting for approval to be described in sufficient detail to enable a reasonable shareholder to form a reasoned judgement about the matter. This standard can also be described as providing shareholders with proper and full disclosure to enable them to assess the merits of the proposal. There is also certain prescribed disclosure for specific transactions, such as related party transactions.

Shareholder proposals

Shareholder proposals (the ability of a shareholder to require that a particular matter be considered at a shareholders' meeting) are one tool available to shareholders to effect corporate change, including changes to board membership, the corporate charter and by-laws. In general, shareholder proposals cannot relate to the company's ordinary business. It is generally less expensive and easier for a shareholder to bring issues for consideration to a shareholders' meeting through a shareholder proposal than to requisition a meeting or conduct a contested proxy fight.[7]

In virtually all jurisdictions, minority shareholders have a right to cause a shareholder proposal to be included in the business to be considered at shareholders' meetings. There are generally specific rules or limitations on the ability of minority shareholders to do so, including:

- The shareholder(s) who can submit a proposal – depending on the jurisdiction, this includes shareholders holding 1%, 2.5%, 5% or 10% of the voting rights in the corporation.

    - For example, in Poland, there are specific shareholder ownership levels required for specific types of shareholder proposals. For example, shareholders must hold at least 5% of the total votes to request that a special-purpose auditor be appointed to review how the company conducts its business.

- The process a shareholder must follow and the time frame within which such a request must be made.

    - For example, in Hong Kong, shareholders making a proposal are required to deposit a sum reasonably sufficient to cover the company's expenses.

- Permissible and prohibited subject matters. For example:

    - In Thailand, there are circumstances where the board of directors may refuse to include a shareholder proposal in the meeting agenda. For example, if the proposal does not comply with the company's by-laws or the subject matter of the proposal falls outside the company's authority.

    - In Germany, a shareholder can only propose counter-proposals to matters already to be considered at a meeting and proposals relating to the nomination of board members.

    - In Italy, shareholders may not propose items that fall within the board's authority to consider and resolve.

In a majority of jurisdictions, shareholder proposals, if passed by shareholders, are binding on the directors and the issuer, provided the proposal is not in violation of the law or the company's constating documents. In some jurisdictions, whether a proposal is binding depends on whether the proposal falls within the authority of the general meeting of shareholders.

In the U.S., if a shareholder presents a proposal as being obligatory (if the proposal requires the issuer or board to act in a certain way), then the proposal is binding on the company. If the proposal is expressed as merely precatory, it is not legally binding.

In all jurisdictions, shareholder proposals can include amendments to the charter or by-laws of the issuer. In sixteen jurisdictions, a shareholder proposal can include the nomination of directors to be elected at a shareholders' meeting.

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[7] OECD Steering Group on Corporate Governance, *Shareholder cooperation or acting in concert? Issues for consideration*, Doc. No. DAF/CA/CG(2008)3 (2008) at 6.

Voting at shareholders' meetings

OECD Principle II.C states:

> *Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings.*

The OECD Methodology recognizes that, in practice, a number of procedures may be used that reduce the effectiveness of shareholder participation. These may include voting by a show of hands without the right to demand a ballot, allowing only a limited number of entry cards to be granted to custodians, delaying the provision of information and holding the shareholder meeting in a difficult-to-reach location. Many rules and procedures are determined by law and regulation, and also influenced by corporate charters and by-laws.

In thirteen jurisdictions, there is a mechanism or requirement to permit voting by beneficial shareholders. In four jurisdictions, no such mechanism exists. In Poland, there is no distinction between registered and beneficial shareholders. In the jurisdictions where a mechanism or requirement exists, the mechanism is generally viewed as working effectively.

In nine jurisdictions, shareholders are not entitled to request that a vote on a particular matter be a vote by ballot. In Germany, the Netherlands and Portugal, the articles of incorporation may provide for a vote by ballot. In the U.S., state law determines whether a shareholder is entitled to require that a vote be by ballot. Two states have such a rule.

In all jurisdictions, there are circumstances where shareholders can not approve matters at shareholders' meetings through a majority vote. Examples include:

- fundamental changes;
- issuance of new classes of preferred shares in certain cases;
- decision by the company to waive or settle a claim for damages against members of the management board; and
- privatizations.

Special majorities of minority shareholders are required in certain jurisdictions, mainly in connection with related party transactions.

There are differences among jurisdictions in the extent to which intermediaries are restricted in voting shares they hold on behalf of others. In a number of jurisdictions, there are no restrictions on intermediaries voting on such matters. In Hong Kong and the Netherlands, it is a matter to be agreed upon between the intermediary and its clients.

In other jurisdictions, there are restrictions on voting by intermediaries, although the intermediary can be appointed as a proxy by the shareholder or beneficial holder. In Israel, the manager of a fund that holds shares issued by a corporation whose securities have been issued to the public (excluding foreign securities), is required to participate and vote at a general meeting of the corporation if, in its opinion, a proposed resolution submitted for the approval of the general meeting may potentially harm the interests of the unit holders.

In most jurisdictions, there are circumstances where there is a separate right of the holders of a particular class of shares to approve a matter. In general, this right arises when the rights of such holders would be affected. In a majority of jurisdictions where non-voting shares exist, non-voting shares can become voting for this purpose.

In eleven jurisdictions, restrictions can be imposed on the number of votes that can be cast or voted by a particular shareholder. In ten of those jurisdictions, the restrictions must be contained in a company's constating documents.

In seven jurisdictions, restrictions on voting by a particular shareholder cannot be imposed. In Canada, although a by-law or charter provision that restricts votes on the basis that the shares are held by a particular shareholder would be invalid, it is possible to create a class of shares that has a maximum number of votes.

In eleven jurisdictions, a shareholder is permitted to vote on a transaction in which it has an interest. There are generally limits to this right:

- The shareholder is generally prohibited from voting on a material related party transaction.
- Minority shareholders may challenge a resolution if a majority shareholder's actions are fraudulent, oppressive or unfair toward minority shareholders, or are damaging to the corporation.
- Directors are prohibited from voting on matters relating to their own liability, and members of the management board cannot resolve issues relating to the appointment, revocation of appointment or liability of members of the controlling body (a separate, independent arm of the board).
- In some jurisdictions, board members cannot vote as shareholders on any transaction in which they have a conflict of interest.

In fifteen jurisdictions, a controlling or substantial shareholder can generally vote its shares in its own interest. Under the 'abuse of majority power' doctrine, a shareholder in Italy can challenge the validity of a shareholders' resolution if a controlling shareholder is proven to have voted in an abusive or fraudulent manner, and to have pursued its own self-interest (not the company's) to the detriment of the other shareholders. In Spain, any resolution passed at a shareholders' meeting may be challenged in court, if it benefits one or more shareholders and harms the company's best interests.

In Hong Kong, the listing rules require that, where a transaction or arrangement is subject to shareholder approval, any shareholder that has a material interest in the transaction or arrangement must abstain from voting on that matter. In Canada, minority shareholder approval may be required for certain types of related party transactions.

In fourteen jurisdictions, issuers are required to disclose the details of specific votes by shareholders at a shareholders' meeting, such as details about the number of shares voted in favour of or against a proposal. In Brazil, although this requirement does not exist, in practice, results are recorded in the minutes and are publicly available. In Canada, issuers disclose the number or percentage of votes cast only if the vote was conducted by ballot. In Mexico, issuers must disclose the resolutions that were passed during a shareholders' meeting. This disclosure would usually state whether a resolution was passed by a majority and/or include a description of the resolutions passed.

In virtually all jurisdictions, there are no impediments to foreign shareholders attending or voting by proxy at a shareholders' meeting. In Thailand, the brief seven-day notice period for a meeting can, in practice, be an impediment to foreign shareholder attendance or participation, although the notice period is 14 days if the meeting is held to deal with extraordinary business transactions such as share offerings to specific investors or groups of investors at a discount.

Fundamental corporate changes

In all jurisdictions, shareholder approval is generally required for fundamental corporate changes such as amendments to the charter and by-laws of an issuer, a sale of all or substantially all of the assets of an issuer or the issuance of shares that will materially affect control. In some jurisdictions, fundamental corporate changes must be approved at an extraordinary shareholders' meeting and/or by a supermajority.

In virtually all jurisdictions, minority shareholders do not have any special right to vote on or approve such matters. In Canada, minority shareholder approval may be required for a business combination transaction where the interests of a security holder may be terminated without the holder's consent and a related party of the issuer is (a) acquiring the issuer, (b) is a party to any connected transaction, or (c) is entitled to receive different consideration or a collateral benefit.

Minority shareholder approval is also required for certain related party transactions in some jurisdictions. (See also the discussion at page 40 under "Approval required for related party transactions.)

Compensation

In twelve jurisdictions, shareholders are entitled to vote on stock-based compensation plans. In almost all of these jurisdictions, such a vote is binding. For example, in Israel, any stock-based compensation made to a director, a controlling shareholder or a relative of a controlling shareholder, requires the approval of the board of directors and the general meeting. In the case of a controlling shareholder, approval is required from the audit committee and at least one-third of the votes of shareholders that do not have a personal interest in approving the transaction. In Germany, the legislature is currently considering new legislation that would tie board members' compensation more closely to the company's long-term objectives and require the approval of the supervisory board or the general meeting.

In some jurisdictions, a "say on pay" for senior management is not required, but some corporations are voluntarily providing for non-binding shareholder votes on such matters.

Aside from stock-based compensation plans, in nine jurisdictions, shareholders are entitled to vote on other compensation-related matters involving senior management. In all of these jurisdictions, such votes are binding, except in Australia where votes are only binding for certain related party transactions where shareholder approval is required. In addition, companies in Australia are required to provide a remuneration report to shareholders and allow shareholders to vote on a non-binding resolution as to whether the remuneration report is adopted.

Material pending or proposed reforms or changes

In many jurisdictions, there are material pending or proposed reforms or changes to the shareholder requisition, proposal or voting process.

For example:

- In Australia, the "100 member" rule for requisitioning a shareholders' meeting is being reconsidered. The current proposal is to change the rule so that only the percentage-based threshold applies. Therefore, shareholders holding in aggregate 5% or more of the issuer's votes could request a shareholders' meeting. In addition, the Australian Securities Exchange has issued a public consultation paper inviting feedback on a proposal for the Australian Securities Exchange to amend its listing rules to allow the quotation of non-voting ordinary shares, subject to certain safeguards.

- In Brazil, proposed amendments would (i) establish that a preferred share without a right to vote acquires such a right if the corporation fails to pay any fixed or minimum dividend to which the share is entitled during three consecutive fiscal years, (ii) allow shareholders to attend a shareholders' general meeting through electronic signature and digital certification, and (iii) establish the proxy deposit requirement for shareholders being represented by proxy at a general meeting.

- In Europe, the European Member States are obliged to implement European Council Directive 2007/36/EC (Shareholders' Rights Directive) into national law by August 3, 2009. The Directive contains the following key provisions:

  a. requiring a minimum notice period of 21 days for most shareholders' meetings – the notice period may be reduced to 14 days where shareholders can vote by electronic means and, at the general meeting, there is agreement about the shortened convocation period;

  b. requiring internet publication of the convocation (i.e. the meeting notice) and of the documents to be submitted to the shareholders' meeting at least 21 days before the shareholders' meeting;

  c. abolishing share blocking and introducing a record date, which may not be more than 30 days before the shareholders' meeting;

  d. abolishing obstacles to electronic participation in general meetings, including allowing electronic voting;

  e. creating the right for shareholders to ask questions and imposing an obligation on the part of the company to answer questions;

  f. abolishing existing constraints on the eligibility of people to act as proxy holders and of excessive formal requirements for the appointment of a proxy holder; and

  g. requiring disclosure of all voting results on the issuer's internet site.

Proxy solicitation and voting

OECD Principle II.C.4 states:

> *Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.*

The right to vote by proxy ensures that shareholders retain the right to vote their shares when they are unable to attend a shareholders' meeting. Shareholders may also use the proxy solicitation mechanism to increase pressure on companies to effect corporate change, in situations where the shareholder proposal route is not available (due to its general unavailability or a specific exclusion). The OECD Principles note that in order to facilitate shareholder participation, companies should consider increasing the role of information technology in voting, including secure electronic voting in absentia.

In all jurisdictions, shareholders have a right to vote by proxy at shareholders' meetings. In six jurisdictions, a form of proxy is not required to be sent by the issuer to all shareholders entitled to vote at the meeting. In Switzerland and Thailand, although no formal requirement exists, in practice, a form of proxy is normally provided.

In most jurisdictions, there are no restrictions that make it difficult for shareholders to vote at a shareholders' meeting. In Brazil, the fifteen-day meeting notice requirement has been found, in practice, to be a short period of time for banks to obtain voting instructions from beneficiaries of Brazilian Depository Receipts. In certain jurisdictions, there are share blocking requirements, which require shareholders to deposit shares with the issuer in order to vote them or obtain a proxy. As noted above under the description of material pending reforms to the shareholder requisition, proposal or voting process, implementation of European Council Directive 2007/36/EC on shareholders rights will abolish share blocking requirements in the European Union.

In most jurisdictions, proxies can be solicited and tendered electronically. In four jurisdictions, the electronic option is not available.

Meeting Chair and adjournments

In all jurisdictions, shareholders' meetings are not required to be chaired by an independent person, such as an independent director. In Canada, shareholders are entitled to seek a court order appointing an independent chair in certain circumstances.

Although not all jurisdictions have an express requirement for a chair to act fairly in chairing a meeting of shareholders, a chair is nonetheless expected to do so. The duty to act fairly may be inferred from other laws and customs or there may be provisions in the articles requiring a chair to act fairly. If the chair is a board member, fiduciary duties and a duty of care are relevant as they apply to all directors and officers.

