



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:  
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

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**PROPORTIONALITY BETWEEN OWNERSHIP  
AND CONTROL IN EU LISTED COMPANIES:  
COMPARATIVE LEGAL STUDY**

**EXHIBIT C (PART II)**

**LEGAL STUDY FOR EACH JURISDICTION**

**SHEARMAN & STERLING<sub>LLP</sub>**

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**PROPORTIONALITY BETWEEN OWNERSHIP AND  
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COMPARATIVE LEGAL STUDY**

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## MULTIPLE VOTING RIGHTS SHARES

### 1) Is this CEM available?

No. The law of 10<sup>th</sup> August 1915, as amended, on commercial companies (“Company Law”)<sup>1</sup> provides that each share has one vote, subject to the provisions of the law allowing the issuance of nonvoting preference shares.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Pursuant to Company Law, each shareholder may participate in the deliberations in a shareholders’ meeting with a number of votes equal to the number of shares held by him, without limitation<sup>2</sup>. It is presently being considered whether to introduce multiple voting rights for shareholders having held their shares for a certain time.

However, in addition to shares, Luxembourg Company Law allows the issue of participation certificates, also-called founder shares (“*titres ou parts bénéficiaires*”). Article 37 of Company Law 2nd sentence provides that independently from shares representing share capital, founder or beneficiary shares may be created. Article 37 of Company Law further provides that the articles determine the rights that are attached to such *parts bénéficiaires*.

These rights could conceivably be voting rights and/or dividend rights or rights to participate in the liquidation or a combination thereof. These *parts bénéficiaires* can be issued for a consideration in cash or kind, but can also be issued without consideration. To our knowledge, no such shares are in issue in Luxembourg listed companies.

It would therefore be possible to issue *parts bénéficiaires* with voting rights with or without the right to participate in profits.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	It is not possible to issue multiple voting rights shares but voting <i>parts bénéficiaires</i> are allowed.
<input checked="" type="checkbox"/> Unclear situation (in respect of <i>parts bénéficiaires</i> )	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Untested Situation	

<sup>1</sup> All references to “Company Law” are to the law of 10<sup>th</sup> August 1915 on commercial companies, as last amended by the law of 21<sup>st</sup> December 2006 and by taking into account the amendments resulting from bills of law 4992 and 5658 approved by Parliament but not yet entered into force at the time of drafting [4.02.07].

<sup>2</sup> Article 67 (4) Company law.

**3) If this CEM is available, is it subject to any restrictions?**

N/A to multiple voting rights shares. In respect of *parts bénéficiaires*, the law simply provides that the articles will determine the rights attached to them. There is however some concern about the generality of the provision and that it would permit the evasion of certain compulsory rules of Company Law (such as for instance those on prohibiting multiple voting rights shares). When drafting terms for *parts bénéficiaires*, some judgement must be exercised as to the extent of rights to be granted thereunder. The rationale or business purpose for introducing the *parts bénéficiaires* will be of great importance as it may in certain instances allow differentiating between abusive situations which are liable to be sanctioned and those with a valid and acceptable business purpose which will be upheld.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

N/A to multiple voting shares. In respect of *parts bénéficiaires*, these would need to be inserted in the articles of incorporation either on incorporation by the founders or subsequent to incorporation by an extraordinary general meeting of the shareholders. That meeting could also authorise the board of directors to issue such *parts bénéficiaires*, but the articles would need to determine the rights attaching thereto.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors in respect of creation of the <i>parts bénéficiaires</i>	<input checked="" type="checkbox"/> Upon authorization of the shareholders	
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<p><input checked="" type="checkbox"/> Decision by the general meeting of shareholders in respect of creation of the <i>parts bénéficiaires</i></p>	<p><input checked="" type="checkbox"/> Quorum: first call 50% of capital 2<sup>nd</sup> call: no quorum.</p> <p><input checked="" type="checkbox"/> Majority: 2/3s of votes expressed (in each case unless increased by articles).</p>	<p>If the shareholders may authorise the board or the Chairman or GM to implement the CEM:</p> <p><input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): As the law does not provide for a duration, it is unclear whether the board could be authorised for an unlimited duration. It would be prudent to limit the duration to 5 years in comparison to the rules regarding increase of capital by the board under the authorization of the shareholders' meeting.</p> <p><input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed?</p> <p>The Luxembourg takeover law allows companies to elect to be subject to article 9.2, 9.3 and 11 of the Takeover directive as envisaged by article 12 of the Takeover directive.</p> <p>To the extent the board has the power to issue voting <i>parts bénéficiaires</i>, such an issue could potentially prevent the bidder to take control of the company. It is therefore likely that in the circumstances the authorization would need to be renewed.</p>
<p><input checked="" type="checkbox"/> Other: at incorporation</p>	<p>Founders in the constitutive deed.</p>	

Specific conditions:

N/A to multiple voting shares. The law does not provide for specific conditions in respect to the issue of *parts bénéficiaires*. It would however be appropriate to prepare a report.

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Special report to shareholders, prepared by: the board of directors.</p>
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5) **Are there ongoing disclosure requirements regarding such CEM?**

N/A to multiple voting shares. The existence of the *parts bénéficiaires* would need to be disclosed in the annual accounts and potentially in the annual report referred to by the Takeover directive as well as in any public offer or listing prospectus.

Short form answer:

<input checked="" type="checkbox"/> Yes  <i>(for parts bénéficiaires)</i>	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Annual accounts and potentially in the annual report referred to by the take-over directive (see under 4 above).  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Publication of a public offer or listing prospectus.  <input checked="" type="checkbox"/> The following disclosure requirements apply in case of creation of voting <i>parts bénéficiaires</i> : <ul style="list-style-type: none"> <li>- Filing of articles of association;</li> <li>- Publication in a Legal Gazette;</li> <li>- Auditors' Report: this is debateable but such a report may be necessary if the <i>parts bénéficiaires</i> are issued against contribution in kind;</li> <li>- Specific Filing, if <i>parts bénéficiaires</i> are to be issued to the public or listed;</li> <li>- Admission documentation, if <i>parts bénéficiaires</i> are to be issued to the public or listed;</li> <li>- Annual Report;</li> <li>- Special Report, on implementation;</li> <li>- Article 10 Report, Debateable because article 10 requires a publication regarding the structure of share capital whereas <i>parts bénéficiaires</i> do not represent share capital.</li> </ul>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

N/A to multiple voting shares as they are prohibited. If they were implemented anyway, they could be annulled because of breach of law.

As to *parts bénéficiaires* they could, depending on their terms, be challenged, as being contrary to general principles of Company Law or that they are implemented as a result of a majority abuse.

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| <input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders; or<br><input checked="" type="checkbox"/> Specific terms are contrary to general principles of Company law<br><input checked="" type="checkbox"/> Such grounds are alternative. |
|---|

## NON-VOTING SHARES

1) **Is this CEM available?**

Pursuant to Company Law, each shareholder may participate in the deliberations in a shareholders' meeting with a number of votes equal to the number of shares held by him, without limitation<sup>3</sup>. Company Law provides that each share has one vote, subject to the provisions of the law allowing the issue of non-voting preference shares<sup>4</sup>. However, in addition to shares, Luxembourg Company Law allows the issue of participation certificates, also called founder shares ("*titres ou parts bénéficiaires*"). Article 37 of Company Law 2<sup>nd</sup> sentence provides that independently from shares representing share capital founder or beneficiary shares may be created. Article 37 of Company Law further provides that the articles determine the rights that are attached to such *parts bénéficiaires*.

These rights could conceivably be voting rights and/or dividend rights or rights to participate in the liquidation or a combination thereof. These *parts bénéficiaires* can be issued for a consideration in cash or kind, but can also be issued without consideration. To our knowledge, no such shares are in issue in Luxembourg listed companies.

It would therefore be possible to issue *parts bénéficiaires* without voting rights with the right to participate in profits without having to comply with the strict requirements regarding non-voting preferential shares.

