ICGN
International Corporate Governance Network
Inspiring good governance & stewardship

Global Network of Investor Associations held by hybrid meeting on 15th July 2024 11:00-12:00 AM GMT

EXECUTIVE SUMMARY

On 15th July 2024, the Global Network of Investor Associations (ICGN) met in a hybrid meeting. ICGN Global Policy Director welcomed members who attended the meeting in-person to London and thanked members joining virtually.

Updates from the following markets were given:

- Australia
- Brazil
- Canada
- Germany
- Italy
- the Netherlands
- United Kingdom (UK)
- United States of America (U.S)

Introduction

ICGN established the GNIA in 2013 to enable national investor associations to discuss priorities around corporate governance, shareholder rights, and responsibilities on a global level. Co-chaired by ICGN and Assogestioni, members represent organisations from Australia, Brazil, Canada, the EU, France, Germany, Italy, the Netherlands, Switzerland, the UK and the U.S.

Key points raised

Australia

Climate reporting

The Australian Accounting Standards Board (AASB) published its draft standard *SR1 Australian Sustainability Reporting Standards of Climate-related Financial Information* in October 2023. These are still under development. IFRS S1 will likely be implemented as a voluntary reporting standard and IFRS S2 as mandatory.

Virtual AGMs

After COVID-19, allowance was made for virtual only company meetings, subject to the company allowing for virtual only meetings in their constitutions. These laws – which came about through amendments to the *Corporations Act* – are now being reviewed. It is early in the review process, however there is some commentary that hybrid meetings should be the expectation for listed companies. Some stakeholders are also suggesting that the requirement for company constitutional amendment to provide for virtual only meetings should be removed. This would be a significant derogation of shareholder rights

ASX Corporate Governance Principles

The Australian Securities Exchange (ASX) *Corporate Governance Principles 5th Edition* has been the subject of public consultation, which ICGN responded to. Submissions are not yet publicly available through the ASX, but there has been some public commentary on the proposals, particularly in respect of the updates encouraging entities to disclose their approach to diversity broader than gender.

The proposed updates in this respect are quite modest. There is commentary suggesting both that the proposals go too far, and other stakeholders saying the proposals do not go far enough (the proposals are short of international examples, such as the UK listing rules and NASDAQ listing rules).

Sustainability collaborations

The Competition Regulator has issued draft guidance on sustainability collaborations. The key message is that the Regulator is open to authorising competition law exemptions where sustainability benefits of collaboration is considered to outweigh the public detriment of diminished competition. Focussing on environmental sustainability, the guidance provides information on the ACCC's processes and considerations for assessing a collaboration authorisation. The ACCC will take into account sustainability benefits, such as emissions reduction, when assessing net public benefits. Several illustrative and real case studies are provided.

The guidance generally focusses on collaboration between firms in the real economy, as opposed to initiatives between investors or financial institutions (though we understand the Banks have been key stakeholders advocating for this). 'Case study 3' (page 11) suggests that collaboration between investors to establish non-binding emissions reduction targets are unlikely to require authorisation.

Canada, The Canadian Coalition for Good Governance (CCGG)

On 20th June 2024, important changes to the *Competition Act* became law. The amendments provide for controversial anti-greenwashing laws. They intend to prevent vague and unsubstantiated or misleading claims about a company's transition to net zero.

The amendments require that "the environmental benefits of a product be supported by adequate and proper testing" and "claims about the environmental benefits of a business or business activity be based on adequate and proper substantiation in accordance with an internationally recognized methodology". Both provisions place a reverse onus on the company to provide evidence that they are compliant.

The legislation does not specify what "internationally recognised methodology" means and has left this to the Competition Bureau to clarify. The Bureau indicated that it is reviewing its current guidelines and recently released a public consultation in furtherance of updated guidelines. A Guidance Feedback Form is available for commenters wishing to submit feedback prior to the launch of the public consultation.

The Act was also amended to permit a private right of access to the Competition Tribunal for cases involving deceptive marketing practices, meaning that companies may be exposed to third party litigation for environmental benefits claims, although this right appears to be limited by a requirement for private claimants to obtain leave from the Tribunal. Significant penalties are attached to findings of liability, including up to $10 million or 3% of gross global revenues.

In reaction, many companies added disclaimers or removed environmental content from their website. Some investors raised concerns about impacts on the financial performance of their investee companies in the event of private claims.

Changes have created confusion and legal uncertainty leading to a potential retraction in voluntary environmental and climate-related disclosures that CCGG and investors have been advocating for. The Competition Bureau needs to act quickly and transparently to provide clarity to the market as to how it will approach implementation of the amendments.

Italy, Assogestioni

Italian AGM season

In 2024, Assogestioni supported the Investment Managers' Committee (IMC) which submitted 75 slates for the election of minority candidates in 50 Italian listed companies. The total number of elected candidates is 87 (36% are women), holding offices in 48 listed companies. Of these, 47 are Directors and 40 are Statutory Auditors, of which 32 are chairpersons (in addition to 38 alternate auditors).

Please see the AGM report here.

Reform of the Italian Financial Law

With the approval of the Italian Capital Law (which ICGN commented on), the Italian government was given the task of reforming the Italian Financial Law. The Ministry of Economy and Finance set up a special commission (composed mainly of academics and professionals - industry bodies are not represented) and, recently, asked Assogestioni to provide its point of view.

Assogestioni sent their position paper to the Ministry in mid-July, advocating for the protection of institutional investors' rights as minority shareholders and highlighting the main focus points. The work of the special commission - that operates in closed sessions - is still in progress, further developments are expected in September 2024.

UK, The Investor Forum

New CEO

The UK Investor Forum will have a new CEO from September 2024, with Chris Kinder, former Head of UK equities at Columbia Threadneedle, taking over from Andy Griffiths.

Creation of an Issuer & Investor Forum

The Issuer & Investor Forum (IIF) will be a new platform under the Investor Forum umbrella, focused on enabling market practitioners to work together to improve the functioning of our markets. A committee of senior industry individuals to guide the new activity will be formed, and the Investor Forum will provide practitioners to work together to improve the functioning of our markets. An advisory committee of senior industry individuals will be formed to guide the new activity, and Investor Forum will provide a secretariat service, thought leadership and project management. This will be outlined further at the CMIT conference in September.

Engaging in Bid Situations

Investor Forum prepared a briefing note in response to a number of requests from their members about what level of collective engagement is possible during bid situations. At a time when companies in the UK are facing several bids and when investor collaboration is also facing intense scrutiny, it is important to ensure a thorough understanding of the underlying principles and rules and regulations which need to be taken into account when considering engagement with other investors.

U.S, Council of Institutional Investors

Delaware's legislature adopted a new law, *Senate Bill 313: An Act to Amend Title 8 of the Delaware Code Relating to the General Corporation Law*. S.B. 313 allows companies to enter special agreements with select shareholders, granting them influence over the board's decisions without requiring approval from other shareholders. This law effectively overturns the verdict in the case against Moelis & Company, where a Delaware judge struck down such an agreement between the company and its founder and CEO, Ken Moelis.

The Council of Institutional Investors (CII) expects this law to lead to an increase in companies entering side agreements with key shareholders, potentially to the detriment of long-term investors.

Decisions / input required

The GNIA next meets on 17th October 2024.

Further information

Visit the GNIA webpage on ICGN's website for previous meeting summaries.