In seven jurisdictions, a chair can unilaterally adjourn a shareholders' meeting in certain circumstances. In Japan, the chair may adjourn the meeting if all matters on the agenda have been addressed and the directors have fulfilled their duty to answer all shareholder questions. In Canada, although there is no explicit authority granted to the chair, under general principles of law, the chair has an inherent power to adjourn a meeting without a motion in the event of disorder, or where he or she acts in a *bona fide* manner for the purpose of facilitating the meeting, and if the adjournment is not longer than is necessary for the restoration of order. In Switzerland, the adjournment must be for a necessary and appropriate cause. In Turkey, no explicit authority is given to the chair to unilaterally adjourn the meeting. In the U.K., this issue is normally addressed in the articles of the issuer.

In fourteen jurisdictions, a substantial or controlling shareholder is entitled to vote its shares and, if such votes constitute a majority, thereby unilaterally approve an adjournment of a shareholders' meeting. That right may be restricted in the company's articles or by-laws. In Switzerland, this right to vote to adjourn a meeting is only available in exceptional circumstances. In Hong Kong, Israel, Italy and Spain, the right to approve an adjournment may be available in certain circumstances to a shareholder that represents a specified fraction or percentage of voting shareholders in attendance at the meeting (for example, 1/3 or 50%).

In a majority of jurisdictions, notice is required where the meeting is adjourned.

For example:

- In Hong Kong, notice of an adjourned meeting is required to be given if the meeting is to be adjourned for 30 days or more.

- In Turkey, if the meeting is adjourned, written notice must be given fifteen days before the new meeting date.

New business at a shareholders' meeting

In a majority of jurisdictions, management or shareholders attending a shareholders' meeting can require that new business (not identified in the meeting notice or agenda circulated prior to the shareholders' meeting) be considered and approved. In seven jurisdictions, shareholders may consider a new item without being given prior notice, but only if it relates to certain topics. For example, in Hong Kong and the U.S., the new item to be considered must fall within the sphere of the usual business that is conducted at an annual general meeting. In Spain, the business must relate to the removal of a board member. In Switzerland, the new item must be regarding (i) the calling of an extraordinary meeting or (ii) the initiation of a special audit.

In five jurisdictions, there are no limitations on the types of new business that can be considered at the meeting. In Mexico, the Netherlands, Turkey and Poland, in order for new business to be considered at a shareholders meeting, either one or both of the following two conditions must be met:

- all shareholders must be present at the meeting; and/or

- the decision to consider such business must be unanimous.

In Thailand, if consideration of all the matters on the agenda has been completed, shareholders representing one-third or more of the total number of shareholders may request that the meeting consider new business.

C. Nomination and appointment of board members

The right to elect directors is an important shareholder right. In a majority of jurisdictions, there are means by which minority shareholders can nominate a director or directors for election in advance of or at a shareholders' meeting. In two jurisdictions, these means do not exist.

In eleven jurisdictions, shareholders attending a shareholders' meeting are entitled to nominate from the floor specific directors for election. In Mexico, this practice is permitted if it is provided for in the company's bylaws. In the Netherlands, this is permitted if all shareholders are present at the meeting and the resolution is adopted unanimously. In Turkey, the nominee must be approved by the shareholders present at the meeting. In the U.S., this process has largely been replaced by the proxy solicitation process.

In all jurisdictions, shareholders have the right to elect directors, and directors are generally elected by a majority of the votes cast. In three jurisdictions, a substantial or controlling shareholder is generally not able to determine all the directors that are elected. In Germany, employees are entitled to elect a certain number of directors to the supervisory board. In Israel, approval of external directors requires one-third of the votes of shareholders who are not controlling shareholders. In Italy, at least one board member must be elected by minority shareholders. In certain states in the U.S., a plurality of votes may also elect directors.

In fifteen jurisdictions, there are means by which a sub-group of shareholders can elect a director or directors to the board, such as through cumulative voting. In seven of those jurisdictions, these rights must be reflected in the issuer's articles or by-laws.

In thirteen jurisdictions, there are recommendations or requirements that limit the level of representation of a substantial or controlling shareholder on an issuer's board or board committees. For example:

- In Australia, the Australian Securities Exchange has issued a number of guidelines with respect to the structure of a company's board, including that:
    - a majority of the board should be composed of independent directors;
    - the chairperson should be an independent director;
    - the roles of chairperson and chief executive officer should not be exercised by the same individual; and
    - the board should create a nomination committee.

- In Israel, there must be at least two external directors on an issuer's board and the board must appoint an audit committee (which includes all the external directors). An external director must have either professional qualifications or be an expert in accounting or finance and at least one of the external directors must have expertise in accounting or finance. An individual may not be appointed as an external director if he/she or his/her relative, partner, employer or corporation of which he/she is a controlling shareholder, at the time of appointment or in the two years preceding the appointment, has a connection to the company.

- In Italy, at least one member of the board of directors must be appointed by minority shareholders. There are also certain rules governing the appointment of members of the internal control body by minority shareholders. The chairman of the internal control body must be appointed from the members elected by minority shareholders. Slates of candidates must be deposited at the issuer's registered office at least fifteen days in advance of the shareholders' meeting, together with (a) details about the shareholders that have submitted slates, (b) a declaration from the shareholders other than those who, jointly or otherwise, possess a controlling or relative majority shareholding, certifying the absence of any connection with the latter, and (c) detailed information on the personal traits and professional qualifications of the candidates. If only one slate is submitted, or the slates are only submitted by majority or connected shareholders, further lists may be submitted up to five working days after the date the slate is submitted.

- In Mexico, 25% of the board must be composed of independent directors.

- In the Netherlands, the articles may provide that one or more supervisory directors (not exceeding one-third of their total number) are to be appointed by means other than by a vote of the general meeting.

- In the U.S., reporting requirements mandate that the issuer identify the directors who are independent and those who are not independent, and where applicable, explain why they are not independent. In addition, listing standards of self-regulatory organizations recommend that boards be comprised of a majority of outside directors.

Requirement for approval of matters by a special committee of independent directors

In a number of jurisdictions, a special committee of independent directors must approve certain matters. For example:

- In Canada, a committee of independent directors is required whenever a take-over bid is made by an insider of the target and such bid must be accompanied by a formal valuation. As a matter of good corporate practice, a special committee of independent directors may be appointed to review material related party transactions and other circumstances where conflicts arise. There are additional requirements that require an audit committee to consist of only independent directors.

- In Mexico, the board must obtain an opinion from an independent audit committee prior to approval of certain transactions such as: related party transactions, internal control and internal audit guidelines of the issuer and the companies controlled by it, the accounting policies of the issuer, the financial statements and the hiring of external auditors.

- In the U.S., the Sarbanes-Oxley Act and SEC regulations require independent directors to be involved in certain aspects of corporate governance, such as serving on an audit committee and appointing external auditors for public companies. In the case of takeovers or business combinations, the board will typically establish a special committee of independent directors to approve the relevant agreement. The role of a specific special committee will depend on the authority it has been given by the board, e.g., to conduct an auction of the company or to simply negotiate with an already identified suitor.

Section 2. Fiduciary duties of directors and controlling or substantial shareholders

The OECD Methodology notes that the risk of minority shareholders' rights being abused is higher in countries where the legal and regulatory framework does not establish a clearly articulated duty of loyalty of board members and officers to the company and to all its shareholders. In the absence of a clear duty, redress may be more difficult to obtain.

OECD Principle VI.A states:

> *Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.*

This OECD Principle sets out the two main elements of the fiduciary duty of board members: the duty of care and duty of loyalty.

In all jurisdictions, directors owe a fiduciary duty and a duty of care to the issuer. In seven jurisdictions, directors also owe such duties directly to shareholders.

In ten jurisdictions, directors and officers owe duties to stakeholders other than shareholders. For example, in the U.K., directors must take into account many interests when fulfilling their duty to promote the success of the company, including long-term corporate interests, interests of employees, suppliers and customers, and the impact of a decision on the community and the environment. In Canada, directors owe duties to the corporation and not to any specific stakeholder, including shareholders. In Japan, as a general practice, directors take into consideration not only the interests of shareholders, but also the interests of other parties.

In ten jurisdictions, the interests of other stakeholders can take priority over those of shareholders. In Australia, Hong Kong, Poland, Switzerland, Thailand and Turkey, although the interests of other stakeholders cannot take priority over those of shareholders, directors may owe duties to creditors when the company is in financial difficulty or on the verge of insolvency. In Canada, directors are not required to favour the interests of any one group of stakeholders. However, when faced with conflicting stakeholder interests, directors may approve a transaction that will benefit some groups, such as shareholders, at the expense of others. In Italy, directors are liable to the company's creditors for any violation of their duties relating to the preservation of corporate assets.

In five jurisdictions, a substantial or controlling shareholder owes a fiduciary or other duty directly to minority shareholders. In Israel, all shareholders must act in good faith in exercising their rights and fulfilling their duties towards the company and other shareholders. Shareholders must not exploit their power in voting on certain matters (i.e. alteration of the by-laws, increases to the registered share capital, mergers and transactions requiring the approval of the general meeting). In the U.S., controlling shareholders may owe a duty to minority shareholders when they transfer control of the corporation to a third party. However, this doctrine is construed very narrowly and is not widely held.

Company groups

In nine jurisdictions, there are special requirements or standards governing fiduciary duties in company groups.
For example:

- In Australia, the notion that directors must act in the best interests of the company is relevant to dealings between companies in a group. The guiding principle remains that each company in the group must be treated as having its own interest even when it is a wholly-owned subsidiary. However, there is case law where directors have been found not to have breached their duties where the relevant action was in the interests of the group. In addition, there is a specific statutory protection for directors of wholly-owned subsidiaries, which provides that a director of a company that is a wholly-owned subsidiary of a body corporate is taken to act in good faith and in the best interests of the subsidiary if: (i) the constitution of the subsidiary expressly authorises the director to act in the best interests of the holding company, (ii) the director acts in good faith in the best interests of the holding company, and (iii) the subsidiary is not insolvent at the time director acts and does not become insolvent because of the director's actions.

- In Brazil, the officers of a corporation may not favour an associated, controlling or controlled corporation to the detriment of their own corporation's interests, and must ensure that transactions between the corporations are equitable or compensated by adequate payment. Those officers will be liable to the corporation for any loss resulting from an infringement of these provisions. However, in company groups, the interests of one of the corporations may be sacrificed if it is in the group's collective interest.

- In Germany, in the context of corporate groups, minority shareholders are compensated for losses or profit withdrawals sustained by a company through compensation provisions contained in the domination agreement. The agreements must also contain a put option for minority shareholders, and be approved by a three-fourths majority vote at a shareholders' meeting (as well as separate votes for different classes of shares affected).

- In Thailand, directors and the management of the company and its subsidiary must perform their duties responsibly, with due care and loyalty, and must comply with the laws and articles of the company, the resolutions of the board of directors and the resolutions of the shareholders' meeting.

In nine jurisdictions, a fiduciary duty is owed only to the company in question and not to a company group.

Section 3. Minority shareholder remedies

Remedies, enforcement mechanisms and effective dispute resolution alternatives should be sufficiently reliable to inspire investor confidence in the overall integrity of the corporate governance framework and in company practices.[8]

Statutory civil remedies for investors and prospective investors who have suffered harm because they relied on materially misleading, incomplete or incorrect information and/or relied upon the opinion of a professional who voluntarily assumed some responsibility for providing an opinion about the integrity of company disclosures, are mechanisms used in some jurisdictions to provide greater protection to investors and to strengthen market discipline. Such remedies may make it easier for investors to establish a claim for recovery.[9]

Definition of market abuse

In all jurisdictions, there is a definition of "market abuse" or provisions which capture the concept (such as provisions prohibiting market misconduct).

For example:

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[8] OECD, *Corporate Governance in Turkey: A Pilot Study*, (Paris: OECD, 2006 at 68).

[9] *Ibid* at 112.

- In Hong Kong, "market misconduct" is defined by law as meaning insider dealing, false trading, price rigging, disclosure of false or misleading information, inducing transactions, and stock market manipulation.

- In Mexico, "market manipulation" is defined as any action by one or several persons, that obstructs or influences the buying and selling of securities, producing an artificial variation in the volume or price of such securities, with the intention to obtain a personal or third party benefit.

Examples of remedies and mechanisms available to shareholders include the following:

1. Oppression remedy. In a majority of jurisdictions, minority shareholders have a right to bring a legal proceeding against an issuer or a substantial or controlling shareholder for oppressive, unfair or abusive actions (such as through an "oppression remedy"). In the Netherlands, although there is no oppression remedy, minority shareholders can bring a tort action against the issuer, its executive and supervisory directors, its *de facto* directors and majority shareholders. A minority shareholder can also initiate an inquiry procedure into the policies and management of the company. In Poland and Turkey, shareholders may bring an action to annul a resolution that is harmful or unfair to a shareholder.

2. Derivative actions. In a majority of jurisdictions, minority shareholders have a right to bring a legal proceeding on behalf of the issuer against a substantial or controlling shareholder for abusive or unfair acts. Leave of the court or court approval is required in Canada, Australia, Germany and Israel. In four jurisdictions, a derivative cause of action does not exist.

3. Class actions. In eleven jurisdictions, a class action can be brought on behalf of a class of shareholders against the issuer or a substantial or controlling shareholder for abusive or unfair actions.

4. Action for material misrepresentation. In a majority of jurisdictions, minority shareholders have a right to bring a legal proceeding against an issuer or a substantial or controlling shareholder for a material misrepresentation in a corporate document or news release.

5. Court-ordered wind-up. In eleven jurisdictions, minority shareholders have a right to request a court to wind up or liquidate an issuer. In the U.S., state law determines whether shareholders have this right.

The grounds and standard of proof that must be met in order to obtain such a court order differ among jurisdictions.

For example:

- In Australia, the standard of proof is a balance of probabilities.

- In Brazil, shareholders must prove that the company cannot achieve its corporate purposes.

- In Canada and Hong Kong, shareholders must demonstrate that there are just and equitable grounds for winding up the company.