<input checked="" type="checkbox"/> No (Clear Situation)	It is not possible to issue non-voting shares without preferential rights.
<input checked="" type="checkbox"/> Unclear Situation (in respect of " <i>parts bénéficiaires</i> ")	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Untested Situation

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Company Law implicitly prohibits non-voting shares as it provides for the principle that each shareholder has one vote per share and only specifically allows non-voting preference shares. Article 37 of Company Law allows the creation of *parts bénéficiaires* which will have the rights given to them in the articles of incorporation and which may be limited to rights to participate in profits and/or liquidation proceeds.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Not allowed, but non-voting <i>parts bénéficiaires</i> are allowed.
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<sup>3</sup> Article 67 (4) Company Law.

<sup>4</sup> Article 44 et seq. Company Law.

3) **If this CEM is available, is it subject to any restrictions?**

N/A to non-voting shares. In respect of *parts bénéficiaires*, the law simply provides that the articles will determine the rights attached to them. There is however some concern about the generality of the provision and that it would permit the evasion of certain compulsory rules of Company Law (for instance those on non-voting preference shares). When drafting terms for *parts bénéficiaires*, some judgement must be exercised as to the extent of rights to be granted thereunder. The rationale or business purpose for introducing the *parts bénéficiaires* will be of great importance as it may in certain instances allow to differentiating between abusive situations which are liable to be sanctioned and those with a valid and acceptable business purpose which will be upheld.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

N/A to non-voting shares. In respect of *parts bénéficiaires*, these would need to be inserted in the articles of incorporation either on incorporation by the founders or subsequently to incorporation by an extraordinary general meeting of the shareholders. That meeting could also authorise the board of directors to issue such *parts bénéficiaires*, but the articles would need to determine the rights attaching thereto.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors in respect of creation of the <i>parts bénéficiaires</i>	<input checked="" type="checkbox"/> Upon authorization of the shareholders	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders in respect of creation of the <i>parts bénéficiaires</i>	<input checked="" type="checkbox"/> Quorum: first call 50% of capital 2 <sup>nd</sup> call: no quorum <input checked="" type="checkbox"/> Majority: 2/3s of votes expressed (in each case unless increased by articles)	<p>If the shareholders may authorise the Board or the Chairman or GM to implement the CEM:</p> <p><input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): As the law does not provide for a duration, it is unclear whether the board could be authorized for an unlimited duration. It would be prudent to limit the duration to 5 years in comparison to the rules regarding increase of capital by the board under the authorization of the shareholders' meeting.</p> <p><input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed?</p> <p>The Luxembourg takeover law allows companies to elect to be subject to article 9.2, 9.3 and 11 of the Takeover directive as envisaged by article 12 of</p>

		<p>the Takeover directive.</p> <p>To the extent the board has the power to issue non-voting <i>parts bénéficiaires</i>, such an issue would not be likely to prevent the bidder to take control of the company. It could therefore be argued that in the circumstances the authorization would not need to be renewed. As however the terms of the <i>parts bénéficiaires</i> could be such that they would give a disproportional right to profits to their holders and could therefore discourage a bidder from pursuing the bid, this may fall under the need for a new authorization.</p>
<input checked="" type="checkbox"/> Other: at incorporation	Founders in the constitutive deed.	

Specific conditions:

N/A to non-voting shares. The law does not provide for specific conditions in respect to the issue of *parts bénéficiaires*. It would however be appropriate to prepare a report.

Specific requirements when deciding to implement the CEM:

Special report to shareholders, prepared by: the board of directors.

**5) Are there ongoing disclosure requirements regarding such CEM?**

N/A to non-voting shares. The existence of the *parts bénéficiaires* would need to be disclosed in the annual accounts and potentially in the annual report referred to by the Takeover directive as well as in any public offer or listing prospectus.\*

## Short form answer:

<input checked="" type="checkbox"/> Yes (for <i>parts bénéficiaires</i> )	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Annual accounts and potentially in the annual report referred to by the take-over directive (see under 4 above). <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Publication of a public offer or listing prospectus. <input checked="" type="checkbox"/> The following disclosure requirements apply in case of creation of non-voting <i>parts bénéficiaires</i> : <ul style="list-style-type: none"> <li>- Filing of articles of association;</li> <li>- Publication in a Legal Gazette;</li> <li>- Auditors' Report, this is debateable but such a report may be necessary if the <i>parts bénéficiaires</i> are issued against contribution in kind;</li> <li>- Specific Filing, if <i>parts bénéficiaires</i> are to be issued to the public or listed;</li> <li>- Admission documentation, if <i>parts bénéficiaires</i> are to be issued to the public or</li> </ul>
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	<p>listed;</p> <ul style="list-style-type: none"> <li>- Annual Report;</li> <li>- Special Report, on implementation;</li> <li>- Article 10 Report, Debatable because article 10 requires a publication regarding the structure of share capital whereas <i>parts bénéficiaires</i> do not represent share capital.</li> </ul>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

N/A to non-voting shares as they are prohibited. If they were implemented anyway, they could be annulled because of breach of law.

As to *parts bénéficiaires* they could, depending on their terms, be challenged as being contrary to general principles of Company Law or that they are implemented as a result of a majority abuse.

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| <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders; or</li> <li><input checked="" type="checkbox"/> Specific terms are contrary to general principles of Company law</li> <li><input checked="" type="checkbox"/> Such grounds are alternative.</li> </ul> |
|---|

## NON-VOTING PREFERENCE SHARES

1) **Is this CEM available?**

Company Law provides for the possibility under a number of conditions to issue non-voting preference shares. (Article 44 et seq.)

The non-voting shares must in case of a distribution of profits confer the right to a preferential and cumulative dividend corresponding to a percentage of their nominal value or accounting par value without prejudice to any additional right in the distribution of surplus profits. They must also confer a preferential right to the reimbursement of the contribution without prejudice to any additional right to participate in the liquidation proceeds. They may be created at incorporation, through an issue by increase of share capital or by the conversion of ordinary shares into preferred non-voting shares.

Non-voting preference shares may not represent more than half of the share capital.

Non-voting preference shares have *ipso jure* voting rights if they exceed the maximum percentage of capital (see the preceding sentence) or in case their preferential dividend or liquidation right is no longer attached to them. In addition they have the right to vote in a general meeting on certain matters listed in article 46 of Company Law. They have the same voting rights as the holders of ordinary shares at all meetings if despite the existence of profits available for that purpose their preferential cumulative dividends have not been paid in their entirety for any reason whatsoever for a period of two subsequent financial years.

<input checked="" type="checkbox"/> Yes (Clear Situation)	<p>Issue is subject to conditions:</p> <ul style="list-style-type: none"> <li>- may not represent more than 50% of share capital;</li> <li>- must confer preferential and cumulative dividend rights and preferred distribution rights on liquidation;</li> </ul> <p>in case they are issued as a result of conversion of ordinary shares, the offer of conversion must be made proportionally to all shareholders.</p>
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Company Law provides for the possibility under a number of conditions to issue non-voting preference shares. (Article 44 et seq.)

The non-voting shares must, in case of a distribution of profits, confer the right to a preferential and cumulative dividend corresponding to a percentage of their nominal value or accounting par value without prejudice to any additional right in the distribution of surplus profits. They must also confer a preferential right to the reimbursement of the contribution without prejudice to any additional right to participate in the liquidation proceeds. They may be created at incorporation, through an issue by increase of share capital or by the conversion of ordinary shares into preferred non-voting shares.

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Permitted
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**3) If this CEM is available, is it subject to any restrictions?**

Non-voting preference shares may not represent more than half of the share capital.

Non-voting preference shares have *ipso jure* voting rights if they exceed the maximum percentage of capital (see the preceding sentence) or in case their preferential dividend or liquidation right is no longer attached to them. In addition they have the right to vote in a general meeting on certain matters listed in article 46 of Company Law.

They have the same voting rights as the holders of ordinary shares at all meetings if despite the existence of profits available for that purpose their preferential cumulative dividends have not been paid in their entirety for any reason whatsoever for a period of two subsequent financial years.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Non-voting Preference Shares
<input checked="" type="checkbox"/> Reinstatement of voting rights in certain circumstances <sup>5</sup>

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The articles need to provide for the number of non-voting preference shares as well as for their preferential dividend and liquidation rights and, as the case may be, for their right to participate in profits or liquidation proceeds beyond their preferential right.

