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May 27, 2011

Dr. K P Krishnan
Secretary
Economic Advisory Council to the Prime Minister
Hall-E, Vigyan Bhawan
Maulana Azad Road
New Delhi-110 001

Dear Dr. Krishnan,

We are writing on behalf of the Association and our global institutional investor base regarding the recommendation by the Standing Committee on Finance in its report to the Parliament on August 31, 2010 to remove the right of shareholders to appoint proxies. We strongly disagree with this proposal since investors—domestic and foreign, retail and institutional—rely on proxies in order to vote at meetings that they are unable to attend in person. The appointment of proxies is a fundamental shareholder right in all developed and emerging markets.

The reason given by the Standing Committee[1] is that since the "Bill has sought to enhance the number of matters on which approval of shareholders can be sought through postal/electronic ballot, the need for proxies may become minimal. The Committee are, therefore, of the view that keeping in mind canons of corporate democracy, the system itself may be discontinued".

The Committee supported this argument by saying:

- A number of matters are already being voted on by postal ballot, such as altering a company's Memorandum, amending its Articles of Association in relation to provisions defining private companies, and the buy-back of shares. Only "ordinary resolutions", such as the consideration of accounts, declaration of dividends, appointment of directors, and appointment and remuneration of auditors, require meetings; and
- The introduction of electronic voting would remove the need to appoint proxies.

We appreciate the efforts made by the Indian Government over the past decade to improve the governance of shareholder meetings. The introduction of the postal ballot in 2001 for certain resolutions was a positive achievement and one which enhanced shareholder voting and the

[1] See the Overview chapter of the report on page 43 under (L) Shareholders Democracy, section 63

principle of "one share, one vote". However, postal ballots can only be used for a small number of special resolutions. Over-use of this mechanism would reduce dialogue and communication between a company and its shareholders. Shareholder meetings are conducive for facilitating such communication and many shareholders need to avail themselves of proxies in order to attend and/or vote at these meetings.

In addressing the questions posed by the Committee on this matter, the Ministry of Corporate Affairs (MCA) rightly stated in its reply that, "the matters of ordinary business [i.e. (a) consideration of accounts, (b) declaration of any dividend, (c) appointment of directors, (d) appointment and remuneration of auditors] and in which directors or auditors have a right to be heard, shall be decided by shareholders through a physical meeting in which members may attend personally or through proxies". (Underlining added.) Yet the Committee seems to have ignored the last part of this statement and focussed only on postal and electronic ballots.

Moreover, the Committee's argument that the introduction of electronic voting would make "the need for proxies minimal" is premature. Clause 97, which introduces "voting through electronic means", states clearly that "unless the articles provide otherwise, a member may exercise his vote at a meeting by electronic means in the manner as may be prescribed". In other words, companies may choose not to adopt electronic voting.

What the Committee also fails to address is that electronic voting is not just a legal issue, but a technological one as well. We recognise that the Ministry recently announced that it was in the process of approving two agencies for providing electronic platforms for voting[2]. However, setting up a fully functioning e-voting platform can be a long and arduous process, as other markets in the region have discovered over the past decade[3]. Furthermore, if, as the clause provides, some companies do not provide e-voting, there will likely be confusion as to whether proxies can be appointed or not.

Over the past decade, more and more global investors are voting their shares, either voluntarily or because of regulation, and are required to publish voting policies and practices. This is an issue that ACGA has worked on actively since 2006. Moreover, in March 2010, SEBI announced that mutual funds should play an active role in ensuring better corporate governance of listed companies and mandated them to disclose

[2] As of May 2, 2011 under the "Green Initiative in the Corporate Governance"
[3] See Addendum

their general policies and procedures for exercising the voting rights of the shares held by them.

We support the efforts of the Indian Government to improve corporate governance and the rights of shareholders. For the reasons given above, however, we believe the Standing Committee's proposal on proxies is in error and that adopting it would do considerable harm to India's reputation for sound economic management.