6. Court-ordered investigation. In nine jurisdictions, minority shareholders have a right to request a court to make an investigation or other order the court sees fit for the protection of shareholders. In

the U.S., state law determines whether shareholders have this right. In Hong Kong, although minority shareholders do not have a right to request a court to make an investigation, shareholders can apply to the Financial Secretary (i.e. equivalent to a Minister of Finance) to request that an inspector be appointed to investigate the company.

The grounds and standard of proof that must be met in order to obtain a court-ordered investigation vary among jurisdictions.

For example:

- In the Netherlands, shareholders must prove that there is reasonable doubt as to the appropriateness of a policy of the issuer. If reasonable doubt is proven, an inquiry is ordered and an investigator is appointed. Based on the investigator's findings, a number of orders can be made, including one ordering the dissolution of the issuer.

- In Germany, there is no specific standard of proof. However, a court may appoint a special auditor to review the issuer if there are grounds to believe that there has been misconduct on the part of management.

7. <u>Dissent and appraisal rights</u>. In fifteen jurisdictions, there are circumstances in which certain types of fundamental corporate actions (such as a merger or delisting) give rise to a right of minority shareholders to demand that their shares be bought by the issuer at fair market value (also known as dissent or appraisal rights).

8. <u>Other rights of legal redress</u>. In some jurisdictions, minority shareholders have other mechanisms to obtain legal redress in certain circumstances where a board, issuer or a substantial or controlling shareholder has acted improperly.

For example:

- In Australia, Brazil, Canada, Hong Kong, Italy, Spain, Switzerland and Thailand, minority shareholders can file a complaint with the securities regulator or stock exchange.

- In Israel, a party filing a class action may apply to the securities regulator to bear his or her costs. If the securities regulator is convinced that the action is in the public interest and there is a reasonable chance that the court will approve the action as a class action, the securities regulator may decide to bear the plaintiff's costs.

- In Italy, shareholders can avail themselves of a corporate arbitration procedure or dispute settlement proceeding. Shareholders also have the right to bring a complaint to the board and that complaint must be included in the board's report presented at the shareholders' meeting. If the complaint is raised by shareholders representing at least 2% of the share capital (or a lower percentage stipulated in the by-laws), the controlling body (which is a separate, independent arm of the board) must conduct an investigation without delay and submit its findings and recommendations to the shareholders' meeting.

- In the Netherlands, a shareholder or group of shareholders representing at least 10% of the issued share capital or holding shares with a nominal value of €225,000 (or less, if provided for in the articles) can request the Enterprise Chamber to appoint one or more individuals to conduct an inquiry into the management or actions of the issuer.

Whistleblower provisions

In nine jurisdictions, officers or employees of an issuer are protected by whistleblower provisions.

For example:

- In Israel, the Employee Protection Act prohibits employers from dismissing or adversely affecting the working conditions of employees who have submitted, or helped others to submit, complaints against the employer or a fellow employee.

- In Thailand, a company is prohibited from treating an officer, an employee or any other person hired to work for the company, unfairly because that person:

  (i) gave information, cooperated or gave assistance to the securities regulator or the Capital Market Supervisory Board in cases where the officer, the employee or such other persons believed or had reasonable grounds to believe that there was a contravention or failure to comply with securities law; or

  (ii) gave statements, filed documents or evidence or gave assistance to the securities regulator or the Capital Market Supervisory Board in an investigation of suspected contraventions or failures to comply with securities law.

Effectiveness of rights of legal redress for minority shareholders

In practice, the effectiveness of these rights of legal redress for minority shareholders varies across jurisdictions. For example:

- In Australia, recent developments in the law have removed some of the obstacles to instituting class actions and have made it easier for shareholders to pursue existing rights of legal redress.

- In Germany, there is well-established jurisprudence of challenges made by shareholders for unfair resolutions. However, claims for damages against companies for negligent or disloyal behaviour are infrequent.

- In Israel, class actions are not widely used, but some cases have been relatively successful.

- In the Netherlands, Japan, Israel, Italy and the U.S., rights of legal redress for minority shareholders are generally effective.

- In Poland and Switzerland, the rights of legal redress are effective but for shareholders generally (i.e. not specifically minority shareholders).

Chapter III. Protection of Minority Shareholders in Specific Contexts

Section 1. Changes in control

OECD Principle II.E.1 states:

> *The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.*

The OECD Methodology notes that the rules and procedures governing the acquisition of corporate control may vary considerably among companies in a jurisdiction, depending on company charters and by-laws, and the structure of ownership and listing regulations. Some jurisdictions have takeover codes or laws specifying in detail the procedures that must be followed. They usually include provisions to protect minority shareholders by requiring bidders to offer to purchase shares at a particular price (mandatory tender offer rules), as well as imposing a threshold at which minority shareholders can require the majority to buy their shares, and/or a threshold where the remaining shareholders can be squeezed out. The OECD Methodology notes that although the OECD Principles do not describe an absolute standard for the nature of these rules and procedures, relevant rules and procedures should be clearly articulated, disclosed and implemented so that the rights can be incorporated into the price of different classes of shares.

Change of control transactions

In all jurisdictions, there are rules and regulations that protect or have the effect of protecting minority shareholders in a change of control transaction. For example:

- In Australia, the Takeovers Panel provides a forum for resolving disputes about a takeover bid until the bid period has ended. The Panel has the right to make orders to protect the rights of persons. In addition, in schemes of arrangement, ASIC reviews scheme documents and can appear in court to object or act as *amicus curaie*.

- In Mexico, in a change of control transaction, all shareholders must be offered the same price per share and be allowed to choose whether or not to remain as a shareholder in the company. The main policy objective of Mexican securities law in change of control transactions is to allow all shareholders to participate in the benefits of a change in control.

- In EU jurisdictions, the Takeover Bid Directive provides for a duty to launch mandatory public offers at an equitable minimum price to protect the holders of securities, in particular those with minority holdings, when control of the company has been acquired.

- In Switzerland, there is a specific takeover statute covering friendly, hostile and mandatory bids. The main goal of the statute is to protect minority shareholders by ensuring transparency and equal treatment of shareholders in change of control transactions. Within the statute, the most important rule is that a mandatory offer must be made to all shareholders when an acquirer, either directly, indirectly or acting in concert with other parties, exceeds the shareholding threshold of 33⅓% of the voting rights (whether or not such rights may be exercisable) of the target company. A target company can raise the shareholding threshold in its articles to 49% of the voting rights (known as "opting up"). A target company's articles can also state that this rule does not apply (known as "opting out"). This is commonly the case with family-controlled companies.

In sixteen jurisdictions, a substantial shareholding or control block cannot be sold to a third party at a premium without triggering any obligation to, or protection of, minority shareholders.

In virtually all jurisdictions, a shareholder or third party is required to make a general offer to all shareholders to purchase its shares when that shareholder or third party acquires control of an issuer or acquires a certain percentage of the issuer's voting shares. The percentage of voting shares that triggers the mandatory offer requirement is 20%, 25%, 30%, 1/3, 50%, 2/3, or 75%, depending on the jurisdiction.

In fourteen jurisdictions, when a general offer is required to be made to all shareholders, there are minimum price requirements or rules applicable to the determination of the price.

For example:

- In Germany, consideration for the shares of the target company must be at least equal to the higher of:

  (i) the value of the highest consideration paid or agreed to by the offeror, a person acting in concert with the offeror or any of its subsidiary undertakings, for the acquisition of shares in the target company within the last 6 months prior to the publication of the offer; and

  (ii) the weighted average price of those shares on a domestic stock exchange during the last three months prior to the publication of the offer.

- In the Netherlands, a bidder is required to offer a fair price for the shares. In principle, a fair price is deemed equal to the highest price paid by the bidder (or parties acting in concert with the bidder) for the relevant shares in the year preceding the offer. If the bidder has not acquired any shares during the preceding year (and acquires control due to, for example, cancellation of shares or a legal merger with another entity), the average share price during that year will be deemed a fair price. An interested party may also request that a court determine whether the price should be set higher. Furthermore, if, subsequent to making the mandatory bid, the bidder acquires the target shares at a higher price than the offer price, each shareholder is entitled to the same consideration. After the offer has been declared unconditional, the bidder is prohibited from acquiring shares at a higher price for one year.

Mandatory bids

Jurisdictions also have a number of other rules and requirements in place when a mandatory bid is made. These include the following:

- <u>Offering document.</u> In all jurisdictions, an offeror is required to prepare and publicly file an offering document. However, in the U.S., depending on the facts and circumstances, an offering document may not always have to be filed with the SEC to effect a business combination or change of control transaction.

- Minimum bid period and payment of identical consideration. In all jurisdictions, an offer is required to be open for acceptance for some minimum period and all shareholders of the same class of shares are required to be paid identical consideration.

- Collateral benefits. In fifteen jurisdictions, collateral benefits to particular shareholders or insiders are prohibited when a general offer is required to be made to all shareholders.

- Duty of the board to maximize shareholder value and comment on an offer. In five jurisdictions, the board owes a duty to shareholders to maximize value to all shareholders when an offer is made. In the U.S., this is a matter of state law. As an example, in Delaware, the board must attempt to get the best price reasonably available in a change of control transaction.

  In most jurisdictions, the board has a duty to comment in detail on the offer. In five jurisdictions, there are special duties of the board where a change of control transaction is proposed. For example, in Hong Kong, once a *bona fide* offer has been communicated to the board of the offeree company, directors of the offeree company are restricted from resigning until (i) the first closing date of the offer, (ii) the date when the offer becomes or is declared unconditional, or (iii) the shareholders have voted on the waiver of the general offer obligation, whichever is later. Furthermore, once an offeror requisitions a general meeting (after its offer becomes unconditional) to seek to appoint directors of the offeree company, the offeree board must cooperate fully and convene a general meeting as soon as possible. The offeree board must not take certain actions after the end of the offer period and until the conclusion of the general meeting of shareholders.

- When offer is by substantial or controlling shareholder or an insider. In eight jurisdictions, there are additional obligations and requirements that can arise when an offer is being made by a substantial or controlling shareholder or an insider. These additional obligations can include:

  - preparation of a valuation or expert report on the transaction;

  - review of the transaction by a committee of independent directors;

  - minority shareholder approval;

  - public disclosure by board members regarding how they are planning to act with respect to their shareholdings; and

  - prohibition of the board of directors and officers from taking any action (that would harm the issuer) to obstruct the offer.

  In the Netherlands, if a public offer is made by a shareholder that, prior to the offer, already had the power to control the appointment of one or more supervisory directors of the issuer, the supervisory directors appointed by that shareholder must refrain from participating in any decisions relating to the mandatory public offer. Furthermore, where a majority shareholder is making a public offer, it has become normal practice for the supervisory board members to opine on the offer.

  In the U.S., no federal securities law requirement exists for a board to form a special committee of independent directors or to prepare an independent valuation. However, where a substantial or controlling shareholder undertakes a transaction to acquire the remaining outstanding securities of a publicly reporting issuer, Rule 13e-3 can apply. This means that heightened disclosure requirements apply, including disclosure relating to the terms of the transaction and details about negotiations, agreements, opinions and appraisals.

- <u>Acting in concert</u>. Sixteen jurisdictions have rules that treat groups of persons as "acting in concert" for purposes of an offer.

- <u>Compulsory acquisitions</u>. In fourteen jurisdictions, if a person making an offer acquires a certain percentage of the shares (generally 90% or more), the acquirer has the ability to mandatorily acquire the balance of the shares held by minority shareholders.

  For example:

  - In Germany, following a takeover bid or mandatory bid, if the offeror acquires more than 95% of the voting rights, the remaining voting shares of a target company will be transferred upon application to the offeror (a squeeze out). The consideration offered must be "fair".

  - In Portugal, any person who, following the launch of a general takeover bid, acquires 90% or more of the voting rights and 90% of the voting rights covered by the bid, may acquire the remaining shares for fair cash consideration in the three months after completion of the bid. In compulsory acquisitions, shareholders of the same class must be treated equally.

  - In Israel, if a shareholder acquires 90% or more of an issuer's shares, that shareholder is required to issue a full tender offer which, in effect, takes the company private. If the tender is accepted and less than 5% of shareholdings remain in the hands of dissenting minority shareholders, the offeror has the right to acquire those shares. Shareholders can appeal to the court regarding the valuation of the shares under a compulsory sale, but cannot appeal the sale itself.

- <u>Right to require issuer to purchase shares</u>. In twelve jurisdictions, minority shareholders have a right to require the issuer or the acquirer to purchase their shares at fair value when a change of control occurs or when a certain threshold of shares is acquired. For example, in EU jurisdictions, the Takeover Bid Directive provides that where, following a takeover bid, an offeror has acquired a certain high percentage (90% or 95%) of a company's capital with voting rights, the holders of the remaining securities have the right to require that the offeror purchase their securities at a fair price (the so-called "sell-out right").

Recent abuses of minority shareholders

In eight jurisdictions, abuses of minority shareholders have recently occurred in connection with change of control transactions.

For example:

- In Germany, offerors have, at times, violated the rules of the Takeover Act. The securities regulator can conduct administrative proceedings with respect to such infringements and shareholders may claim damages.

- In Israel, there have been a few recent attempts in the courts to redress grievances relating to the transfer of control. The key issue in these cases has been the determination of fair value of the shares sold in compulsory acquisitions. The results of the cases have been mixed.

- In Italy, a typical example of abuse of minority shareholders is a situation where parties act in concert but attempt to conceal their relationship in order to avoid the mandatory takeover bid rules. The Italian securities regulator has detected some of these infringements and has issued sanctions against responsible parties.

- In Poland, there have been several cases where the control of a company was obtained through a violation of the rules relating to material blocks of shares. In those cases, parties attempted to hide the fact that they were acting in concert. The Polish securities regulator took action in all the known cases of such violations.

- In the Versatel[10] case in the Netherlands, an acquiror tried to squeeze out the remaining shareholders of Versatel through a variety of measures that raised several conflict of interest issues. Minority shareholders commenced inquiry proceedings and were granted preliminary injunctions by the court.