These provisions may be inserted in the original articles of incorporation or by an extraordinary general shareholders' meeting amending the articles. Their issuance will be subject to the maximum period for an authorization to the board, namely five years from publication of the articles, if the powers were contained therein at incorporation, or five years from publication of the minutes of the EGM granting such authorization.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Upon authorization of the shareholders	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: first call 50% of capital 2 <sup>nd</sup> call: no quorum <input checked="" type="checkbox"/> Majority: 2/3s of votes expressed (in each case unless increased by articles)	If the shareholders may authorise the Board or the Chairman or GM to implement the CEM:  <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): Five years from publication of the articles of incorporation if the power was contained therein at incorporation or five years from

<sup>5</sup> The issue of new shares carrying preferential rights; the determination of the preferential cumulative dividend attaching to the non-voting shares; the conversion of non-voting preferred shares into ordinary shares; the reduction of the capital of the company; any change to its corporate object; the issue of convertible bonds; the dissolution of the company before its term; the transformation of the company into a company of another legal form.

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		<p>publication of the minutes of the EGM granting such authorization.</p> <p><input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed?</p> <p>The Luxembourg takeover law allows companies to elect to be subject to article 9.2, 9.3 and 11 of the Takeover directive as envisaged by article 12 of the Takeover directive.</p> <p>The answer will therefore depend on (i) whether the company has elected to restrict the ability of the board to use the authorized share capital as referred to in article 9.2. of the Takeover directive or not, (ii) the terms of the authorisation and (iii) whether the proposed share issuance meets the criteria referred to in article 9.2 of the take-over directive.</p>
<p><input checked="" type="checkbox"/> Other: at incorporation</p>	<p>Founders in the constitutive deed.</p>	

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Special report to shareholders, prepared by: General rules on limitation or surpression of preferential subscription rights against contribution in cash which require a Board of Directors report, will apply. There are no specific rules dealing with the fact that these are non-voting shares.</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): The annex to the accounts must indicate the number and nominal value or in the absence of nominal value the accounting par value of each class of shares in the company. In our opinion any unpaid preferential dividend should also be disclosed in the annex. Furthermore the report referred to in article 10 of the take-over directive will need to include appropriate particulars. Obviously, in case of a public offer or admission to dealing on a regulated market or on a market other than a regulated market of such shares, or of ordinary shares of the same Company, appropriate disclosure regarding their number and the rights attached thereto must be made.</p>	
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**5) Are there ongoing disclosure requirements regarding such CEM?**

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Annual accounts and annual report referred to by the take-over directive (see under 4 above).</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Publication of a public offer or listing prospectus.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association;</li> <li>- Publication in a Legal Gazette;</li> <li>- Auditors' Report, No (except when issued against contribution in kind);</li> <li>- Specific Filing, if issued to the public or listed;</li> <li>- Admission documentation;</li> <li>- Annual Report;</li> <li>- Special Report;</li> <li>- Article 10 Report, Debatable because article 10 requires a publication regarding the</li> </ul>
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	structure of share capital whereas <i>parts bénéficiaires</i> do not represent share capital.
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The decision to create non-voting preference shares would be either a shareholders' decision or a board decision on the basis of a shareholder authorization. A decision of the majority of the shareholders could be challenged on the basis that it constitutes a majority abuse. However, the basis for a majority abuse is only likely to be found in the fact that the non-voting shares carry a preferential dividend (e.g., if the majority would reserve the issuance of those shares to itself) rather than the fact that the shares are non-voting.

In case of a conversion of ordinary shares into preferred non-voting shares the offer must be made to all shareholders in proportion to the amount of capital held but shareholders cannot be forced into a conversion. An action based on majority abuse in those circumstances is therefore difficult to imagine.

A decision constitutes a majority abuse if it is not in corporate interest of the company, in the sole interest of the majority holder and against the interest of the minorities.

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders and<br><br><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest. | <input checked="" type="checkbox"/> Such grounds are cumulative. |
|--|--|

## PYRAMID STRUCTURES

1) **Is this CEM available?**

No corporate law rules regulating pyramid structure. As Company Law does not prohibit pyramid structures they are in principle permitted.

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Company Law does not prohibit pyramid structures. The existence of a pyramid structure could therefore only be challenged on the grounds of an abuse but this has not to the best of our knowledge been applied in the context of pyramid structures.

<input checked="" type="checkbox"/> Laws	Company Law does not prohibit pyramid structures
<input checked="" type="checkbox"/> General Principle of contractual freedom	

3) **If this CEM is available, is it subject to any restrictions?**

No.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

The decision to implement a pyramid structure holding the listed company would be typically taken by the board of directors of the entity holding the stake in the listed company and be subject to the corporate rules governing the functioning of such entity. Luxembourg law, as the law governing the listed company, does not provide for any conditions as to who at the shareholder level needs to take the decision on implementation of a pyramid structure, except of course where the shareholder is a Luxembourg company. In that case the decision would typically be taken by the board of directors.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors of the entity holding shares in the listed company	<input checked="" type="checkbox"/> Autonomous decision
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**5) Are there ongoing disclosure requirements regarding such CEM?**

There is no particular disclosure requirement regarding pyramid holdings. The entity holding an investment via pyramid structures may need to consolidate the company so held if the relevant conditions as to control are fulfilled.

The holding via a pyramid structure of an interest in a listed company will need to be considered carefully when it is set up or in case of future dealings in shares, as the various companies may constitute a group acting in concert which could lead to threshold disclosure requirements or the potential trigger of a mandatory takeover obligation under the take-over directive.

If control is exercised over the listed company then the disclosure obligations regarding the controlling shareholder will apply such as indicated in the public offer prospectus or listing prospectus. If the listed company is comprised in the consolidation of its controlling shareholder, it would also need to disclose that control in its accounts.

If the arrangement presents a significant participation in the capital, it needs to be disclosed in the report referred to in article 10 of the Takeover directive.

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Any report referred to in the Takeover directive if participation is substantial. <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: <ul style="list-style-type: none"> <li>- In case of a concert: threshold disclosure</li> <li>- If control or notable influence is exercised via pyramid structure: prospectus</li> <li>- If consolidated in a parent: - annual accounts</li> </ul> <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Specific Filing, on listing of the NewCo;</li> <li>- Specific Notification;</li> <li>- Information to shareholders;</li> <li>- Admission documentation;</li> <li>- Annual Report;</li> <li>- Special Report;</li> <li>- Article 10 Report.</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The challenging of a pyramid structure will be very difficult if possible at all.

It would appear very difficult to challenge the existence of a pyramid structure unless its setting up was the result of a corporate restructuring of the listed company to be controlled, requiring a shareholder vote at the level of that company. Depending on circumstances there may be the possibility for challenge as a majority abuse. However, as the majority already controls the company, the implementation of a pyramid structure through such a restructuring would normally only occur where a subsequent dilution of the former majority holders was planned.

## PRIORITY SHARES

1) **Is this CEM available?**

It is a typical feature of non-listed joint venture company articles to comprise different classes of shares with different veto or decision powers adapted to a variety of needs of the relevant partners. In listed companies this is not excluded but should be rare in practice. It is generally considered by practitioners that these arrangements are valid subject to a very broad test as to legitimate reasons. The question has however not yet been tested in conclusive court cases.

<input checked="" type="checkbox"/> Unclear Situation	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Untested Situation
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Company Law does not prohibit priority shares. It also provides that shares of different classes will have separate votes on issues affecting the rights of one class (article 68).

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	No prohibition in Company Law.
<input checked="" type="checkbox"/> Reasonability Test		

3) **If this CEM is available, is it subject to any restrictions?**

Company Law does not prohibit priority shares. It also provides that shares of different classes will have separate votes on issues affecting the rights of one class (article 68).

