



Company Law Reform in OECD Countries A Comparative Outlook of Current Trends

ISSUES NOTE

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The issues for discussion that are presented in this note derive from consultations with Member countries during the June 2000 preparatory meeting. Their purpose is to provide the different panels with a framework for discussion, focussing on those aspects for which participants have expressed a special interest. Needless to say, the list of questions is not exclusive and participants should feel free to raise additional matters.

Session 2: Current Reform Initiatives – Challenges and Opportunities

2.1 What are the main driving forces behind current company law reform initiatives? For example, what are the general influences from internationalisation, developments in financial markets, the emergence of new industries and the introduction of new communication and information technology? How are these influences manifested in reform work?

2.2 Are there any indications that current influences or demands on company law lead to international convergence in terms of the legal approach, and the legislative and regulatory content?

2.3 To what extent are recent efforts to reform company law influenced by developments in related regulatory domains, notably securities legislation?

2.4 To what extent is the impact on the functioning of the economy and corporate competitiveness explicitly considered in company law reform? If this is the case, how is this manifested in practice?

2.5 In your experience, what aspects of company law and its application tend to attract most interest from the business community? In a rapidly changing environment, how is the balance between predictability and flexibility handled? Is the promptness of the judicial process and dispute settlements considered an important factor?

2.6 To what extent is the relationship between statutory rules and self-regulation addressed in reform work? What do you consider to be the basic characteristics and indispensable elements of credible and effective self-regulation?

Session 3: The General Shareholders' Meeting

3.1 Some commentators have argued that the existence of a large number of dispersed owners have made the traditional general shareholders' meeting obsolete and redundant. Would you agree with this?

3.2 What are the main effects on the shareholder's meeting from an increasing number of shareholders and a more dispersed international ownership structure? Is it likely that such developments will change the role and the format of the shareholders' meeting?

3.3 How may new information technology be used to improve the functioning of the shareholders' meeting in terms of information dissemination, voting procedures (including proxies), etc.? Have any concrete steps been taken in this direction?

3.4 How should the general competence of the shareholders' meeting be defined? Should it be designated to deal with a limited and defined set of issues or, as a principle, be able to serve as the ultimate decision making body on virtually all company matters? Is it possible to identify any shifts in responsibilities among different company organs, such as the shareholders' meeting, the board and executive management?

3.5 Under what circumstances should deviations from the simple majority rule be mandated? In your experience, what is the underlying reason and guiding principle for such deviations? Is there a real risk that super majority requirements in the case of dispersed ownership and low participation rates may stall the decision making process making it practically impossible to obtain the required majority?

3.6 What is generally law and practice when it comes to the nomination and election of the board of directors? What is the experience from nomination committees, cumulative voting rights and minority representation?

Session 4: The Board of Directors

4.1 In your experience, has the competence of the board as a company organ in any way changed in relation to the shareholders' meeting and executive management? Is the issue of one or two tier boards important or are the practical implications of the two approaches fairly similar? Can general principles of board practices and duties be applied regardless of the structure?

4.2 What should be the basic point of departure for policy-makers when regulating issues related to board duties? Is it sufficient to define these duties for the board *as such* making its members subject to uniform fiduciary duties regardless of their background, affiliation or "electorate"? Or, is it necessary to go beyond that and legislate on additional "safeguards", for example in terms of the board's size, composition and routines? Is it meaningful to legislate on such matters as age, number of board engagements and board member qualifications?

4.3 What is the general trend in terms of the board's fiduciary duties: to shareholders or the company?

4.4 What is your experience from different approaches to the nomination and election of board members? From society's perspective, do nomination committees have advantages that should make the use of such committees compulsory? What are the main advantages and disadvantages of cumulative voting rights?

4.5 What can be said about independent board members? How is this term generally defined? Does it typically include independence from large owners? Should the potential problem of “dependence” be solved by mandating independent directors or by strengthening compliance with stated and uniform fiduciary duties for all board members?

4.6 What can be said about different approaches to board remuneration and the decisions on remuneration of board members? Is there any scope for legislation or to advocate certain forms of remuneration over other? Should disclosure of board remuneration be an issue for legislation?

Session 6: The Capital Structure of the Company

6.1 To what extent can developments in terms of financial innovations and financing techniques be expected to influence company law and related regulatory domains? Can you provide examples of how legislation has been changed in order to facilitate for the company and its capital suppliers to arrive at more cost-effective capital structures?

6.2 What aspects of “minority” or third party protection do you consider to be most topical in relation to adjustments of the capital structure? What should be the “guiding principle” for “equal treatment” in relation to adjustments in the capital structure? What are the experiences from pre-emptive rights and directed buy-backs?

6.3 Is court supervision necessary in capital reductions? Is it sufficient to focus on company solvency in relation to shareholder and creditor protection when changes to capital are being made?

6.4 How does your legislation view the relationship between dividends, share buy-backs and redemption of shares? Does legislation generally discriminate between these different approaches to distribution? What influences the company’s choice of technique?

6.5 Particularly in listed companies, what are the main merits and disadvantages of a legal capital requirement?

6.6 To what extent does legislation concerning the capital structure explicitly consider its impact on the governance and control structure of the company?

Session 7: Corporate Ownership and Control

7.1 What can be considered a reasonable level of disclosure of individual shareholdings? In your view, what are the most effective procedures and mechanisms for such disclosure?

7.2 What are the legal requirements for disclosure of other control mechanisms than direct ownership, for example cross-shareholdings, company groups, voting caps, shareholder’s agreements, etc.?

7.3 What are the most critical legal provisions that need to be in place in order to assure free and cost-effective transferability of shares?

7.4 Equal treatment is often considered a central principle during changes in corporate control. How is this principle manifested in law or regulations?

7.5 What are the merits and disadvantages of a mandatory bid rule? If your country has such a rule, how is the principle of equal (or fair) treatment manifested?

7.6 Is the board of directors in the target-company generally expected to take an active role during the take-over process? Should executive managers and the board of directors have any legal rights to impose obstacles to changes in corporate control? What would motivate any such rights or obligations?