Delisting

The OECD Methodology recognizes that delisting a company may be particularly damaging to shareholders. It notes that it is essential for the corporate governance framework to include provisions to protect minority shareholders and to ensure that transactions occur at transparent prices and under fair conditions.

In seventeen jurisdictions, minority shareholders are protected in a delisting.

For example:

- In Hong Kong, the resolution to approve a delisting must be subject to the following conditions: (i) approval by at least 75% of the votes attaching to all shares held by disinterested parties, (ii) the number of votes cast against the resolution cannot be more than 10% of the votes attaching to all shares held by disinterested parties, and (iii) the offeror must be entitled to exercise, and then must exercise, its rights of compulsory acquisition.

- In Poland, if an issuer requests a delisting, the Warsaw Stock Exchange Management Board can require that a tender offer be made for all of the issuer's outstanding shares at a "fair price". The exchange can also require that a tender offer be made in other circumstances where a delisting occurs.

- In Thailand, in a voluntary delisting, the company must obtain approval from shareholders representing 75% of the voting rights. Shareholders holding more than 10% of the voting rights can object to the delisting. The company must also appoint an independent financial advisor to advise shareholders in the event of a delisting. Furthermore, there is a statutorily prescribed minimum price for offers made to minority shareholders.

[10] *Versatel Telecom International N.V. v Swedish Tele2 AB* [2007] Enterprise Chamber Court of Appeals.

Section 2. Related party transactions

OECD Principle V.A.5. states that issuer disclosure should include material information on related party transactions. The OECD Methodology notes that it is important for the market to know whether a company is being run with due regard to the interests of all its investors. Therefore, it is vital that the company fully disclose material related party transactions to the market, either individually, or on a grouped basis, including whether those transactions have been executed at arm's length and on normal market terms.

All jurisdictions impose heightened disclosure or other requirements applicable to related party transactions and a requirement on issuers to publicly disclose or disclose specifically to minority shareholders related party transactions.

Related party or connected party transactions are defined in virtually all jurisdictions. For example, in Mexico, related party transactions are defined as all transactions conducted between the issuer and 'related persons'. A related person is defined as:

(i) any person having control or significant influence over an entity that integrates the corporate group or group of the issuer, and the directors and relevant officers of said entities;
(ii) a person with decision making authority over an entity that forms part of the corporate group or group of the issuer;
(iii) spouse or family members of an individual mentioned in items (i) through (ii);
(iv) legal entities that integrate the corporate group or group of the issuer;
(v) legal entities controlled by an individual mentioned in items (i) through (iii); or
(vi) legal entities over which an individual mentioned in items (i) through (iii) has significant influence.

See Appendix B for a more detailed description of the definitions of related party or connected party transactions across jurisdictions.

In most jurisdictions, the materiality of the transaction triggers the requirement for disclosure or review of a related party transaction. See Appendix B for a more detailed description of the materiality or analogous thresholds across jurisdictions.

In twelve jurisdictions, restrictions or disclosure obligations are imposed on the ability of an issuer to make loans to directors or officers or a substantial or controlling shareholder. Such loans are treated as related party transactions in virtually all jurisdictions.

Transactions between group companies

In twelve jurisdictions, there are special rules governing transactions between group companies.

For example:

- In Brazil, the balance of any liability or asset account representing transactions carried out between group companies must be excluded from the consolidation in the preparation of consolidated financial statements.

- In Germany, the management board of a controlled company must complete a domination report each year that describes any contracts between the controlled company and a controlling enterprise or group of companies.

Approval required for related party transactions

In thirteen jurisdictions, a material related party transaction may require approval from one or more of the following: the board, the supervisory board, a board committee, shareholders at the general shareholders' meeting, or minority shareholders.

In five jurisdictions, no approval of a related party transation is required. In Brazil, no approval is required by law but the company's by-laws may set forth the type of approval required. In Japan, although there is no requirement for approval, approval by the board or the shareholders at a meeting is required when the transaction involves directors that have a conflict of interest.

Where a shareholder vote on a related party transaction is required, a party to that transaction can validly vote its shares in favour of the transaction in four jurisdictions. In Italy, the board of directors must adopt internal rules that aim to ensure that related party transactions satisfy fairness and transparency requirements.

Minority shareholder approval of a related party transaction is required in five jurisdictions. In Canada, minority shareholder approval is only required for large (25% of market capitalization) related party transactions. In Germany, approval is required when there is any amendment or rescission of a domination and profit transfer agreement entered into as part of a related party transaction and that could affect minority shareholders' compensation, indemnity or put option (the put option is generally contained in the domination and profit transfer agreement or, in the context of a takeover, in the takeover document). In the U.S., minority approval is only required when (i) the parties to a merger agreement have imposed such a requirement, or (ii) sources of legal authority other than the federal securities laws (such as state corporate law or case law) otherwise require such approval.

In all jurisdictions, directors who have an interest in a related party transaction (or an interest in a party to a related party transaction) are required to disclose that interest to the board. In fifteen jurisdictions, such directors are prohibited from participating in deliberations with respect to, or voting on, the transaction. In the U.S., state law determines whether or not such directors are subject to this prohibition. In six jurisdictions, there are exceptions to these two requirements. In Italy, if the company's decision regarding whether or not to enter into the related party transaction is influenced by the direction and coordination activity of a related entity, the company must describe the reasons and interests which influenced the decision. This information must be disclosed to the board in a report and delivered to shareholders.

Independent valuation or fairness opinion

In seven jurisdictions, there is a requirement to prepare and publicly disclose an independent valuation in connection with certain related party transactions. In Australia, a report on the transaction by an independent expert is not required unless the related party transaction falls within the approval requirements in the listing rules of the Australian Securities Exchange. In Israel, although no independent valuation is required, if the board relied on a valuation in determining the value of the consideration in a transaction with a controlling shareholder, the valuation must be disclosed. In Switzerland, if an offer is made by a substantial or controlling shareholder or an insider, the board must publish a valuation report prepared by a recognized auditing company or a securities dealer.

In five jurisdictions, a fairness opinion is required to be prepared for a related party transaction. In three jurisdictions, the fairness opinion must be publicly disclosed. In Poland, an independent valuation and fairness opinion is required only if there is a significant change in the issuer's situation as a result of the transaction. In Switzerland, if less than two board members are independent and an offer is made by a substantial or controlling shareholder or insider, an auditor or securities dealer will be requested to deliver a fairness opinion that must be published. In addition, the board of directors has the power to order a fairness opinion to be prepared in any case, and that it be delivered to the Takeover Board.

In the U.S., no express requirement exists under federal securities laws to prepare and disclose to shareholders an independent valuation or fairness opinion. However, receipt of a fairness opinion or valuation by the company (or affiliate that is materially related to a change of control or business combination transaction) is generally required to be disclosed.

In most of the jurisdictions where an independent valuation or fairness opinion is required, there are rules or guidelines for their preparation. In a majority of jurisdictions, the issuer chooses and pays the valuator. In Turkey, the issuer chooses the valuator from a list approved by the board. In Thailand, the issuer chooses the valuator from a list approved by the securities regulator.

In most jurisdictions, there is no express requirement for a particular person to supervise the valuator. However, in three jurisdictions, the securities regulator supervises the valuator. In Canada, either the board or an independent committee of the board supervises the valuator.

In virtually all jurisdictions, an offer to acquire minority shares does not have to be made at the price established by a valuation.

Chapter IV. Role of securities supervisors and other regulators in the protection of minority shareholders

In most jurisdictions, securities regulators have special powers or authority to protect minority shareholders or to provide redress to them. In some cases, the protections offered to minority shareholders are those offered to shareholders generally.

In fourteen jurisdictions, securities regulators do not have the discretion to regulate or enforce corporate law rules. However, other regulators (such as government ministries) have this authority in seven of those jurisdictions.

For example:

- In Hong Kong, the Registrar of Companies has certain authority to take prosecutorial action with respect to any non-compliance with the obligations or duties of the company, directors or officers in dealing with shareholder meetings and voting. The Financial Secretary (i.e. equivalent to a Minister of Finance) also has certain powers under the Company Ordinances which may be exercised to protect minority shareholders, such as (i) the power of investigation, (ii) the power to apply for winding up, and (iii) the right to apply for injunctions.

- In Italy, the issuer's controlling body and external auditor must inform the securities regulator without delay of any irregularities discovered in the exercise of their respective functions. Furthermore, if Consob has a well-founded suspicion of serious irregularities in the performance of the supervisory duties by the issuer's controlling body, it may report its findings to a court. The court can order an inspection and take appropriate measures.

- In the U.K., the Companies Investigation Branch, an arm of the U.K. government, investigates issues of fraud, serious misconduct or material irregularities in a company's affairs. The Companies House, another arm of the U.K. government, acts as the registrar of companies.

In three jurisdictions, there are additional special rules or requirements that apply to company groups or to transactions among group companies. For example, in Italy, Consob has established listing requirements for companies that control non-EU foreign companies, subsidiaries subject to control by other companies, and holding companies.

Proposed or recent reforms to protect minority shareholders

In nine jurisdictions, there are recent or proposed reforms or additional frameworks that are intended to provide protection to minority shareholders.

For example:

- In Australia, several issues arising from the *Sons of Gwalia*[11] case have been referred to the Corporations and Markets Advisory Committee (CAMAC) for consideration and advice. Based on CAMAC's findings, there may be a legislative response. The court held in *Sons of Gwalia* that, during the external administration of a company and distribution of a fund under a deed of company arrangement, claims by shareholders for the recovery of losses due to wrongdoings by a company can rank equally with the claims of unsecured creditors.

[11] *Sons of Gwalia Ltd v Margaretic; ING Investment Management LLC v Margaretic* [2007] HCA 1.

- In Brazil, the securities regulator is conducting a full review of its Instruction 202/93, which sets out the disclosure requirements for financial statements and other information for listed companies. The revised Instruction will establish new levels of disclosures based on a variety of factors.

- In Israel, recent and proposed reforms include (i) the creation of a specialized court for securities and corporate litigation, (ii) strengthening the independence of the board,
(iii) voluntary adoption of a corporate governance code, (iv) an improved procedure for approving financial statements, and (v) an increase in the involvement of institutional investors in the capital markets.

- In Mexico, recent reforms have been made to the Securities Market Law. The reforms focus on protecting (i) the rights of minority shareholders, (ii) preventing market abuse, (iii) defining the duties and responsibilities of board members, officers, controlling shareholders, external auditors and committees, and (iv) fostering the development of medium- and long-term corporate debt markets, as well as private equity and venture capital markets.

- In Spain, listed companies reported on their compliance with the Unified Code of Good Governance for the first time in 2008 (the Code came into effect in 2007). The Code contains a comprehensive list of measures to protect minority shareholders.

- In Thailand, the corporate governance provisions of the Securities and Exchange Act (and related regulations) were amended to (i) enhance the fidcuiary duties of directors, (ii) specify the sanctions for breaches of those fiduciary duties, and (iii) strengthen the rules governing related party transactions. The Act was also amended to deal with the qualifications of independent directors and audit committees, and the roles and functions of audit committees. These changes came into effect in August 2008.

Chapter V. Conclusion

The fact-finding exercise conducted by the Task Force to survey the protections afforded to minority shareholders in listed issuers has provided insight into the corporate governance regimes of the eighteen participating countries. As illustrated in the report, although laws and practices vary across jurisdictions and continue to evolve, a robust corporate governance framework that provides protections to minority shareholders will generally incorporate measures relating to the transparency of corporate ownership and governance structures, the accountability of boards and management to shareholders and specific rights and protections granted to minority shareholders in specific circumstances.

Appendix A

Are shareholders required to publicly disclose or to disclose specifically to minority shareholders acquisitions of shares above a certain threshold or percentage (such as under the Regulation 13D requirement in the U.S.)? If so, what are the reporting thresholds and disclosure deadlines? When are such reports required to be amended or updated?