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	Comments In accordance with article 12 of the Luxembourg law on takeovers implementing article 11 of the Takeover directive, for those companies that have voluntarily submitted to such rules.
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4) **Who decides whether this CEM should be implemented, and under what conditions?**

All details are provided below.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Upon authorization of the shareholders	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: first call 50% of capital, 2 <sup>nd</sup> call: no quorum <input checked="" type="checkbox"/> Majority: 2/3s of votes expressed (in each case unless increased by articles)	If the shareholders may authorise the Board or the Chairman or GM to implement the CEM: <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum

		<p>duration): Five years from publication of the articles of incorporation if the power was contained therein at incorporation or five years from publication of the minutes of the EGM granting such authorization.</p> <p><input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed?</p> <p>The Luxembourg takeover law allowed companies to elect to be subject to article 9.2., 9.3 and 11 of the Takeover directive as envisaged by article 12 of the Takeover directive.</p> <p>The answer will therefore depend on (i) whether the company has elected to restrict the ability of the board to use the authorized share capital as referred to in article 9.2. of the Takeover directive or not, (ii) the terms of the authorization and (iii) whether the proposed share issuance meets the criteria referred to in article 9.2. of the take-over directive.</p>
<p><input checked="" type="checkbox"/> Other: at incorporation</p>	<p>Founders in the constitutive deed.</p>	

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Special report to shareholders, prepared by: No specific report except in case of suppression or limitation of preferential subscription right of existing shareholders in case of a cash contribution.</p> <p><input checked="" type="checkbox"/> Statutory auditors need to be involved as follows: None except if issue of shares against contribution in kind</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): The annex to the accounts must indicate the number and nominal value or in the absence of nominal value the accounting par value of each class of shares in the company.</p> <p>Respective rights attaching to such shares would need to be disclosed in any public offer or listing prospectus.</p>
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5) **Are there ongoing disclosure requirements regarding such CEM?**

Details are provided below.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Annual accounts and annual report referred to in article 10 of the take-over directive. <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Disclosure in listing or public offer prospectus. <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Filing of articles of association;</li> <li>- Publication in a Legal Gazette;</li> <li>- Auditors' Report, No (except if issued against contribution in kind);</li> <li>- Specific Filing;</li> <li>- Admission documentation;</li> <li>- Annual Report;</li> <li>- Special Report, No except if suppression of professional subscription rights;</li> <li>- Article 10 Report.</li> </ul>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The issue of priority shares could be challenged as an abuse of a majority if it was put in place to remove all influence from minority holders. If it was in existence at the incorporation of the company, the chance of such a challenge would appear remote. The validity itself could be challenged if the rights attaching to the priority shares were manifestly incompatible with general company law principles.

<input checked="" type="checkbox"/> The decision to implement the CEM is (i) in the sole interest of the management or in the sole interest of the majority shareholders <u>and</u>
<input checked="" type="checkbox"/> (ii) The decision to implement the CEM is against the interest of the minority shareholders.

## DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

The law of 27<sup>th</sup> July 2003 on the trusts and fiduciary contracts allows to structure a holding through depositary receipts. It will also be possible to structure such arrangements through deposit agreements governed by foreign legislation.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The law on trusts and fiduciary contract. The legislation of the financial sector deals with the existence of depositary shares, such as the law regarding threshold disclosures, the prospectus law, the takeover law and the market abuse law. Subject to contract, the holders of depositary receipts have or will not have the right to give instructions to the depository either to vote the shares or to issue a proxy to the holder of the deposit certificate.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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3) **If this CEM is available, is it subject to any restrictions?**

Conversion rights, except if the terms of the CEM provide otherwise.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

The setting up of a depositary share program is normally at the initiative of the board of directors of the issuer. If it is made in connection with the issuance of new shares, the board will need an authorization to issue the shares within the authorized share capital and possibly suppress the preferential subscription right of shareholders. The issue of depositary shares will not require a shareholder vote.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
<input checked="" type="checkbox"/> Other:	By the shareholder setting up the deposit agreement and putting his shares on deposit

Specific conditions:

None.

5) **Are there ongoing disclosure requirements regarding such CEM?**

Disclosure in the annual accounts. Any prospectus published by the company in respect of equity linked instruments would need to contain a description of the deposit agreement to the extent it has been set up by the company.

If the voting rights are separated from the depository shares, it needs to be disclosed in the report referred to in article 10 of the Takeover directive.

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly account basis: report referred to in article 10 of the Takeover directive  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Prospectus disclosure in case of public offer or a listing of equity or equity link instruments by the issuer.  <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Specific Filing, No except if depository receipts are issued to the public or listed;</li> <li>- Admission documentation;</li> <li>- Article 10 Report.</li> </ul>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Unclear whether there is a valid ground to challenge.

## VOTING RIGHT CEILINGS

### 1) **Is this CEM available?**

Company Law does not provide for any voting right ceiling as Company Law provides that each shareholder can assist in the shareholders' meeting with as many votes as he holds. Voting right ceilings can however be agreed contractually amongst shareholders in shareholder agreements. There are to our knowledge no court cases in Luxembourg dealing specifically with voting rights ceilings. Luxembourg courts are however likely to consider precedents particularly in Belgium but also in France.

Belgian relevant precedents are those passed prior to amendments to Belgian legislation which specifically deal with shareholder agreements; Luxembourg company law does not contain any such specific provisions.

Essentially the principles resulting from Belgian precedents are that shareholder agreements are valid and binding to the extent they are not contrary to the interests of the relevant company and are limited in scope and/or in time. Subject to complying with such conditions it is considered that the Luxembourg court would uphold a shareholder agreement. It is however not clear whether in case of a violation of the shareholder agreement, the Luxembourg courts would order specific performance in particular where an exercise of voting rights is concerned. It is generally held to be more likely that the Luxembourg court would only allocate damages.

Subject to complying with such principles, a contractual voting right ceiling should be valid.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Untested Situation
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### 2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

We cannot point to any particular rule as there have not been to our knowledge any specific Luxembourg court rulings on point.

### 3) **If this CEM is available, is it subject to any restrictions?**

The provision would need to be valid against the court test for validity of shareholders' agreements referred to in 1) above.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	In accordance with article 12 of the Luxembourg law on takeovers implementing article 11 of the Takeover directive, for those companies that have voluntarily submitted to such rules.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

A voting right ceiling cannot be validly provided for in the articles of incorporation. Such a ceiling can only be agreed to in a shareholders' agreement amongst those shareholders who are parties to the relevant contract.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: relevant shareholders	In Shareholders' Agreement
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Specific conditions: None other than compliance with general principles referred to in 1) above.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Yes, such arrangement must be disclosed by the relevant company by announcement to the extent it is known to it in its prospectus and annual report and if material. In addition, this may, depending on circumstances, result in a threshold disclosure obligation. It must also be disclosed in the report referred to in article 10 of the Takeover directive.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: yearly in the accounts, on an ad hoc basis if material, and in the report referred to in the Takeover directive. <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: in case of publication of a prospectus in connection with a public offer or an admission to listing – application of threshold disclosure rules. <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Admission documentation, if known to the company;</li> <li>- Annual Report, if known to the company;</li> <li>- Special Report, if material;</li> <li>- Article 10 Report, if known to the company.</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The CEM could be challenged by the shareholders' party to the agreement on the grounds that it represents a non-valid contract, (i.e., that the conditions as to validity of shareholder agreements are not met (see 1 above)).

Short form answer: Invalid shareholders' agreement

## OWNERSHIP CEILINGS

1) **Is this CEM available?**

The company law does not provide for any ownership ceiling. However, articles of incorporation or shareholders' agreements could provide for ownership ceilings. There is to our knowledge no court case in Luxembourg dealing specifically with this issue. The developments in respect of shareholders' agreements set out in 1) under Voting right ceilings apply.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation	<input checked="" type="checkbox"/> Untested Situation
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

We can not point to any particular rule as there have not been to our knowledge any specific Luxembourg court rulings on point.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input type="checkbox"/> Binding Rule <input type="checkbox"/> Non-Binding Rule	Implicit authorization
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3) **If this CEM is available, is it subject to any restrictions?**

The provision would need to be valid against the court test for validity of shareholders' agreements. There are to our knowledge no court cases in Luxembourg dealing specifically with ownership ceilings. Luxembourg courts are however likely to consider precedents particularly in Belgium but also in France.

