



ShareSoc

UK Individual Shareholders Society

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By Email to "CorporateGovernance&CorporateFinance@oecd.org"
<CorporateGovernance&CorporateFinance@oecd.org>,

Re [Public Consultation on the Review of the G20/OECD Principles of Corporate Governance](#)

Thank you for the opportunity to comment on the proposed revised principles.

For the most part we are fully supportive of the proposed changes. We have some quibbles with some of the wording, but that is minor.

However, we do have very strong concerns about the intermediated securities chain in the UK and the fact that UK law defines shareholder as the person who is on the shareholder register, rather than the beneficial shareholder therefore excluding >90% of retail shareholders from their rights under the UK Companies Act 2006.

On page 24 it is stated:

III.B. Votes should be cast by custodians or nominees in line with the directions of the beneficial owner of the shares.

Custodian institutions holding securities as nominees for customers should not be permitted to cast the votes on those securities unless they have received specific instructions to do so. In some jurisdictions, listing requirements contain broad lists of items on which custodians may not vote without instruction, while leaving this possibility open for certain routine items. Rules should require custodian institutions to provide shareholders with timely information concerning their options in the exercise of their voting rights. Shareholders may elect to vote by themselves or to delegate all voting rights to custodians. Alternatively, shareholders may choose to be informed of all upcoming shareholder votes and may decide to cast some votes while delegating some voting rights to the custodian.

It seems entirely reasonable that nominees shouldn't vote unless they have specific instructions.¹ Without instructions, they might vote in ways that beneficial shareholders don't agree with. However,

¹ We note however that boilerplate terms in the custody agreement could effectively appoint the Nominee or its agent as Proxy (which is precisely what the original language is trying to prevent). We believe that what is needed is a regulatory construction that differentiates between nominees and independent proxies. You need to beware of unintended consequences.

The term "specific instructions" that needs to be clarified, in particular that those instructions could come from a proxy agent, if authorised by the beneficial shareholder. E.g. you could say "specific instructions from the beneficial shareholder or from a person authorised to instruct by that shareholder".

a corollary to this is that it must be easy for beneficial shareholders to provide instructions – which also means that those shareholders need to be informed by the custodians of their opportunity to provide voting instructions, whenever a shareholder vote is held. That is where the system fails in the UK, disadvantaging retail shareholders. It should also be possible for beneficial shareholders to delegate their “right to instruct” to another party that they trust to vote in a manner they support.

Moreover, the paragraph from the Principles, explicitly permits beneficial shareholders to delegate voting authority. However, it is not the Custodian that the authority should be delegated to but beneficial shareholders should be able to nominate a third party, such as Minerva, a Proxy Voting Agency or ShareSoc, a group representing individual shareholders, to instruct the Custodian. That should be clarified in the Principles. There is nothing in the paragraph cited that precludes instructions being issued electronically.

Also, the paragraph (as far as we can see) also doesn't preclude direct electronic communication between a proxy agency and a registrar, if the Custodian has authorised that (clearly the registrar will need to know which block of shares are being voted, which needs co-ordination between proxy agency, custodian and registrar).

What we would like is a fiduciary obligation, that requires the nominee to have a clear duty to vote and to take account of beneficial owners' views.

In the UK, nominees very rarely vote and so over 90% of beneficial shareholders are losing their rights. In the UK, nominees and individual retail shareholders own 15% of the UK stock market and 25% of AIM, on average.

It is regrettable that OECD has not grasped the opportunity to address a catastrophic defect with the current regime to improve proxy plumbing and ensure that shareholders rights are fully protected.

Custodian banks are not the owners of shares, they are mechanical functionaries who, through these Principles, have obtained undue power and influence over the voting process. In terms of specific legislative alignment, the Principles should, at the very minimum, reflect the legal realities of, for example, the European Union and United Kingdom which requires custodians to co-operate with shareholders wishes. Over the past nearly 30 years, we have seen first hand how little real choice shareholders are given in respect of voting.

Shareholders are the owners and providers of capital and their investee companies should be communicating with them directly. For both retail and institutional shareholders, the barriers are significant and have become worse over time as the financial services industry prioritises trading over owning.

The principles also do not reflect the administrative and practical realities that custodians can be bypassed to enable electronic end to end processing, something that we know Minerva have been doing for many years. However, there are significant anti-trust and bundling abuses at play which prevent a truly efficient digital system and which grant custodians monopoly powers over other people's assets. Custodians do not know or understand the issues surrounding voting, for the OECD to give a tacit endorsement of banks casting empty votes is a serious oversight. Additionally, we would

respectfully point out that demoting company law and making it subservient to listing rules or stock exchange standards is a grave error which removes important property rights and protections.

The unduly complex chain of intermediaries is riddled with vested interests that perpetuates inefficiencies that work against shareholders and companies. They have been given a licence to operate which is not justified in law or fiduciary duty.

We therefore respectfully urge you to reconsider this section at the earliest opportunity.

We would be happy to meet to explain our views in more detail.

About ShareSoc

One of ShareSoc's primary functions is to represent individual investors. We lobby Government and Regulators about individual investor needs, and campaign for change from government, regulators, and financial service providers. Alongside this we network, inform and educate investors through events, company presentations, SIGnet groups, educational content, newsletter, blogs, tweets and emails. These elements combine to make the investing experience better for our members.

ShareSoc represents the views of individual investors. In addition to our own members, 6 million people own shares or have investment accounts with platforms in the UK. The Office for National Statistics estimates that at the end of 2018 UK-resident individuals held 13.5% of the UK stock market, up by 1.2% from 2016 and moving away from the historical lows of 10.2% in 2008. In 2020, the Financial Times estimated that 15% of the UK stock market is held by individual shareholders. In addition to this there are many more who have money invested in shares via funds, pensions and savings products such as employee share ownership schemes.

See <https://www.sharesoc.org/investor-academy/advanced-topics/uk-stock-market-statistics/>

ShareSoc is the UK's largest retail shareholder organisation acting in all areas of the UK stock market, with more than 9,000 members. It is a not for profit company. ShareSoc is dedicated to the support of individual investors (private shareholders as opposed to institutional investors). We aim to make and keep investors better informed to improve their investment skills and protect the value of their investments. We engage with companies, the Government or other institutions if we think individual shareholders are not being treated fairly. See www.sharesoc.org.

Yours sincerely

Cliff Weight

ShareSoc Policy Director