Jurisdiction	Public Disclo-sure	Thresholds	Timing	Report on changes?	Disclosure specifically to minority share-holders
Australia	YES	Shareholder reporting requirements A person must provide notice of their substantial holding if: • they begin or cease to have a substantial holding in the company (i.e. relevant interest in 5% or more of the voting shares); • the person has a substantial holding in the company and there is a movement of at least 1% in their holding; or • the person makes a takeover bid for the company. Substantial shareholdings must be reported by the shareholder to the ASX. This information is then disclosed on the company announcements platform. Director reporting requirements A director must disclose all movements in their shareholdings.	Shareholder reporting requirements Information must be disclosed: • within 2 business days after they become aware of the information, or • by 9.30am on the next trading day after they become aware of the information if a takeover bid is made for voting shares in the company and the person becomes aware of the information during the bid period. Director reporting requirements The *Corporations Act 2001* (the Act) and the Listing Rules of the ASX have different timing requirements: • Under the Act, a director of a listed company must notify the relevant market operator of shareholdings within 14 days after their appointment as a director of the company, the listing of the company, or any change in the director's interests. • The ASX Listing Rules require disclosure of a notifiable interest of a director within 5 business days or a director's appointment or a change in notifiable interest occurring.	Shareholder reporting requirements Substantial shareholders (i.e. if a person and their associates have relevant interests of 5% or more of the total votes) must disclose a movement of 1%. Director reporting requirements A director must disclose all movements in their shareholdings.	NO
Brazil	YES	Shareholders must notify the company if they purchase or dispose of 5% of shares of any class or series.	Shareholders must notify the company immediately. As soon as the company is notified by the shareholder, the company, through its Investor Relations Director, is responsible for informing the CVM and the stock exchanges or entities of the organized over-the-counter market in which the shares of the company are	Any 5% increase or decrease in the shares of any class or series thereafter must be disclosed.	NO

Jurisdiction	Public Disclo-sure	Thresholds	Timing	Report on changes?	Disclosure specifically to minority share-holders
			admitted for trading.		
Canada	YES	Early warning requirements Every person who acquires voting or equity securities, or securities convertible into voting or equity securities, of a class that when added to the acquiror's securities of that class, constitutes 10% or more of the outstanding securities of that class (10% early warning requirement). In the event a formal take-over bid or issuer bid is outstanding, and a person acquires beneficial ownership of, or the power to exercise control or direction over, securities of the class subject to the bid which, when added to the acquiror's securities of that class, constitute 5% or more of the outstanding securities of that class, the acquirer is subject to reporting requirements (5% early warning requirement). Insider reporting requirements Directors, officers and significant shareholders (generally a person who owns or controls more than 10% of an issuer's voting securities) are insiders with insider reporting obligations.	Early warning requirements Under the 10% early warning requirements, a news release must be promptly issued and filed, and a report must be publicly filed within 2 business days. Under the 5% warning requirement, a news release must be issued and filed before the opening of trading on the next business day. Insider reporting requirements Within 10 days of becoming an insider of a reporting issuer, the insider must file an insider report with securities regulators.	Early warning requirements – Under the 10% early warning requirement, an acquirer must issue and file a news release within 2 business days of obtaining: 1) an additional 2% of the class of securities that was subject of the most recent report, 2) securities convertible into an additional 2% of the class of securities that was subject of the most recent report, or 3) a change in material fact contained in the most recent report. Under the 5% early warning requirement, an acquirer must issue and file a news release upon obtaining an additional 2% of the class of securities that the subject of the most recent report. Insider reporting requirements A report must be filed within 10 days of any change in beneficial ownership or control or direction over securities of an insider. An insider must file a separate insider report within 10 days of entering into, amending, or terminating any agreement/arrangement/ understanding that affects the insider's economic interest in or exposure to the issuer.	NO
Germany	YES	Any person whose shareholdings (in an issuer whose home country is Germany) reaches, exceeds or falls below 3%, 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% of the voting rights by purchase, sale or by any other means must disclose this information to the issuer and the Supervisory Authority. With respect to share certificates, the notification requirement applies only to the holder of the certificates. The notification period begins to run when the notifying party learns that his/her shareholdings reaches, exceeds or falls below a threshold. These rules implement the requirements of the EU Transparency Directive. However, the 3% threshold	The shareholder must notify the issuer and Supervisory Authority without undue delay, and within 4 trading days at the latest.	Disclosure must be made whenever a threshold is crossed.	NO

Jurisdiction	Public Disclo-sure	Thresholds	Timing	Report on changes?	Disclosure specifically to minority share-holders
		is not found in the Directive. It was introduced to ensure that management is informed early on of shareholders that are able to significantly influence company policy.			
Hong Kong	YES	Shareholder reporting requirements Shareholders must disclose to the Stock Exchange of Hong Kong their interests and short positions in voting shares of the listed company. The obligation arises on a holding of 5% and over. Director reporting requirements Directors and chief executives of a listed issuer must disclose their interests, and short positions, in any shares in a listed issuer (or any of its associated corporations) and their interests in any debentures of the listed issuer (or any of its associated corporations).	Shareholder reporting requirements The time allowed for filing initial notifications, i.e. when an issuer is first listed, is 10 business days. A shareholder must disclose changes in his interests in a listed issuer within 3 business days except in the case of a newly listed issuer, in which case the period is 10 days. Director reporting requirements The time allowed for filing initial notifications, i.e. when an issuer is first listed or when the person concerned becomes a director or CEO, is 10 business days. However, in the case of an initial notification, directors are required to specify the highest price and average price per share for interests in shares acquired on-exchange within 4 months prior to the date of the relevant event and, in the case of interests acquired off-exchange, the average consideration per share and the nature of the consideration. There are similar notification requirements for interests in shares of associated corporations.	Shareholder reporting requirements A shareholder must file a notice on the occurrence of certain events, namely "relevant events." These relevant events include : (i) When a shareholder's interest drops below 5% (i.e. he ceases to have a notifiable interest). (ii) When there is an increase or decrease in the percentage figure of a shareholder's holding that results in his/her interest crossing over a whole percentage number which is above 5% (e.g. his interest increases from 6.8% to 7.1% - crossing over 7%). (iii) When a shareholder has a notifiable interest and *the nature of his/her interest in the shares changes* (e.g. on exercise of an option). (iv) When a shareholder has a notifiable interest and he comes to have, or ceases to have, a short position of more than 1% (e.g. he was already interested in 6.8% of the shares of a listed corporation before taking a short position of 1.9%). (v) When a shareholder has a notifiable interest and there is an increase or decrease in the percentage figure of his short position that results in his short position crossing over a whole percentage number which is above 1%. (e.g. he was already interested in 6.8% of the shares of a listed corporation before	NO

Jurisdiction	Public Disclo-sure	Thresholds	Timing	Report on changes?	Disclosure specifically to minority share-holders
				increasing his short position from 1.9% to 2.1%). (vi) If a shareholder has an interest in 5% or more of the shares of a corporation that is being listed, shares of a class that is being listed, or shares of a class which are being given full voting rights. A shareholder must disclose changes in his interests in a listed issuer within 3 business days except in the case of a newly listed issuer, in which case the period is 10 days. **Changes in the percentage level of a short position** Disclosure only has to be made as a result of a short position passing through the 1% percentage level or a higher percentage level if there is also have a notifiable interest (i.e. a 5% long position). Disclosure is not required if there is a change in the percentage level of a short position but there is no "notifiable interest". Hence if a short position rises from 5% to 6% but there is still only a 3% long position, disclosure is not required. <u>Director reporting requirements</u> A director or chief executive has to disclose changes in his interests and short positions when a "*relevant event*" occurs. The relevant events in respect of a director or chief executive include : (i) When he becomes interested in the shares of the listed issuer (e.g. on the grant to him by the listed issuer of share options). (ii) When he ceases to be interested in such shares (e.g. on delivery of shares on settlement date). (iii) When he enters into a contract to sell any such shares. (iv) When he assigns any right granted to him by the listed issuer to subscribe for such	

Jurisdiction	Public Disclo-sure	Thresholds	Timing	Report on changes?	Disclosure specifically to minority share-holders
				shares. (v) When the nature of his interest in such shares changes (e.g. on exercise of an option, on lending shares and when shares lent are returned). (vi) When he comes to have, or ceases to have, a short position in the shares of a listed issuer. (vii) If he has an interest, or a short position, in shares of a listed issuer at the time when it becomes a listed issuer. (viii) If he has an interest, or a short position, in shares of a listed issuer when he becomes a director or chief executive of that issuer.	
Israel	YES	An interested party is required to inform the company of their holdings and any changes in them, regardless of the size of the change. An "interested party" is defined as someone who holds five percent or more of the issued share capital of the corporation or of the voting power therein, someone who is entitled to appoint one or more of the directors of the corporation or its general manager, someone who holds office as a director of the corporation or as its general manager, or a corporation in which a person as aforesaid holds 25% or more of its issued share capital or of the voting rights therein or is entitled to appoint 25% or more of its directors.	An interested party must make its disclosure to the company in writing after it becomes aware of the change, and in any case no later than 1 trading day after the date of the change. Once notice is given to the company, the latter must file an immediate report with the Israel Securities Authority. If it receives notice before 9:30 a.m. on a trading day, the immediate report must be filed by 13:00 that day. If received later, the company must file by 9:30 a.m. the following trading day. Once filed, the dissemination of information is instantaneous over the MAGNA and is available for public review through the ISA website. Once a week, the corporation must file a report containing details of the interested parties and of their holdings in the securities of the corporation. Each report summarizes the transactions made and presents the updated status of ownership. In addition, a report outlining current ownership structure must be submitted weekly for all weeks in which a change in holdings has occurred. In addition, the ownership structure must also be disclosed in the company's periodic financial reports and	Immediately upon a change in the number of shares held by an interested party.	NO

Jurisdiction	Public Disclo-sure	Thresholds	Timing	Report on changes?	Disclosure specifically to minority share-holders
			in prospectuses.		
Italy	YES	Reporting obligations apply to persons holding more than 2%, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 66.6%, 75%, 90% and 95% of a listed company's share capital.	Notice must be given to the company and Consob within 5 days. The securities regulator publishes the information within 3 days.	Variations above or below these thresholds must be reported to the company and Consob as soon as possible and in any event within 5 days.	NO
Japan	YES	Shareholder reporting requirements Large shareholders (i.e. shareholders who own over 5% of total shares) must file a large shareholdings report with the FSA, which is publicly disclosed. Director reporting require-ments In addition, directors and major shareholders of an issuer must report to the FSA when they purchase or sell the issuer's shares.	Shareholder reporting requirements A large shareholdings report must be submitted within 5 days after acquiring the holding. Director reporting require-ments Directors and major shareholders must submit a report to the FSA before the 15th day of the month following the month in which the sale or purchase of securities was made.	Shareholder reporting requirements When a large shareholders' shareholding ratio changes by more than 1%, a large shareholdings report must be submitted within 5 days of the change. Director reporting require-ments Directors and major shareholders of an issuer must report to the FSA when they purchase or sell the issuer's shares.	NO
Mexico	YES	Any person or group of persons who acquire, directly or indirectly, shares of the issuer and as a result of such acquisition, their shares represent more than 10% and less than 30% of the issuer's equity, must report the transaction to the stock exchange for public dissemination. In addition, related persons who increase or decrease their shareholdings by 5% must inform the Stock Exchange.	A person or group of persons must report the transaction not later than one day after the transaction was made. Related persons must inform the Stock Exchange of any increase or decrease in their shareholdings no later than 1 day after the transaction.	There are no requirements to update or amend such reports. However, issuers must disclose shareholdings by directors, officers and substantial or controlling shareholders in subsequent offering and continuous disclosure documents.	NO
The Netherlands	YES	Shareholder reporting requirements Every holder of shares is obliged to notify the AFM when he or she acquires or disposes of shares in an issuer, if he thereby reaches or falls under a threshold with regard to the shares in his or her possession. The thresholds are 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95%. The same reporting obligation applies with respect to the acquisition or disposal of voting rights in an issuer, even if this is a result of a notification by the issuer of the AFM as described above. In addition, every holder of shares is obliged to notify the AFM immediately when he or she acquires or disposes of shares with a special right regarding	Shareholder reporting requirements The AFM must be notified immediately. Director reporting requirements The AFM must be notified immediately. The AFM immediately enters all notifications in a publicly accessible register. The issuer is also required to disclose this information in its annual report.	Shareholder reporting requirements Notification must be given every time a threshold is crossed. Director reporting requirements Executive and non-executive directors must immediately notify the AFM of any change in the number of shares and (nature of the) voting rights he/she holds.	NO

Jurisdiction	Public Disclo-sure	Thresholds	Timing	Report on changes?	Disclosure specifically to minority share-holders
		control over an issuer (a priority share). Currently, the Dutch government is drafting a bill in which the thresholds are replaced by thresholds for every percentage point, starting at 3%. The Dutch government is also contemplating introducing a requirement for a shareholder holding 10% of the share capital to disclose his/her intentions with respect to his/her shareholding. Director reporting requirements Executive and non-executive directors are required to notify the AFM of all shares and voting rights in the issuer at their disposition.			
Poland	YES	A shareholder who acquires 5%, 10%, 20%, 25%, 33%, 50% or 75% of the total votes must notify the Commission (PFSA) and the company.	Notification must be given within 4 days from the date of crossing the threshold, or 4 days from the date on which the shareholder becomes, or through due diligence could have become, aware that it has crossed a threshold.	A report must be made whenever a threshold is crossed. Notification must be given within 4 days from the date of the change, or from the date on which the shareholder becomes, or through due diligence could have become, aware of the change in its shareholdings.	NO
Portugal	YES	Any entity reaching or exceeding a certain percentage of the voting rights in the capital of a public company or reducing its holding to a value below any of the relevant limits, should inform the CMVM and the investee company. The investee company should immediately publish the communication received. The reporting thresholds for listed companies in Portugal are 5%, 10%, 15%, 25%, 1/3, ½, 2/3 and 90% of the voting rights. The reporting thresholds for a Portuguese listed company in Portugal are 2%, 5%, 10%, 15%, 25%, 1/3, ½, 2/3 and 90% of the voting rights.	The disclosure deadline is 4 trading days after the acquisition or disposal of the qualified holding.	Disclosure must be made whenever a threshold is crossed.	NO
Spain	YES	Shareholder reporting requirements In general, significant shareholders (i.e. 3% of voting rights or more, and 1% for tax havens) must disclose to the issuer and CNMV all transactions that cross the following thresholds: 3%, 5%, 10%, 15%, 20%, 25%, 30%, 35, 40%, 45% 50%, 60%, 70%,	Shareholder reporting requirements The CNMV is the appointed authority to publicly disclose the significant holdings on its web site. Notifications of significant shareholders must be effected within 4 trading days after the transaction. The CNMV must make the information publicly	Shareholder reporting requirements Disclosure must be made whenever a threshold is crossed. If a take over bid is underway, the disclosure threshold is 1% and 3% thereafter. Disclosure must be made no later than 4 business days after the transaction.	NO