Belgian relevant precedents are those passed prior to amendments to Belgian legislation which specifically deal with shareholder agreements; Luxembourg company law does not contain any such specific provisions.

Essentially the principles resulting from Belgian precedents are that shareholder agreements are valid and binding to the extent they are not contrary to the interests of the relevant company and are limited in scope and/or in time. Subject to complying with such conditions it is considered that the Luxembourg court would uphold a shareholder agreement. It is however not clear whether in case of a violation of the shareholder agreement, the Luxembourg courts would order specific performance, in particular where an exercise of voting rights is concerned. It is generally held to be more likely that the Luxembourg court would only allocate damages.

Subject to complying with such principles, a contractual ownership ceiling should be valid.

If inserted in articles of incorporation, their ownership ceiling must not prevent the free disposition of shares, but, subject to such limitation, should in principle be valid.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	In accordance with article 12 of the Luxembourg law on takeovers implementing article 11 of the Takeover directive, for those companies that have voluntarily submitted to such rules.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

This can only be implemented by a contract amongst the shareholders who are parties to the relevant contract or by an insertion in the articles of incorporation.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders (if inserted in articles)	<input checked="" type="checkbox"/> Quorum: first call 50% of capital, 2 <sup>nd</sup> call: no quorum <input checked="" type="checkbox"/> Majority: 2/3s of votes expressed (in each case unless increased by articles)
<input checked="" type="checkbox"/> Other: (i) relevant shareholders (ii) Founders in constitutive deed at incorporation	(i) In Shareholders' Agreement (ii) If inserted in Articles

Specific conditions: If inserted in a shareholders' agreement, the provision would need to be valid against the court test for validity of shareholders' agreements. There are to our knowledge no court cases in Luxembourg dealing specifically with ownership ceilings. Luxembourg courts are however likely to consider precedents particularly in Belgium but also in France.

Belgian relevant precedents are those passed prior to amendments to Belgian legislation which specifically deal with shareholder agreements; Luxembourg company law does not contain any such specific provisions.

Essentially the principles resulting from Belgian precedents is that shareholder agreements are valid and binding to the extent they are not contrary to the interests of the relevant company and are limited in scope and/or in time. Subject to complying with such conditions it is considered that the Luxembourg court would uphold a shareholder agreement. It is however not clear whether in case of a violation of the shareholder agreement, the Luxembourg courts would order specific performance, in particular where an exercise of voting rights is concerned. It is generally held to be more likely that the Luxembourg court would only allocate damages.

Subject to complying with such principles, a contractual ownership ceiling should be valid.

If inserted in articles of incorporation, their ownership ceiling should not prevent the free disposition of shares.

5) **Are there ongoing disclosure requirements regarding such CEM?**

Yes, such arrangement must be disclosed by the relevant company, in case of shareholders' agreement, to the extent it is known to in its prospectus and by announcement if it constitutes material information. It must also be disclosed in the report referred to in article 10 of the Takeover directive.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: in the report referred to in the Takeover directive. <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Listing or offer prospectus, to the extent known to the company and if material. <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Filing of articles of association, if inserted in articles of incorporation;</li> <li>- Publication in a Legal Gazette, if inserted in articles of incorporation;</li> <li>- Information to shareholders, if in articles or known to the company;</li> <li>- Admission documentation, if in articles or known to the company;</li> <li>- Periodic Report, if material;</li> <li>- Special Report, if in Articles or known to the company;</li> <li>- Website.</li> </ul>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The CEM, if inserted in a shareholders' agreement, could be challenged by the shareholders party to the agreement on the grounds that it represents a non-valid contract.

If inserted into the articles, it could be challenged if it was considered to prevent free disposition of shares, or, if combined with an exemption from the ceiling for the main shareholder, or constituted a majority abuse.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders and is against the corporate interest
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## SUPERMAJORITY PROVISIONS

1) **Is this CEM available?**

Whilst the law does not specifically provide for such supermajority provisions, the view is held that such provisions are legal except in case of the dismissal of directors which can always be approved by a simple majority of the shares voting at a meeting.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	General consensus
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Whilst the law does not specifically provide for such supermajority provisions, it is the view that such provisions are legal except in case of the dismissal of directors which can always be approved by a simple majority of the shares voting at a meeting.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Implicit authorization
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3) **If this CEM is available, is it subject to any restrictions?**

The removal of directors may not be subject to supermajority requirements. It is unclear whether the breakthrough rule to which a Luxembourg company may voluntarily submit itself, would apply.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	Application uncertain
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4) **Who decides whether this CEM should be implemented, and under what conditions?**

Details are set out below.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: first call 50% of capital, 2 <sup>nd</sup> call: no quorum <input checked="" type="checkbox"/> Majority: 2/3s of votes expressed (in each case unless increased by articles)	<p>If the shareholders may authorise the Board or the Chairman or GM to implement the CEM:</p> <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed? <p>The question seems to be not relevant. Once the provision is inserted in the articles and unless the articles themselves provide for a term</p>
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		for such rule, it will apply as long as the company exists or that it has not been removed.
<input checked="" type="checkbox"/> Other: at incorporation	Founders in the constitutive deed.	

Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

Such provisions must be disclosed in the listing prospectus. It must also be disclosed in the report referred to in article 10 of the Takeover directive.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: <ul style="list-style-type: none"> <li>- publication of an offer or listing prospectus</li> <li>- the notice of any shareholders meeting resolving on issues where the CEM applies would need to disclose the supermajority requirement.</li> <li>- report referred to in the Takeover directive.</li> </ul> <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Filing of articles of association;</li> <li>- Publication in a Legal Gazette;</li> <li>- Information to shareholders;</li> <li>- Admission documentation;</li> <li>- Article 10 Report.</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Not easily identifiable. A supermajority CEM does not appear to be contrary to the one share one vote principle.

Short form answer: None.

## GOLDEN SHARES

1) **Is this CEM available?**

There is no legislation providing for a golden share but there may be instances where the government has by virtue of the articles of incorporation or under the terms of a concession, reserved certain rights.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Untested Situation
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

There is no specific internal rule which either authorises or prohibits this CEM and to our knowledge there are no court cases on point.

3) **If this CEM is available, is it subject to any restrictions?**

Unclear.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Details are provided below.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders (if inserted in articles)	<input checked="" type="checkbox"/> Quorum: first call 50% of capital, 2 <sup>nd</sup> call: no quorum <input checked="" type="checkbox"/> Majority: 2/3s of votes expressed (in each case unless increased by articles)	If the shareholders may authorise the Board or the Chairman or GM to implement the CEM: <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed?  The question seems to be not relevant. Once the provision is inserted in the articles and unless the articles themselves provide for a term for such rule, it will apply as long as the company exists or that it has not been removed.
<input checked="" type="checkbox"/> Other: at incorporation	Founders in the constitutive deed.	

Specific conditions: None.

5) **Are there ongoing disclosure requirements regarding such CEM?**

Yes, in listing or offer prospectus and in the annual report to be published under the takeover law.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: <ul style="list-style-type: none"> <li>- prospectus</li> <li>- in the report referred to in the takeover law.</li> </ul> <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Filing of articles of association, if inserted in articles of incorporation;</li> <li>- Publication in a Legal Gazette, if inserted in articles of incorporation;</li> <li>- Admission documentation;</li> <li>- Article 10 Report.</li> </ul>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Unclear.