In this context, we would like to add that the appointment of proxies is not the only challenge for shareholder voting in India. Vote counting at almost all listed company meetings is still by a show of hands, not by a poll, hence votes are not counted properly or fairly. Furthermore, proxies in India are disallowed by law from voting on a show of hands and speaking at meetings, a system that disenfranchises investors who are not at the meetings. This topic is one we covered in detail in our "ACGA India White Paper on Corporate Governance" in January 2010.

As an organisation dedicated to assisting in the implementation of effective corporate governance, we would be pleased to communicate further with you on this issue in the near future.

Yours sincerely,

Jamie Allen
Secretary General

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Electronic voting in Asia

Starting in Japan, electronic voting has gradually evolved in Asia over the past decade. It is fair to say, however, that its adoption has proven more difficult than authorities and e-voting providers originally envisaged. We summarise below the experience of three markets that have adopted, or are in the process of adopting, e-voting.

JAPAN

The only market that has offered e-voting for any length of time in the region is Japan. It is run by a company called Investor Communications Japan (ICJ), a joint venture between the Tokyo Stock Exchange (TSE), Broadridge Financial Services (formerly ADP Investor Communication Services) and the Japan Securities Dealers Association (JSDA). The platform is based on Broadridge's "ProxyEdge" voting service, which processes almost 100% of the votes cast electronically in the US.

After various delays, ICJ became operational in time for the June 2006 proxy voting season in Japan. Around 111 issuers signed up to the system that year. Although those numbers were low compared to the 3,000-odd listed companies in Japan and the more than 1,600 firms on the first section of the TSE, they were more impressive when viewed in market-cap terms. The 111 issuers accounted for 46% of the aggregate market cap of Nikkei 225 companies and 31% of the market cap of all companies listed on TOPIX, according to data supplied by ICJ.

A major reason why more companies did not sign up quickly was because they wanted to wait and see how ICJ's first year of operation went before committing themselves (since it is a system paid for by issuers). For investors, by far the biggest advantage of ICJ is that they have until noon of the day before meetings to cast their vote. This significantly increases the amount of time available for analysis of meeting agendas.

By the 2007 voting season, ICJ had signed up 215 companies, while by 2008 more than 300 were using the system. Today, however, the total is slightly less than 400. The low adoption rate is for a number of reasons: there are competing e-voting platforms in the market; the cost to companies; and, most importantly, the fact that companies will not implement e-voting until the government mandates it.

KOREA

K-evote, an electronic voting system for exercising voting rights through the internet (http://evote.ksd.or.kr), was launched on September 23, 2010 by the Korea Securities Depository (KSD). Companies that opt for the electronic voting system by a resolution by the board of directors will register their shareholders' meeting agenda in advance at the KSD. Shareholders will be able to access the website in order to vote from 10 days prior to the date of the shareholders' meeting until the day before the meeting. The KSD hopes that e-voting will allow shareholders to exercise their voting rights more easily, despite the fact that many listed Korean companies hold their AGMs at the same time in the month of March.

Korea Ship Finance Co., Ltd. was the first company to adopt the electronic voting system in September 2010. Since the launch of the system 50 companies have adopted it.

TAIWAN

Taiwan regulators amended the law in 2006 to allow electronic transmission of share votes. After a false start by a private provider, the Taiwan Depository & Clearing Corporation (TDCC) established in 2009 a domestic e-voting platform called "StockVote". It allows shareholders to vote electronically up to five days ahead of the AGM.

Thus far, the adoption of StockVote has been limited: only six companies signed up to use it in 2010. The main reason for their reluctance is that the vast majority of companies prefer to vote by acclamation. Taiwan regulators are aware of this, which is why in July 2009 the Executive Yuan, the cabinet, approved for presentation before parliament an amendment to Article 177-1 of the Company Act authorising, "the competent authority, by considering the scale, shareholder numbers and structure of shareholders of such company, and other situations it deemed to be necessary, may order a company to include electronic voting as one of the company's shareholder meeting voting methods". The bill is under review by the Legislative Yuan, Taiwan's parliament.