Jurisdiction	Public Disclo-sure	Thresholds	Timing	Report on changes?	Disclosure specifically to minority share-holders
		75%, 80% and 90%. If a take over bid is underway, the disclosure threshold is 1% and 3% thereafter. Director and officer reporting requirements Directors, senior managers and senior officials must report any transaction involving the issuer's shares, including the price at which the transaction was concluded.	available within 3 trading days after the notification was received. Director and officer reporting requirements Disclosure must be made no later than 4 business days after the transaction.	Director and officer reporting requirements Directors, senior managers and senior officials must report any transaction involving the issuer's shares.	
Switzerland	YES	The reporting thresholds are: 3%, 5%, 10%, 15%, 20%, 25%, 33 1/3%, 50% or 66 2/3% of the voting rights, whether or not such rights may be exercised. The disclosure obligation arises when these thresholds are attained, exceeded or fallen below. The right to convert participation or bonus certificates into shares and the exercise of conversion or share acquisition rights are considered equivalent to an acquisition for the purposes of securities legislation. Similarly, the exercise of sale rights is considered equivalent to a sale for the purposes of securities legislation. In particular, transactions involving financial instruments that economically enable the acquisition of equity securities in view of a public takeover offer will constitute an indirect acquisition.	Shareholders must notify the company and stock exchange in writing within 4 trading days. The issuer must publish the notification within 2 trading days. If a company fails to publish a notification, or publishes an incorrect or incomplete notification, the disclosure office of the exchange may immediately publish the required information. The disclosure office may also publish the reason for its substitue notification. The company must be notified in advance of such measure being taken by the disclosure office.	Any change in the information subject to the notification obligation must be communicated without delay to the appropriate disclosure office and the company.	NO
Thailand	YES	Early warning requirements Any person and related person who acquires or disposes of securities which results in an aggregate holding of securities of 5% or any multiple of 5%, must submit a report to the SEC and the SET. A disposition of convertible securities is deemed to be a disposition not causing any change in the management or operations of a business and the person disposing of such convertible securities are exempted from the requirement to submit a report on the disposition. Insider reporting obligations Directors, executives and auditors are required to	Early warning requirements The SEC and SET must be notified within three business days. Director reporting obligations Initial reports must be submitted to the SEC within 30 days after the closing date of a public offering. If a person is appointed as a director, executive or auditor after the closing date of the public offering, an initial report must be made within 30 days of the appointment. A report on the change in shareholdings must be submitted to the SEC for every purchase, sale, transfer or acceptance of a	Early warning requirements For any person reaching or falling below any 5% threshold, a report must be submitted to the SEC and SET within three business days. A disposition of convertible securities is exempt. Director reporting obligations Any change in a director's, executive's, or auditor's shareholdings arising from a purchase, sale, transfer or acceptance of transfer of securities must be reported within three business days.	NO

Jurisdiction	Public Disclo-sure	Thresholds	Timing	Report on changes?	Disclosure specifically to minority share-holders
		prepare and file a shareholdings report with the SEC. In case of any change in securities holding by directors, executives and auditors as a result of an exercise of a right to purchase shares in proportion to the number of shares held, or as a result of an exercise of a right in respect of convertible securities or by way of inheritance, such change shall not be regarded as a change in securities holding subject to the reporting requirement.	transfer of securities, within three business days from the date of purchase, sale, transfer or acceptance of transfer of such securities.		
Turkey	YES	Changes in the direct or indirect ownership of 5%, 10%, 15%, 20%, 25%, 1/3, 50%, 2/3 or 75% or more of the total voting rights or share capital of a corporation or mutual fund by a natural or legal person or other natural or legal persons acting together, must be reported.	Disclosure must be made on the date of the transaction or by 9:00 am of the next working day at the latest.	Any changes to any previous disclosures must be continuously updated and disclosed to the public.	NO
U.K.	YES	The initial threshold is 3%.	The deadline is 4 trading days in the case of a non-UK issuer and 2 trading days in all other cases.	Disclosure must be made for every 1% change up to 100% for UK issuers and at 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% for non-UK issuers.	NO
U.S.	YES	<u>Early warning requirements</u> The Exchange Act (Section 13d) requires any person (other than the issuer) who acquires (directly or indirectly) the beneficial ownership of more than 5% of any equity security registered under the Exchange Act must disclose this information. The type and extent of information that must be disclosed varies, depending on whether the reporting person is a passive investor, an institution that buys, sells and hold securities in the regular course of its business, or other kind of market participant. <u>Director and officer reporting requirements</u> The Exchange Act (Section 16a) also requires that all officers, directors, and beneficial owners of more than 10% of any class of equity security registered under the Exchange Act file appropriate notice with the SEC.	<u>Early warning requirements</u> Disclosure must be made within 10 days after the acquisition. <u>Director and officer reporting requirements</u> The appropriate notice must be filed with the SEC within 10 days of becoming an officer, director, or beneficial owner.	<u>Early warning requirements</u> Amended reports must generally be filed promptly to disclose any material changes to the information reported, including acquisitions or sales of 1% of the subject class of securities. For certain kinds of filers with passive investment intent, amendments must be filed within 45 days of the calendar year end. <u>Director and officer reporting requirements</u> Notice must be filed within 2 days when there has been a change in an officer's, director's, or beneficial owner's shareholdings.	NO

Appendix B

How are 'related party transactions' defined? Is there a "materiality threshold" for disclosure or review of related party transactions? If so, how is materiality defined?

Jurisdiction	Definition of related party transaction	Definition of materiality or analogous threshold for disclosure or review of related party transactions
Australia	The transactions to which these restrictions apply is drafted very broadly and the relevant phrase is 'give a financial benefit'. There is no exhaustive definition included in the Corporations Act. Instead, the Corporations Act contains guidelines on what will be a financial benefit. First, in determining whether a financial benefit is given: • a broad interpretation should be adopted, even if criminal or civil penalties may be involved; • the economic and commercial substance of conduct is to prevail over its legal form; and • any consideration that is or may be given for the benefit, even if the consideration is adequate, should be disregarded (s229(1)). Secondly, there are three specific extensions by providing that the giving of a financial benefit includes: • giving a financial benefit that does not involve paying money (for example, by conferring a financial advantage on the recipient); • giving a financial benefit by making an informal agreement, oral agreement or an agreement that has no binding force; and • giving a financial benefit indirectly, for example, through one or more interposed entities. "Related parties" covers the following range of persons and entities related to a public company and directors of the public company: • controlling entities, • directors and their spouses, • relatives of directors and spouses, • entities controlled by other related parties, • related party in previous 6 months, • entity which has reasonable grounds to believe it will become related party in future • entity acting in concert with related party. However, entities controlled by the public company are not related parties.	There is no materiality threshold.
Brazil	A related party is defined as a natural person or a legal entity to which the company may contract or carry out transactions without the conditions of independence observed in transactions carried out with third parties who do not have a special relationship with the company, its management or any other part of it. CVM Deliberation 026/1986 provides a list of related party transactions.	There is a threshold for transactions that significantly affect the financial condition, the income and financial statements of the parties to the transaction.
Canada	A related party transaction is generally defined as a transfer of economic resources or obligations between related parties, or the provision of services by one party to a related party, regardless of whether any consideration is exchanged. For some purposes under securities law, a "related party transaction" is defined more narrowly. Specifically, in the context of regulation of very significant transactions that may require minority approval or the preparation of a formal valuation, a related party transaction is defined as a transaction between the issuer and a person or corporation that is a related party of the issuer at the time the transaction is agreed to, as a consequence of which, either through the transaction itself or together with connected transactions, the issuer directly or indirectly (a) purchases or acquires an asset from the related party for valuable consideration, (b) purchases or acquires, as a joint actor with the	Under Canadian GAAP, an issuer's financial statements are required to contain disclosure of all material transactions with related parties. An item of information, or an aggregate of items, is "material" if it is probable that its omission or misstatement would influence or change a decision. Materiality is a matter of professional judgment in the particular circumstances. With respect to disclosure of related party transactions in the issuer's management discussion and analysis (MD&A), "related party transactions" and "materiality" have the same meaning as under Canadian GAAP.

Jurisdiction	Definition of related party transaction	Definition of materiality or analogous threshold for disclosure or review of related party transactions
	related party, an asset from a third party if the proportion of the asset acquired by the issuer is less than the proportion of the consideration paid by the issuer, (c) sells, transfers or disposes of an asset to the related party, (d) sells, transfers or disposes of, as a joint actor with the related party, an asset to a third party if the proportion of the consideration received by the issuer is less than the proportion of the asset sold, transferred or disposed of by the issuer, (e) leases property to or from the related party, (f) acquires the related party, or combines with the related party, through an amalgamation, arrangement or otherwise, whether alone or with joint actors, (g) issues a security to the related party or subscribes for a security of the related party, (h) amends the terms of a security of the issuer if the security is beneficially owned, or is one over which control or direction is exercised, by the related party, or agrees to the amendment of the terms of a security of the related party if the security is beneficially owned by the issuer or is one over which the issuer exercises control or direction, (i) assumes or otherwise becomes subject to a liability of the related party, (j) borrows money from or lends money to the related party, or enters into a credit facility with the related party, (k) releases, cancels or forgives a debt or liability owed by the related party, (l) materially amends the terms of an outstanding debt or liability owed by or to the related party, or the terms of an outstanding credit facility with the related party, or (m) provides a guarantee or collateral security for a debt or liability of the related party, or materially amends the terms of the guarantee or security.	
Germany	There is no general definition.	There is no precise definition of materiality in the context of related party transactions. However, the concept of materiality is relevant for purposes of disclosing an issuer's material contracts, as well as material changes in an issuer's affairs.
Hong Kong	A connected transaction is broadly understood as a transaction between a listed issuer and a connected person, including associates of a connected person. This would include a controlling shareholder. A connected transaction also includes certain transactions between a listed issuer and a person who is not a connected person. A connected transaction can be any kind of transaction, whether or not it is of a revenue nature and/or in the ordinary and usual course of business, and includes the provision of financial assistance.	In order to determine whether a connected transaction is subject to the disclosure and shareholder approval requirements, there are certain thresholds: Full Exemption (a) De minimis transactions are exempt from all reporting, announcement and independent shareholders' approval requirements. A de minimis transaction is a connected transaction on normal commercial terms where: (i) each of the percentage ratios, other than the profits ratio (see below for the ratios) is less than 0.1%; or (ii) each of the percentage ratios, other than the profits ratio (see below for the ratios) is equal to or more than 0.1% but less than 2.5% and the total consideration is less than HK$1,000,000. Partial exemption (b) A connected transaction on normal commercial terms where: (i) each of the percentage ratios, other than the profits ratio (see below for the ratios) is less than 2.5%; or (ii) each of the percentage ratios, other than the profits ratio (see below for the ratios) is equal to or more than 2.5% but less than 25%; and (iii) the total consideration is less than

Jurisdiction	Definition of related party transaction	Definition of materiality or analogous threshold for disclosure or review of related party transactions
		HK$10,000,000 is only subject to the reporting and announcement requirements and is exempt from the independent shareholder approval requirements. The percentage ratios are the figures, expressed as percentages resulting from each of the following calculations: (a) Assets ratio — the total assets which are the subject of the transaction divided by the total assets of the listed issuer; (b) Profits ratio — the profits attributable to the assets which are the subject of the transaction divided by the profits of the listed issuer; (c) Revenue ratio — the revenue attributable to the assets which are the subject of the transaction divided by the revenue of the listed issuer; (d) Consideration ratio — the consideration divided by the total market capitalisation of the listed issuer. The total market capitalisation is the average closing price of the listed issuer's securities as stated in the Exchange's daily quotations sheets for the five business days immediately preceding the date of the transaction; and (e) Equity capital ratio — the nominal value of the listed issuer's equity capital issued as consideration divided by the nominal value of the listed issuer's issued equity capital immediately before the transaction. *Note*: The value of the listed issuer's debt capital (if any), including any preference shares, shall not be included in the calculation of the equity capital ratio. All other connected transactions must be announced publicly by means of a published announcement, a circular must be sent to shareholders giving information about the transaction, and prior approval of the shareholders in general meeting will be required before the transaction can proceed.
Israel	Israeli law does not define "related party transactions". However, this term is used to refer to transactions with 'interested parties" and transactions with controlling shareholders which require special approvals under corporate law. The following transactions are "related party transactions": 1. A transaction between the company and an officer or with another person in which a company officer has a personal interest. 2. An extraordinary transaction between the company and an officer or with another person in which a company has a person interest. 3. The grant of an exemption, insurance, undertaking to indemnify or indemnification under a permit to indemnify an officer who is not a director. 4. A contract between the company and one of its directors regarding the terms of his service, including the granting of loans in the context of employment terms, and a contract between the company and one of its directors regarding the terms of his employment in other positions. 5. An extraordinary transaction of a public company with a controlling shareholder; a transaction with another person in which the controlling shareholder has a personal interest, including a private placement; a contract between a public company and a controlling shareholder or with a relative of such a shareholder, if he is also an officer in the company - regarding the terms of his service and his employment, and if he is a company employee but not an officer – regarding his employment by the company. 6. A private placement of 20% or more of the company's voting rights to an interested party or a private placement as a result of which a person will become a controlling shareholder.	There is no definition of "materiality" in Israeli law.