Short form answer: Unclear

## PARTNERSHIPS LIMITED BY SHARES

1) **Is this CEM available?**

Provided for by Company Law since 1915 (Section V of Company Law on *sociétés en commandite par action*). In a Luxembourg partnership limited by shares, there are two types of shareholders, unlimited shareholders who are jointly and separately liable for the obligations of the company and limited shareholders who are only liable to make their contribution (and are therefore in the same situation as shareholders in a *société anonyme*). The unlimited partners or one of the unlimited partners will be the manager. The manager is nominated in the articles of incorporation. Subject to contrary provisions of such articles, the manager can only be removed with his consent. Likewise, all decisions which bind the company vis-à-vis third parties or which modify the articles must be approved by the manager or managers (again subject to contrary provisions in the articles).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Provided for by Section V of Company Law.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Section V of Company Law
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3) **If this CEM is available, is it subject to any restrictions?**

No.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

The form of limited partnership may either be adopted at incorporation or by a vote of the shareholders meeting transforming the company into a limited partnership.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: first call 50% of capital, 2 <sup>nd</sup> call: no quorum <input checked="" type="checkbox"/> Majority: 2/3s of votes expressed (in each case unless increased by articles)	<p>If the shareholders may authorise the Board or the Chairman or GM to implement the CEM:</p> <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed? <p>The question seems to be not relevant. There is no prohibition under the takeover law for a vote to be tabled before shareholders during a tender offer to transform the company into a limited partnership.</p>
<input checked="" type="checkbox"/> Other: at incorporation	Founders in the constitutive deed	

Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

No particular ones. A listing or offer prospectus will need to disclose how the company operates.

Short form answer: Filing of AoA/ Publication in a Legal Gazette/ Article 10 Report

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

On incorporation, if the company is formed immediately as a limited partnership, a challenge thereof would need to attack the validity of the company itself on general grounds. If a *société anonyme* is transformed into a limited partnership by shareholder vote, it could potentially be attacked on the basis of constituting a majority abuse.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders
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## CROSS-SHAREHOLDINGS

1) **Is this CEM available?**

Luxembourg has implemented directive 92/101/EEC which allows a certain level of cross-shareholding as long as none of the companies directly or indirectly holds a majority of the voting rights in the other or directly or indirectly exercises a dominant influence on the other. The criteria which determine when those situations arise are implemented from directive 92/101/EEC. Within the limits provided, the decision to implement a cross-shareholding is a decision of the respective board of directors.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Luxembourg has implemented directive 92/101/EEC which allows a certain level of cross-shareholding as long as none of the companies directly or indirectly holds a majority of the voting rights in the other or directly or indirectly exercises a dominant influence on the other. The criteria which determine when those situations arise are implemented from directive 92/101/EEC. Within the limits provided, the decision to implement a cross-shareholding is a decision of the respective board of directors.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input type="checkbox"/> Binding Rule
	<input type="checkbox"/> Non-binding Rule

3) **If this CEM is available, is it subject to any restrictions?**

Luxembourg has implemented directive 92/101/EEC which allows a certain level of cross-shareholding as long as none of the companies directly or indirectly holds a majority of the voting rights in the other or directly or indirectly exercises a dominant influence on the other. The criteria which determine when those situations arise are implemented from directive 92/101/EEC. Within the limits provided, the decision to implement a cross-shareholding is a decision of the respective board of directors.

Where there is a direct control cross-shareholding, i.e. where one company directly controls the other or directly exercises a significant influence on the other, the acquisition will be treated as an acquisition of treasury shares with all the corresponding obligations such as the 10% limit, the requirement for an authorization by the GMS and the suspension of the voting rights of the shares held by the direct subsidiary in the parent.

When there is an indirect control cross-shareholding, the voting rights held by the indirect subsidiary in the parent company are suspended.

Short form answer:

<input checked="" type="checkbox"/> The percentage of Cross-Shareholding is limited	Luxembourg has implemented directive 92/101/EEC which allows a certain level of cross-shareholding as long as none of the companies directly or indirectly holds a majority of the voting rights in the other or directly or indirectly exercises a dominant influence on the other. The criteria which determine when those situations arise are implemented from directive 92/101/EEC. Within the limits provided, the decision to implement a cross-shareholding is a decision of the respective Board of Directors.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

The decision to invest in another company is an autonomous decision by the board of directors. The decision to issue shares to such other company is a decision either of the shareholders' meeting or the board of directors by delegation of the shareholders' meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision for making investment <input checked="" type="checkbox"/> Upon authorization of the shareholders for issuing shares	<input type="checkbox"/> A specific committee needs to be involved <input type="checkbox"/> Approval of independent directors is required
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders For issuing shares	<input checked="" type="checkbox"/> Quorum: first call 50% of capital, 2 <sup>nd</sup> call: no quorum <input checked="" type="checkbox"/> Majority: 2/3s of votes expressed (in each case unless increased by articles)	If the shareholders may authorise the Board or the Chairman or GM to implement the CEM: <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): Five years from publication of the articles of incorporation if the power was contained therein at incorporation or five years from publication of the minutes of the EGM granting such authorization. <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed? The Luxembourg takeover law allows companies to elect to be subject to article 9.2, 9.3 and 11 of the Takeover directive as envisaged by article 12 of

		<p>the Takeover directive.</p> <p>The answer will therefore depend on (i) whether the company has elected to restrict the ability of the board to use the authorized share capital as referred to in article 9.2 of the Takeover directive or not, (ii) the terms of the authorization and (iii) whether the proposed share issuance meets the criteria referred to in article 9.2 of the Takeover directive.</p>
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Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Special report to shareholders, prepared by: General rules on limitation or suppression of preferential subscription rights against contribution in cash which require a board of Directors report, will apply. There are no specific rules dealing with the fact that these shares are to be issued in connection with a cross-shareholding.</p> <p><input checked="" type="checkbox"/> Statutory auditors need to be involved as follows: None except if issue against contribution in kind</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): A threshold crossing would need to be disclosed and even in the absence, in case the information is considered price sensitive.</p>	<p>Specific rights of minority shareholders when the CEM is implemented:</p> <p>None.</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

Any threshold crossing would need to be disclosed. Even in the absence of such a crossing, the information would need to be disclosed if it is considered price sensitive.

In addition the company would need to disclose its holdings in the other company in the annex to its accounts.

If the cross-shareholding participation was material it would need to be disclosed in the report referred to in article 10 of the Takeover directive.

Short form answer:

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Participation in other companies will need to be disclosed in accounts; report referred to in the Takeover directive. <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: <ul style="list-style-type: none"> <li>- announcement if price sensitive</li> <li>- disclosure in prospectus if material</li> <li>- threshold disclosure</li> </ul> <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Admission documentation</li> <li>- Annual Report</li> <li>- Article 10 Report</li> </ul>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

A challenge would again depend on circumstances, but the most likely possibility would be a majority abuse or that the cross-shareholding is against the corporate interest of the relevant company.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders, and	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders) <input checked="" type="checkbox"/> Such grounds are cumulative.
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## SHAREHOLDERS' AGREEMENTS

### 1) **Is this CEM available?**

There are to our knowledge only limited court cases in Luxembourg dealing specifically with shareholders' agreements. Luxembourg courts are also likely to consider precedents particularly in Belgium but also in France.

Belgian relevant precedents are those passed prior to amendments to Belgian legislation which specifically deal with shareholder agreements; Luxembourg company law does not contain any such specific provisions.

In summary, the principles resulting from Belgian precedents are that shareholder agreements are valid and binding to the extent they are not contrary to the interests of the relevant company and are limited in scope and/or in time. Subject to it complying with such conditions it is considered that a Luxembourg court would uphold a shareholder agreement and the existing rulings confirm that position. It is however not clear whether in case of a violation of the shareholder agreement, the Luxembourg courts would order specific performance in particular where the exercise of voting rights is concerned. It is generally held to be more likely that a Luxembourg court would only allocate damages.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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### 2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

There are to our knowledge only limited court cases in Luxembourg dealing specifically with shareholders' agreements. Luxembourg courts are also likely to consider precedents particularly in Belgium but also in France.

Belgian relevant precedents are those passed prior to amendments to Belgian legislation which specifically deal with shareholder agreements; Luxembourg company law does not contain any such specific provisions.

In summary, the principles resulting from Belgian precedents are that shareholder agreements are valid and binding to the extent they are not contrary to the interests of the relevant company and are limited in scope and/or in time. Subject to it complying with such conditions it is considered that a Luxembourg court would uphold a shareholder agreement and the existing rulings confirm that position. It is however not clear whether in case of a violation of the shareholder agreement, the Luxembourg courts would order specific performance in particular where the exercise of voting rights is concerned. It is generally held to be more likely that a Luxembourg court would only allocate damages.

