

## **New Companies Bill Enfranchises Nominee Shareholders**

**Gavin Oldham**

The ECCR shareholder resolution tabled for Royal Dutch Shell's AGM earlier this year was a landmark achievement in terms of shareholder engagement; but, due to the number of shareholdings now in nominee, it proved very difficult to secure the 100 signatures needed for its successful 'tabling'

Disenfranchisement of nominee shareholdings has been a bone of contention for Personal Equity Plan (PEP) and Individual Savings Account (ISA) holders for years, and it now affects millions of shareholdings bought through internet broking services. Nominee share administration is by far the most efficient way to hold a portfolio of shares, and the Government has recognised this by requiring it to be used for all tax-free savings accounts. But until now it has not extended shareholder rights for the c. 24 million shareholdings held in nominees.

### **Vigorous campaign**

Following a vigorous campaign by The Share Centre and its partners in the Shareholder Alliance, all this is about to change. A Government Amendment to the Companies Bill currently under consideration means that it will now be obligatory for all companies traded on regulated markets to extend these rights through nominees, who will be able to enable their investors to 'opt in' for all their listed shareholdings.

The new legislation covers a number of key provisions to encourage shareholder engagement, and at its heart is the supply of information. Nominee operators will in future be able to invite shareholders to 'opt in' for hard copy shareholder information on the same basis as registered shareholders: information which is essential for assessing the company's performance, voting and General Meeting attendance. This provision covers all listed companies, and the Secretary of State is reserving the right to extend it to unlisted companies by Secondary Regulation when and if appropriate.

The Bill also makes attending and speaking at General Meetings considerably easier for nominee shareholders, and a new clause deals specifically with the ability to join in requests to table shareholder resolutions, require circulation of statements or independent reports on polls. All of these rights call for support from at least 100 shareholders, but they have never been available to nominee shareholders in the past.

Furthermore there is a new provision for partial election which ensures that, when a company offers a choice of action to its shareholders, each nominee shareholder will be able to choose what is best for him/her; in the past some companies have only accepted a single direction on behalf of all shareholders in a nominee, for example when loan stock is offered in a capital repayment to help reduce capital gains tax bills.

### **Shareowner democracy strengthened**

So what are the implications of these changes? They will mean that:

- Shareowner democracy in the UK will be significantly strengthened, with many private investors now able to influence the future of the companies in which they have chosen to invest and become a part owner.

- Investors will be able to choose between hard copy or electronic information describing what's happening in their companies: not just Report and Accounts, but also corporate action information such as an acquisitions and bid approaches. The proportion of personal nominee share ownership in some companies is large enough to affect the future of that company.
- Nominee investors will be able to attend and speak at General Meetings and join with other shareholders to table shareholder resolutions. The latter was a big issue in the recent Royal Dutch Shell General Meeting, where a shareholder resolution was put forward by investors with social and environmental concerns.
- Nominee operators will offer a variety of voting arrangements (including the internet) for ease of engagement. This cannot be done at present as the level of shareholder information is so poor that there is little demand for voting.

The only issue which has not been addressed in the amendment is that of shareholder benefits, or 'perks'. Twenty-five per cent of companies which supply these benefits do not extend them to nominee shareholders, but since this is viewed as a commercial, rather than corporate governance, matter, the Government takes the view that it is difficult to include them in the legislation. We hope best practice will prevail to encourage these companies to be fair to nominee shareholders.

Nevertheless we are delighted that the Government has now reconsidered its position and agreed to enfranchise nominee shareholders. I have personally been committed to achieving this change in UK law for the past 19 years, and am delighted that this major injustice is being corrected. The growth in use of nominees has expanded massively over the past years, largely due to Government requirements (*re* ISAs, PEPs) and it is right that we ensure that Company Law keeps pace with the change in ways of investing in British business.

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