Jurisdiction	Definition of related party transaction	Definition of materiality or analogous threshold for disclosure or review of related party transactions
Italy	Under International Accounting Standards (IAS), a related party transaction is a transfer of resources, services or obligations between 'related parties' regardless of whether a price is charged. Under IAS, a party is related to an entity if: (a) directly, or indirectly through one or more intermediaries, the party: (i) controls, is controlled by, or is under common control with, the entity (this includes parents, subsidiaries and fellow subsidiaries); (ii) has an interest in the entity that gives it significant influence over the entity; or (iii) has joint control over the entity; (b) the party is an associate (as defined in IAS 28 Investments in Associates) of the entity; (c) the party is a joint venture in which the entity is a venturer (see IAS 31 Interests in Joint Ventures); (d) the party is a member of the key management personnel of the entity or its parent; (e) the party is a close member of the family of any individual referred to in (a) or (d); (f) the party is an entity that is controlled, jointly controlled or significantly influenced by or for which significant voting power in such entity resides with, directly or indirectly, any individual referred to in (d) or (e); or (g) the party is a post-employment benefit plan for the benefit of employees of the entity, or of any entity that is a related party of the entity. Consob has also clarified in its communication statement (Sept. 20, 2002) that a "related party" includes, inter alia, a controlling company, subsidiaries, persons participating in voting agreements, and persons able to exert considerable influence.	A materiality threshold may be introduced by Consob through the implementation of Art. 2391-bis of the Italian Civil Code.
Japan	A related party transaction is a transaction with 'related parties'. That would include a controlling shareholder. Related parties include: a controlling shareholder; parent companies; affiliate companies; companies which have the same companies as its parent company; directors; directors of parent companies, etc.	If the amount of the transaction exceeds 10% of the total sales of the issuer, the transaction is treated as 'material'.
Mexico	Related party transactions are defined as all transactions conducted between the issuer and 'related persons'. A related person is defined as: (i) any person who has control or significant influence over an entity that integrates the corporate group or group of the issuer, and the directors and relevant officers of said entities; (ii) a person with decision making authority over an entity that forms part of the corporate group or group of the issuer; (iii) spouse or family members of an individual mentioned in items (i) through (ii); (iv) legal entities that integrate the corporate group or group of the issuer; (v) legal entities controlled by an individual mentioned in items (i) through (iii); or (vi) legal entities over which an individual mentioned in items (i) through (iii) has significant influence.	Material information is qualitative and quantitative information about a corporation, its securities, and corporate group (if applicable), that is necessary for an investor to understand its financial, administrative, economic and legal situation, where disclosure or omission of such information would affect an investor's investment decision.
The Netherlands	See Italy's response for the definitions of related party transactions and related parties under IAS 24, for financial statements prepared in accordance with IFRS.	Decisions to enter into transactions in which there are conflicts of interest with executive or supervisory directors or with persons holding 10% or more of the shares in the issued share capital of the issuer, that are of material significance to the company and/or to the relevant executive or supervisory directors or a holder of 10% or more of the issuer's shares, require the approval of the supervisory board. An issuer will decide whether a transaction is of material significance to the company by considering factors such as the effect of the transaction on the profit or loss, and on the financial position of the issuer.

Jurisdiction	Definition of related party transaction	Definition of materiality or analogous threshold for disclosure or review of related party transactions
Poland	For purposes of annual financial statements and financial statements disclosed in a prospectus, the definitions of 'related party transactions' and 'related parties' under IAS are used. Please see Italy's response for these definitions. For purposes of periodic reports, a related party is defined by the order of the Minister of Finance to mean: a) the parent entity of the issuer, a subordinated undertaking of the parent entity, the spouse or cohabitating partner of the parent entity, persons related to the parent entity through blood or marriage up to the second degree, an adopter or adoptee of the parent entity, persons related through custody or guardianship to the parent entity, as well as any entity with respect to which one of the above mentioned persons is the parent entity or a managing person, b) another shareholder who holds, within the meaning of statutory provisions, 20% or more of the total vote at the issuer's general shareholders meeting at the time the information is published, as well as such shareholder's subsidiary undertaking or an entity with respect to which such a shareholder is a managing person, c) a subordinated undertaking of the issuer, and, if the issuer is a fund, a related undertaking of the management company of the issuer, d) a managing or supervisory person with respect to the issuer at the time the information is published, the spouse or cohabitating partner of such a person, persons related to such a person through blood or marriage up to the second degree, an adopter or adoptee of such person, as well as any entity with respect to which one of the abovementioned persons is the parent entity or a managing person	There is no precise definition of materiality. However, it is understood generally to be information that could influence the economic decisions of investors. In addition, qualitative considerations should prevail over quantitative considerations in determining materiality.
Portugal	See Italy's response for the definitions of related party transactions and related parties under IAS 24, for financial statements prepared in accordance with IFRS.	All related party transactions must be disclosed.
Spain	A related party transaction is defined as a transfer of resources or obligations between related parties, or the provision of services by one party to a related party, regardless of whether any consideration is exchanged. Please see Italy's response for the definition of 'related party' under IAS.	There is no special rule defining a "materiality threshold".
Switzerland	The definition used depends on the accounting standard used (IFRS, US GAAP or Swiss GAAP FER). For financial statements prepared in accordance with IFRS, see Italy's response.	In connection with related party transactions, materiality means that the information is of importance to an investor. As a part of this, qualitative as well as quantitative aspects must be taken into account. Moreover, materiality must be judged with regard to a single specifically required item of information and ultimately in view of its overall effect. Thus for example, various individual items of apparently immaterial information that have consequently been omitted can, when viewed as a whole, be material.
Thailand	A "related party transaction" means any transaction between a listed company or a subsidiary company and a "connected person". "Connected persons" means the following persons: (1) management, major shareholders, controlling persons or persons to be nominated as the management or controlling persons of a listed company or a subsidiary company including related persons and close relatives of such persons. (2) any juristic person having a major shareholder or a controlling person as the following persons of a listed company or a subsidiary: (a) the management (b) major shareholder (c) controlling person (d) person to be nominated as the management or a controlling person (e) related persons and close relatives of persons from (a) to (d) (3) any person whose behaviour can be indicated as an acting person or under a major influence of persons in (1) to	Materiality is defined differently according to the type of connected transaction. Generally, connected transactions that are ≤ 1 million Baht or ≤ 0.03% of the issuer's net tangible asset value (whichever is higher) are not considered material and are not subject to disclosure or shareholder and board approval requirements. If a transaction is > 1 million Baht but < 20 million Baht, or > 0.03% but < 3% of the issuer's net tangible asset value (whichever is higher), the transaction must be approved by the board of directors. If the transaction is ≥ 20 million Baht or ≥ 3% of the issuer's net tangible asset value (whichever is higher), the transaction must be approved by shareholders.

Jurisdiction	Definition of related party transaction	Definition of materiality or analogous threshold for disclosure or review of related party transactions
	(2) when making decisions, determining policy, handling management or operations; or other persons the Exchange deems as having the same manner.	
Turkey	Under IAS, a related party transaction is a transfer of resources, services or obligations between 'related parties' regardless of whether a price is charged. Please see Italy's response for the definition of 'related party' under IAS.	A related party transaction, the value of which exceeds 10% of the company's total assets or gross sales, requires review by an independent advisor, who presents his/her report to the board.
U.K.	A related party transaction means: (1) a transaction (other than a revenue transaction in the ordinary course of business) between a listed company and a related party; or (2) an arrangement pursuant to which a listed company and a related party each invests in, or provides finance to, another undertaking or asset; or (3) any other similar transaction or arrangement (other than a revenue transaction in the ordinary course of business) between a listed company and any other person the purpose and effect of which is to benefit a related party.	A transaction is material if it exceeds certain thresholds.
U.S.	A related party transaction is one in which the issuer was or is to be a participant where the amount involved exceeds $120,000 and in which any 'related person' had or will have a direct or indirect material interest. A related person means someone who is a director (or nominee thereof), an executive officer of the registrant or any immediate family member (*e.g.*, any child, stepchild, parent, stepparent, spouse, sibling *etc.* of such director, executive officer or nominee for director) of a director or executive officer of the registrant.	Materiality is not defined by statute or regulation. The rules do not necessarily set a standard for materiality but rather require disclosure of the issuer's policies and procedures for the review, approval, or ratification of any transaction. However, court cases often define materiality as information that a reasonable investor would consider important in making an investment decision.

Appendix C

IOSCO Corporate Governance Task Force Questionnaire – Protection of Minority Shareholders in Listed Issuers

Chapter I. Preliminary Issues

OECD Principle III.A.1: Within any series of a class, all shares should carry the same rights. All investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase. Any changes in voting rights should be subject to approval by those classes of shares which are negatively affected.

Section 1: Balance between voting rights/control and financial risk for shareholders

1. Is there a general definition of "control" or "controlling shareholder" used in your jurisdiction for corporate or securities law purposes? What is that definition(s)? Do your rules distinguish between effective control (for example, a holding of 40%) and legal control (for example, a holding of more than a majority of the votes)?

2. Is there a general definition of "minority shareholder" used in your jurisdiction for corporate or securities law purposes? What is that definition(s)?

3. Does the board of directors have primary responsibility to determine the number of shares to be issued and to whom, or does it first have to seek approval from shareholders (for instance, for the number of shares issued for a given period to exceed a level set by the shareholders)?

4. Are there any restrictions on the number, threshold or percentage of shares that issuers can issue without shareholder or minority shareholder approval?

5. Are there any special or different rules applicable where shares are to be issued to a substantial or controlling shareholder, an insider or a related party (also referred to as a "non-arm's length" party)?

6. Are issuers permitted to issue shares that do not follow the 'one share, one vote' model?

   a. Are all shares of a particular class or series of shares required to carry the same rights?

   b. Are there any restrictions on the attributes that issuers can attach to different classes of shares? For example, can holders of different classes of shares have different voting rights, different entitlements to dividends and different rights on winding up?

   c. Can issuers issue multiple voting shares to one shareholder and subordinated or non-voting shares to others? What approvals are required to do so?

   d. Can shares be issued that have increased votes if they are held for some minimum period of time or have increased votes in specified circumstances?

e. Do minority shareholders have a right to vote on or approve the creation of superior ranking multiple voting shares as well as any material change to the attributes of such shares?

f. Are all shares required to be issued for "fair value" as determined by the board? Are voting rights considered in determining fair value?

g. Are there restrictions or special rules applicable to the issue of shares for property?

h. Do minority shareholders or the holders of a class of subordinate voting or non-voting shares have any additional protections from actions by a substantial or controlling shareholder?

i. In particular, are issuers required to provide specific protections to holders of subordinate voting or non-voting shares where there is an offer for a superior class of voting shares or if there is a proposed change of control transaction (such as so-called "coattail provisions" that require an offer to be made to the holders of subordinate voting or non-voting shares as well)? Where are any such protections contained (charter, by-laws or other)?

j. Are multiple voting and subordinate voting or non-voting share structures common in your jurisdiction?

7. Do shareholders of a particular class or series of shares have a right to vote on the approval of any changes in the share attributes of that class or series? What level of shareholder approval is required?

8. Can a "golden share" be issued to one shareholder that permits that shareholder to control the election of a majority or other proportion of the board, or to control in any other way specific decisions of the board? If so, what control, if any, do minority shareholders have over the creation or issue of such a share? Are such arrangements common in your jurisdiction?

9. Can shares be issued in bearer form? If so, are there specific rules protecting the interests of holders of bearer shares? How are such shares voted at shareholders' meetings?

10. Are pre-emptive rights (requiring share issuances to be offered to existing shareholders on a pro rata basis) generally available under applicable law or regulatory requirements to minority shareholders? Do such rights apply only to the class of shares held by a particular shareholder? Do such rights have to be included in the charter or by-laws of the particular issuer? Is there any other protection of shareholders from such deleterious action?

11. Are there other specific protections available to minority shareholders who have the financial risk of an investment in an issuer against actions of shareholders that have disproportionate voting power?

Section 2: Disclosure of relevant shareholdings and voting rights

OECD Principle II.D: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

12. Are issuers required to publicly disclose shareholdings by directors, officers and substantial or controlling shareholders (such as disclosure in offering and continuous disclosure documents and proxy materials)? Is a substantial or controlling shareholder required to provide such information?

13. Are substantial or controlling shareholders or insiders required to publicly disclose, in advance, large sales of equity securities (whether in a private transaction and whether or not the shares have been previously traded in the secondary market)? If so, what are the requirements? What information must be disclosed?

14. Are issuers required to publicly disclose the voting and other rights attached to different classes of shares (such as disclosure in offering and continuous disclosure documents and proxy materials)?

15. Are issuers or shareholders required to publicly disclose the terms of, or to publicly file, material shareholders' agreements entered into among certain shareholders? Are there any restrictions on the ability of shareholders to enter into such agreements or as to the terms of such agreements?

16. Are shareholders required to publicly disclose or to disclose specifically to minority shareholders acquisitions of shares above a certain threshold or percentage (such as under the Regulation 13D requirement in the U.S.)?

a. If so, what are the reporting thresholds and disclosure deadlines? Are there material exemptions or exceptions?

b. Are there specific disclosure obligations triggered by a stock lending arrangement?

c. To what classes of shares does the obligation apply?

d. What information must be disclosed?

e. When are such reports required to be amended or updated?

f. Are shares held through corporate groups, or by shareholders acting in concert, required to be aggregated for reporting purposes?

g. Are there any special rules or requirements with respect to convertible shares?

17. Are there any requirements to publicly disclose a qualified or limited holding of, or qualified or limited interest in, shares (less than full ownership of such shares)? For example, are there specific disclosure obligations for mechanisms that have the effect of decoupling voting rights and economic ownership? (Examples include market instruments such as securities lending, contracts for difference, and call/put options.)

18. Are substantial or controlling shareholders required to file insider trading reports when their ownership of shares changes? How quickly must such reports be filed? Does the reporting obligation apply to all securities held by the shareholder including options?

Chapter II. Minority shareholders’ rights and protections

Section 1. Minority shareholders’ rights

A. Access to information

19. Do minority shareholders generally have a right of timely access to the financial books and records of an issuer, as well as minutes of directors and shareholders’ meetings?

20. Are minority shareholders and others entitled to obtain a current shareholders list of an issuer at a reasonable cost?

21. Are issuers required to publicly disclose on a timely basis material transactions or events affecting them or the value of their outstanding shares? If so, what is the test applied to determine when disclosure must be made?

22. Are issuers required to prepare and send or make available to shareholders annual and interim financial statements? Are such statements required to be audited? Can distribution of such materials be effected by electronic means only?

23. Are issuers required to disclose in their financial statements or elsewhere any related party or other transactions that could have adversely affected the interests of shareholders or the value of their shares? Is there any obligation to make immediate disclosure of such transactions?

24. Are issuers required to publicly disclose and file material contracts to which the issuer is a party?

25. Is there a prohibition on selective disclosure of material information to certain market participants and not to others? Can selective disclosure of material information be made by an issuer to a substantial or controlling shareholder and not to other shareholders?

26. Are there any other material rights that minority shareholders have to obtain access to corporate information?

B. Shareholders’ meetings

Notice and disclosure about meetings

27. Are issuers required to hold an annual shareholders’ meeting and to provide advance notice of such meetings to all shareholders? If so, what are generally the notice-related disclosure requirements and the timelines for giving notice?