Short form answer:

<input checked="" type="checkbox"/> Court Decisions
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**3) If this CEM is available, is it subject to any restrictions?**

There are to our knowledge only limited court cases in Luxembourg dealing specifically with shareholders' agreements. Luxembourg courts are also likely to consider precedents particularly in Belgium but also in France.

Belgian relevant precedents are those passed prior to amendments to Belgian legislation which specifically deal with shareholder agreements; Luxembourg company law does not contain any such specific provisions.

In summary, the principles resulting from Belgian precedents are that shareholder agreements are valid and binding to the extent they are not contrary to the interests of the relevant company and are limited in scope and/or in time. Subject to it complying with such conditions it is considered that a Luxembourg court would uphold a shareholder agreement and the existing rulings confirm that position. It is however not clear whether in case of a violation of the shareholder agreement, the Luxembourg courts would order specific performance in particular where the exercise of voting rights is concerned. It is generally held to be more likely that a Luxembourg court would only allocate damages.

The principle of Directors' independence must also be complied with.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	In accordance with article 12 of the Luxembourg law on takeovers implementing article 11 of the Takeover directive, for those companies that have voluntarily submitted to such rules.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

None.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: relevant shareholders	In Shareholders' Agreement
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Specific conditions: Mandatory Takeover: if the shareholders acting in concert hold voting rights representing 33 1/3% or more of total voting rights in the company excluding those securities which only have a voting right in particular situations.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Any listing prospectus would need to disclose the existence of shareholders' agreements of which the company is aware. In addition, the shareholders may be considered to be acting in concert and will therefore trigger a threshold disclosure obligation. The information to be disclosed would, to the extent that the company would know it, include the material provisions of the voting arrangements, the identity of the members to the shareholders arrangement and the number of votes they hold. In case of a threshold disclosure obligation only, the identity of the members of the concert would need to be disclosed together with the number of votes they hold after the crossing of the threshold. The report referred to in article 10 of the Takeover directive will require disclosure if the shareholders' agreement provides for restrictions to the transfer of shares or of voting rights in the meaning of the transparency directive.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: report referred to in the Takeover directive. <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: see above, a simple majority of the shares voting <ul style="list-style-type: none"> <li>- prospectus</li> <li>- threshold disclosure in case of concert</li> </ul> <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Admission documentation, if known to the company;</li> <li>- Annual Report, if known to the company;</li> <li>- Article 10 Report.</li> </ul>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The CEM could be challenged by the shareholders party to the agreement on the grounds that it represents a non valid contract or that breaches mandatory provisions of Company Law.

Short form answer: N/A.

**B – GENERAL BACKGROUND QUESTIONS****1) What are the rules for Board elections? How many corporate votes are required to appoint or remove corporate directors?**

The board of directors is appointed by the shareholders. In a dual structure the members of the management board are appointed by the supervisory board except where the articles give such power to the shareholders meeting. The members of the supervisory board are appointed by the shareholders meeting.

If the office of a member of any of the board of directors, the management board or the supervisory board becomes vacant, and unless the articles provide differently, the remaining directors, members of the management board or members of the supervisory board may appoint a replacement whose appointment is subsequently confirmed by the corporate body who is entitled generally to make the appointments.

Directors of the board of directors and supervisory board are removed without notice and at will (*ad nutum*) by the shareholders meeting. The members of the management board may be removed by the supervisory board and if the articles so provide by the shareholders meeting. This does not prevent them to entering into an employment agreement with the company.

It is generally considered that members of a board of directors may be revoked at any shareholders meeting. The same rule would apply to the management board and the supervisory board.

Voting on the election is without quorum and at simply majority of shares voting (unless articles would provide differently). In case of removal, there is no quorum and the decision must be approved by simple majority of the voting (without the articles being able to provide for a quorum or an increased majority).

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for Board election: see above, a simple majority of the shares voting. For Board removal: same as for election. Quorum required for shareholders' meetings proceeding with the election or removal of Board members: None.</p> <p><input checked="" type="checkbox"/> Specific mechanisms (such as cumulative voting) authorise minority shareholders to be represented at the board</p> <p>Cumulative voting (understood as the possibility for shareholders to group their votes on one candidate and having no further vote on the other candidates for directorships) should be admissible.</p> <p>There is no legal provision providing for a right of minority shareholders to be represented at the board, however articles could validly provide for this.</p> <p>Likewise article provisions that require for a certain number of independent directors would be valid.</p>	<p><input checked="" type="checkbox"/> Boards members may be revoked during any shareholders' meetings or only during certain shareholders' meetings or only if revocation is on the agenda → At any meeting</p> <p><input checked="" type="checkbox"/> Board members may always be removed without cause, without notice and without indemnity</p>
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<p><input checked="" type="checkbox"/> Electronic voting is authorized</p> <p>The law allows the articles of a company to provide that shareholders will be counted towards a quorum, those shareholders who attend via video conference or by other telecommunication means allowing their identification. These means must satisfy technical characteristics which ensure the effective participation to the meeting, whose deliberations must be online continuously.</p>	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened</p> <p>A shareholder or shareholders holding together 10% of the share capital (jointly) may require the board of directors, the management board or the supervisory board to convene a shareholders meeting with the agenda they indicate. Failure to convene is a criminal offense and gives rise to civil liability.</p> <p><input checked="" type="checkbox"/> Proxy solicitation is authorized.</p> <p>There are no rules governing proxy solicitation. It is unclear whether the shareholder register would be accessible to the person soliciting proxies.</p>
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**2) What shareholders' decisions require a vote from more than a simple majority?**

Subject to increased majority requirements in the articles, the following decisions require more than a simple majority:

- increase of share capital or creation of an authorized share capital;
- suspension or limitation of preferential subscription rights or authorization of the board to do the same;
- changes in the articles including change of corporate purpose;
- true mergers and divisions;
- solvent liquidation;
- transformation of the company into a company of a different form.

The above need to be submitted to an extraordinary shareholders meeting which at a first meeting needs to have an attendance of 50% of the share capital, no quorum being required at a second meeting. At either the first or the reconvened meeting the resolution, in order to be carried, needs to be adopted by 2/3s of the votes cast.

A change of the nationality of the company requires the unanimous consent of all shareholders.

No consent by shareholders is required for an issuance of bonds or other financial instruments which are not equity linked. It is also possible to issue equity linked instruments without shareholder consent but then the equity conversion or exchange feature will not be enforceable.

It is considered by doctrine and by legal literature and by certain court precedents that the sale of all or potentially all the assets would be tantamount to a liquidation and would therefore require a vote of the shareholders at the same quorum and majority requirement as a liquidation.

An acquisition of a company by a third party would not require an increased vote.

Short form answer:

<p><input checked="" type="checkbox"/> All changes in bylaws / articles of association</p> <p><input checked="" type="checkbox"/> Issuance of shares</p> <p><input checked="" type="checkbox"/> Mergers</p>	<p><input checked="" type="checkbox"/> Change of nationality of the company</p> <p><input checked="" type="checkbox"/> Change of corporate purpose</p> <p><input checked="" type="checkbox"/> Sale of all or substantially all the assets</p>
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Shareholders who are present or represented but do not participate or cast a blank vote are counted towards the quorum (if there is a quorum requirement) but are disregarded for the calculation of the vote.



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES: EXTERNAL  
STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

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**PROPORTIONALITY BETWEEN OWNERSHIP AND  
CONTROL IN EU LISTED COMPANIES:  
COMPARATIVE LEGAL STUDY**

**HUNGARY**

**Gárdos, Füredi, Mosonyi, Tomori**

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## MULTIPLE VOTING RIGHTS SHARES

### 1) Is this CEM available?

Under the 2006 Company Act, one type of the preference shares is the multiple voting rights share. The voting right attached to one share is determined by the articles of association; it may, however, not exceed ten times the voting rights corresponding to the face value of the share. In public companies the multiple voting rights shares have multiple votes only in cases where simple majority is required according to the law and/or the articles of association. The multiple voting rights shares cannot have other preferences.