28. Are there rules with respect to the advance fixing and disclosure of record dates for voting at a shareholders’ meeting? What are these rules?

29. Do minority shareholders have a right to require a board to call, or can shareholders themselves call, a shareholders’ meeting for specific purposes? If so, what are those purposes and what are the applicable requirements that must be met? Are there any restrictions on the ability to call such shareholders’ meetings or on the types of business that may be considered at such meetings?

30. Are issuers required to provide shareholders with full and substantial disclosure about the matters and business to be considered at a shareholders' meeting? What standard of disclosure is required?

Shareholder proposals and voting

31. Do minority shareholders have a right to (a) cause a shareholder proposal to be included in the business to be considered at shareholders' meetings and/or (b) add items to the meeting agenda? If so, are there specific rules or limitations on the ability of minority shareholders to do so? What are they?

32. Are shareholder proposals, if passed by shareholders, binding on the directors and the issuer? If not, are there specific types of legally binding proposals?

33. Can a shareholder proposal include (i) amendments to the charter or by-laws of the issuer; or (ii) the nomination of directors to be voted on at a shareholders' meeting?

34. Do shareholders have the right to vote by proxy at shareholders' meetings? If so, is a form of proxy required to be sent by an issuer to all shareholders entitled to vote at a shareholders' meeting? Are there restrictions that make it difficult for shareholders to vote at a shareholders' meeting (such as a requirement to deposit share certificates)? Can proxies be solicited and tendered electronically?

35. Is there a mechanism or requirement to permit voting by beneficial owners of shares (as opposed to voting by registered shareholders)? Does that mechanism work effectively?

36. Is any shareholder entitled to require that a vote on a particular matter be a vote by ballot? Can shareholders vote electronically or by e-mail?

37. Does a majority of votes cast always govern the approval of matters at shareholders' meetings, or are there circumstances where 'special majorities' of minority shareholders are required (for instance, where minority shareholders may be affected differently)?

38. Is shareholder approval required for fundamental corporate changes, such as amendments to the charter and by-laws of an issuer, a sale of all or substantially all of the assets of an issuer or the issuance of shares that will materially affect control? Do minority shareholders have any special right to vote on or approve such matters?

39. Are shareholders entitled to vote on (a) stock based compensation plans or (b) any other matters related to the compensation of senior management? Are such votes precatory or binding?

40. Are intermediaries (such as broker/dealers or trustees) restricted in voting shares they hold on behalf of others?

41. Are there circumstances where there is a separate right of the holders of a particular class of shares to approve a matter (class votes) or where non-voting shares become voting for this purpose?

42. Can restrictions be imposed on the maximum number of votes that can be cast or voted by a particular shareholder? Would such a restriction by required to be contained in the by-laws or charter of an issuer?

43. If a shareholder has an interest in a transaction that is being voted on, is that shareholder permitted to vote on that transaction? Can a controlling or substantial shareholder generally vote its shares in its own interest?

44. Are issuers required to disclose the details of specific votes by shareholders at a shareholders' meeting, such as details about the number of shares voted in favour of or against a proposal?

45. Are there any impediments to foreign shareholders attending or voting by proxy at shareholders' meetings?

46. Are there any other material legal or practical problems that affect the ability of minority shareholders to attend shareholders' meetings or to have their shares voted at a shareholders' meeting?

47. Are there any material pending or proposed reforms or changes to the shareholder requisition, proposal or voting process in your jurisdiction?

Meeting Chair and adjournments

48. Are shareholders' meetings required in certain circumstances to be chaired by an independent person, such as an independent director?

49. Is there a legal duty of a Chair to act fairly in chairing a meeting of shareholders? What is the Chair's legal obligation?

50. Can the Chair of a shareholders' meeting unilaterally adjourn that meeting?

51. Is a substantial or controlling shareholder entitled to vote its shares and thereby unilaterally approve an adjournment of a shareholders' meeting?

52. When is written notice of an adjourned meeting required to be given to shareholders?

53. Can management or shareholders attending a shareholders' meeting require that new business (not identified in the notice of meeting) be considered and approved? Is there a limitation on the types of such business that can be considered?

54. Are there any other material legal or practical problems that affect the ability of minority shareholders to participate in shareholders' meetings?

C. Nomination and appointment of board members

55. Are there means by which minority shareholders can nominate a director or directors in advance of or at a meeting of shareholders? What limitations are there on such rights?

56. Are there means by which a sub-group of shareholders can elect a director or directors to the board, such as through cumulative voting? Are such rights required to be included in the charter, by-laws or share conditions of an issuer? Are such rights commonly used?

57. Are shareholders attending a shareholders' meeting entitled to nominate from the floor specific directors for election?

58. Are there rules or standards under which minority shareholder representation is required on the board?

59. Are directors generally elected by a majority of the votes cast? Is a substantial or controlling shareholder therefore generally able to determine all the directors that are elected?

60. Are there recommendations or requirements that limit the level of representation of a substantial or controlling shareholder on an issuer's board or board committees? If so, what are those requirements?

61. When, if at all, is approval of a special committee of independent directors required for a transaction or matter?

62. Are there any other issues regarding nomination and appointment of board members relevant to the rights of minority shareholders?

D. Rights of legal redress

63. Do minority shareholders have a right to bring a legal proceeding against an issuer or a substantial or controlling shareholder for oppressive, unfair or abusive actions (such as through an "oppression" remedy)? Are there significant limitations on the exercise of such rights?

64. Do minority shareholders have a right to bring a legal proceeding on behalf of the issuer against a substantial or controlling shareholder for abusive or unfair acts (a so-called "derivative action")? Are there limitations on the exercise of such rights? Is there a definition of "market abuse" or a similar concept in your jurisdiction?

65. Do minority shareholders have a right to bring a legal proceeding against an issuer or a substantial or controlling shareholder for a material misrepresentation in a corporate document or news release?

66. Do minority shareholders have a right to bring a "class action" on behalf of a class of shareholders against the issuer or a substantial or controlling shareholder for abusive or unfair actions? Are there any material restrictions on the availability or exercise of that right?

67. In practice, how effective are these rights of legal redress for minority shareholders? Please provide examples of proceedings where these rights have been exercised and what, if any, remedies have been granted.

68. Do minority shareholders have a right to request a court to wind up or liquidate an issuer, or to make an investigation or any other order that the court sees fit for the protection of shareholders? What standard of proof is required to obtain such an order?

69. Are officers or employees of an issuer protected by whistleblower provisions?

70. Are there circumstances in which certain types of corporate action give rise to a right of minority shareholders to demand that their shares be bought by an issuer at fair market value (so-called "dissent or appraisal" rights)? What are those circumstances? Are such rights effective in protecting minority shareholders?

71. Do minority shareholders have a low cost mechanism to obtain legal redress or restitution in certain circumstances where a board or a substantial or controlling shareholder have acted improperly, such as through an ombudsman? What are the key requirements to accessing that mechanism?

72. Do minority shareholders have any other important rights of legal redress in your jurisdiction where an issuer or a substantial or controlling shareholder has acted improperly, unfairly or in an abusive manner?

Section 2. Fiduciary duties of directors and controlling or substantial shareholders

73. Do directors and officers owe a fiduciary duty and a duty of care to (a) the issuer, and (b) directly to shareholders?

74. Do directors and officers owe duties to stakeholders other than shareholders? Can the interests of other stakeholders take priority over those of shareholders?

75. Does a substantial or controlling shareholder owe any fiduciary or other duties directly to minority shareholders?

76. Are there special requirements or standards governing fiduciary duties in company groups? Is a fiduciary duty owed only to the company in question and not to the company group?

Chapter III. Protection of minority shareholders in specific contexts

Section 1. Changes in control

77. Please describe any rules that protect minority shareholders in a change of control transaction including the policy objectives of such rules. What constitutes a 'change of control' for this purpose?

78. What kinds of transactions trigger an obligation to share a control premium with minority shareholders? Can a substantial shareholding or a control block be sold to a third party at any premium without triggering any obligation to or protection of minority shareholders?

79. In what circumstances is a shareholder or third party required to make a general offer to all shareholders to purchase their shares (a tender offer or take-over bid)? In the event a general offer is required to be made to all shareholders:

a. Are there minimum price requirements?

b. Is the offeror required to prepare and publicly file an offering document? If so, what are the minimum content requirements?

c. Is the offer required to be open for acceptance for some minimum period?

d. Are all shareholders of the same class of shares required to be paid identical consideration?

e. Are collateral benefits to particular shareholders or insiders prohibited?

f. Does the board owe a duty to shareholders to maximize value to all shareholders when an offer is made and to comment in detail on that offer? Are there special duties of the board where a change of control transaction is proposed?

g. Are there specific additional obligations and requirements that arise where an offer is being made by a substantial or controlling shareholder or an insider (such as an obligation to constitute a special committee of independent directors or to prepare an independent valuation)?

h. Are there rules that treat groups of persons as "acting in concert" for purposes of an offer?

i. If a person making an offer acquires a certain percentage of the shares (for example, 90%), does the acquirer have the ability to mandatorily acquire the balance of the shares held by minority shareholders? If so, what are the key requirements of that right?

j. If a change of control occurs, do minority shareholders have a right to require the issuer or the acquirer to purchase their shares at fair value? When does that right arise and how is fair value determined?

80. Have any abuses of minority shareholders recently occurred in your jurisdiction in connection with change of control transactions? Describe typical examples, if any.

81. In what circumstances can the shares of an issuer be delisted from a stock exchange? Are minority shareholders protected from a delisting?

82. What other legal or regulatory requirements apply to protect minority shareholders where there is a change in control of an issuer?

Section 2. Related party transactions

83. Are there heightened disclosure or other requirements applicable to related party transactions (transactions, for instance, between an issuer and a substantial or controlling shareholder or insider)? Is an issuer required to publicly disclose or to disclose specifically to minority shareholders in financial statements or otherwise, related party transactions? What is the trigger requiring such disclosure (for example, materiality of the transaction)?

84. How are 'related party transactions' defined for this purpose? Are there special rules governing transactions between group companies, such as the requirement to publish a statement of the net benefits/costs accruing to a specific firm in a controlling group? Is there a "materiality threshold" for disclosure or review of related party transactions? If so, how is materiality defined?

85. What approval is required for a material related party transaction? When is approval required by the audit committee, independent directors (including requirements for a special committee) or by shareholders?

86. Where a shareholder vote on a related party transaction is required, can a party to that transaction validly vote its shares in favour of the transaction? When, if at all, is approval by minority shareholders required?

87. Are directors who have an interest in a related party transaction (or an interest in a party to a related party transaction) required to disclose that interest to the board and prohibited from participating in deliberations with respect to, or voting on, the related party transaction? Are there exceptions to that requirement?

88. Is there any requirement in connection with a transaction to prepare and disclose to shareholders an independent valuation or fairness opinion? Is any such valuation or opinion required to be publicly disclosed or disclosed specifically to minority shareholders?

89. If an independent valuation or fairness opinion is required, are there rules or guidelines for the preparation of them? Who chooses the independent valuator? Who pays the valuator? Who supervises the preparation of the valuation/opinion? Must an offer to acquire minority shares be made at the price established by a valuation?

90. Are there any restrictions on the ability of an issuer to make loans to directors or officers or a substantial or controlling shareholder? Are such loans treated as related party transactions?

91. What other legal or regulatory requirements apply to protect minority shareholders from the consequences of a related party transaction?

Chapter IV. The role of securities supervisors and other regulators in the protection of minority shareholders

92. What is the role of securities regulators in the protection of minority shareholders? Do securities regulators have any special powers or authority to protect minority shareholders or to provide redress to them?

93. Do securities regulators have discretion to regulate or enforce corporate law rules such as those dealing with shareholder meetings and voting? If not, are there other regulators who have such authority and effectively use it?

General

94. Are there any additional special rules or requirements that apply to company groups or to transactions among group companies?

95. Are there any recent or proposed reforms in your jurisdiction (not described above) that are intended to provide protection to minority shareholders?

96. Are there any other issues in your jurisdiction relevant to the rights of minority shareholders or protection of minority shareholders?

Appendix D

List of participating jurisdictions

Chairman: Vice-Chairman James Turner
Ontario Securities Commission (Ontario, Canada)

Australian Securities and Investments Commission (Australia)	Steven Bardy Fiona Lourey
Comissão de Valores Mobiliários (Brazil)	Augusto Carlos C. C. Pina Filho Eduardo Manhães R. Gomes
Bundesanstalt für Finanzdienstleistungsaufsicht (Germany)	Stefan Pankoke Philipp Sudeck
Securities and Futures Commission (Hong Kong)	Charles Grieve Suet Peng Siew
Israel Securities Authority (Israel)	Yael Almog Galya Levy
Commissione Nazionale per le Società e la Borsa (Italy)	Nicoletta Giusto
Financial Services Agency Government of Japan (Japan)	Hideo Oki Mai Suzuki
Comisión Nacional del Mercado de Valores (Mexico)	Guillermo Babatz Carlos Quevedo
Netherlands Authority for the Financial Markets (The Netherlands)	Jelle Dinant
Ontario Securities Commission (Ontario, Canada)	Ilana Singer Daphne Wong

Komisja Nadzoru Finansowego (Poland)	Krzysztof Grabowski
Comissão do Mercado de Valores Mobiliários (Portugal)	João Gião
Autorité des marchés financiers (Québec, Canada)	Louis Morisset
Comisión Nacional del Mercado de Valores (Spain)	Esther Martínez Cuesta Luis Francisco Montero González
Swiss Financial Market Supervisory Authority (Switzerland)	Myriam Senn
Office of the Securities and Exchange Commission (Thailand)	Chalee Chantanayingyong Nataya Niyamanusorn Rachamarn Suchitchon
Capital Markets Board of Turkey (Turkey)	Tuba Altun Selcan Olca
Financial Services Authority (United Kingdom)	John-Paul Dryden Toby Wallis
Securities and Exchange Commission (United States of America)	Timothy Geishecker Robert Peterson