Under the 1997 Company Act the provisions were less restrictive as multiple voting shares were not limited to simple majority vote questions and it could be combined with other preferences.

In practice there are multiple voting shares in public companies still operating under the 1997 Company Act with (i) 102 times voting power (where the 102 times votes shall also be taken into account in the calculation of the quorum) or (ii) a 50% plus one vote voting power to its holder. Further, there are multiple voting rights shares entitled to 10 times voting in a company already operating under the 2006 Company Act. These multiple voting rights shares are not listed, they are issued in a private issuance.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	<p>The voting power cannot exceed ten times the voting rights corresponding to the face value of the share, and unless it is issued before July 1, 2006, its use is limited to matters requiring simple majority voting.</p>
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The 2006 Company Act<sup>6</sup> expressly authorizes the issuance of multiple voting shares and provides for their terms. As Hungary has adopted a continental law system all the statutes are binding.

There are companies which issued multiple voting rights shares under the earlier Company Act, the 1997 Company Act<sup>7</sup>, or under the even earlier Company Act, the 1988 Company Act<sup>8</sup>. According to the transitory rules, the companies have to meet the requirements of the 2006 Company Act by 1 September 2007 at the latest.

As the 2006 Company Act came into force only a half-year ago and as many companies still operate under the 1997 Company Act, there are no significant court decisions. In Hungary there are no federal rules. The highest level of legislation is the acts issued by the parliament.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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### 3) If this CEM is available, is it subject to any restrictions?

As already noted above in Section 1, the voting rights attached to one share are determined by the articles of association; it may, however, not exceed ten times the voting rights corresponding to the face value of

<sup>6</sup> Act IV of 2006 on Business Associations, issued by the Hungarian Parliament.

<sup>7</sup> Act CXLIV of 1997 on Business Associations, issued by the Hungarian Parliament.

<sup>8</sup> Act VI 1988 on Business Associations, issued by the Hungarian Parliament.

the share. In public companies the multiple voting rights shares have multiple votes only in cases where simple majority is required according to the law and/or the articles of association.

According to the 2006 Company Act, a three-quarter majority decision is required for the following:

- approval and amendment of the articles of association, unless the law contains provisions to the contrary;
- transformation or termination of the company without succession;
- alteration of the rights attached to the different series of shares, and the conversion of categories or classes of shares;
- reduction of the share capital, unless the law contains provisions to the contrary;
- intervention in an imminent public takeover offer by, *e.g.*, increase of the share capital or acquisition of treasury shares.

In the case of public companies the multiple voting rights shares cannot have other preferences.

The minimum percentage of the common shares is 50% of the registered capital, that is, the other shares in total may represent only 50% of the registered capital. Within this, there is no further limitation for the maximum percentage of the preference shares.

The articles of association may provide the maximum voting power of each shareholder; this however cannot discriminate among the shareholders. The Company Act provides that according to the rules of the Capital Market Act<sup>9</sup>, this limitation terminates in the case of acquisition of 75% voting interest in a public tender. In the case of companies where the limitation was provided before August 3, 2001, the limitation terminates if the above conditions are met after January 1, 2010. According to the Capital Market Act, Hungary has opted for applying Breakthrough Rules only if the company has so provided in the articles of association. Therefore the Company Act and the Capital Market Act are not in harmony and the practice will decide on the interpretation of the Company Act in this regard.

According to the Capital Market Act the articles of association may provide that (i) at the general meeting of a company when deciding on a defensive act against a public takeover, the multiple voting rights shares lose their preference and/or (ii) at the first general meeting called by the tendered acquiring at least 75% voting interest, the multiple voting rights shares lose their preference. The owners of these shares shall become entitled to compensation for the loss of their rights when it occurs if upon acquisition of the multiple voting right shares they did not know and should not have known about the Breakthrough Rules.

It may also have a restrictive effect that for an increase or reduction of the share capital the consent of the holders of the types or classes of shares which are directly affected by the capital increase or reduction, or the holders of shares which the articles of association declare to be affected is required.

The concerned shareholder may not cast a vote when the resolution to be adopted concerns:

- the exemption of the shareholder from any obligation or responsibility;
- the provision of any advantage to the shareholder;
- the execution of an agreement with the shareholder;
- the commencement of any legal procedures against the shareholder;
- the creation or termination of a relationship with the shareholder and the determination of its content.

The 1997 Company Act did not restrain the use of multiple voting rights shares to simple majority questions and allowed the combination of various preferences. According to the transitory rules of the

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<sup>9</sup> Act CXX of 2001 on the Capital market, issued by the Hungarian Parliament.

2006 Company Act, the multiple voting rights shares issued earlier can keep their right to exercise multiple voting rights on supermajority vote questions as well. If however the shares were issued under the 1997 Company Act by providing for other preferences as well, the other preferences have to be terminated at the first general meeting after July 1, 2006 (the 2006 Company Act becoming effective), but at the latest by September 2007. The 1988 Company Act did not provide for any limitations on the preferences, the 1997 Company Act transitory rules allowed keeping the more than 10 times voting power, thus in practice there could be companies with more than 10 times voting power. As however the 2006 Company Act did not provide further transitory rules for keeping this power, the voting power of these shares has to be limited to 10 times voting power at the first general meeting after July 1, 2006 (the 2006 Company Act becoming effective), but at the latest by September 2007. This may raise problems as the rights may be modified only with  $\frac{3}{4}$  majority vote and the other shareholders may not be interested in accepting the change. The 2006 Company Act forces the modifications by providing that the companies who do not modify their deeds to meet the new requirements will be terminated by the registration court.

Short form answer:

<input checked="" type="checkbox"/> Maximum number of votes per share	The maximum level of voting rights to be exercised by a shareholder may not exceed ten times the voting rights corresponding to the face value of the share.
<input checked="" type="checkbox"/> Maximum percentage of Multiple Voting Rights Shares	A company may issue preference shares up to 50% of the registered capital.
<input checked="" type="checkbox"/> Loss of multiple voting rights in certain circumstances	The multiple voting rights share loses its preference in those matters when qualified majority voting is required, unless it is issued before July 1, 2007.
<input checked="" type="checkbox"/> Application of a Breakthrough Rule	The articles of association may provide that (i) at the general meeting of a company when deciding on a defense act against a public takeover, the multiple voting rights shares lose their preference and/or (ii) at the first general meeting called by the tenderer acquiring at least 75% voting interest, the multiple voting rights shares lose their preference
<input checked="" type="checkbox"/> Others	As the preference shares issued under the 1997 Company Act do not lose their preference, in practice there may be preference shares with different rights.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The shareholders, or based on the authorization of the general meeting, the board of directors, decide on the issuance of multiple voting rights shares.

The general meeting has a quorum if shareholders representing more than half of the shares having voting right is represented unless the articles of association provide either for a lower quorum in the case of matters falling under simple majority vote or for a higher quorum in any matter defined in the articles. If pursuant to the law or the articles of association a shareholder is not allowed to vote on a particular matter, he/she will be disregarded when determining the quorum as well. Unless the articles provide otherwise, if a general meeting has no quorum a second one shall be called with the same agenda and such meeting has quorum irrespective of the shares represented.

Multiple voting rights shares can be created by issuing shares or changing the terms attached to the shares. At the foundation of the company, the inaugural general meeting shall issue shares by adopting the articles of association with a three-quarter majority vote; the general meeting may however change the terms of the articles included in the foundation plan, only with unanimous vote of all subscribers. Unless the articles of association provide for a higher vote, issuance of shares by increasing the registered capital requires a vote for the decision by more than 50% of those who are present at the meeting and have voting rights. (It is noted that in Hungary the question is not tested whether abstention means vote against the decision or shall not be taken into account at all. We understand that the majority opinion is that in Hungary there is an enhanced simple majority requirement.) The capital increase can also be implemented by the board of directors based on the authorization provided in the articles of association determining the period (which is maximum five years) and the maximum amount of the capital increase.

As noted above, if the rights of other shareholders are affected by the issuance of new shares, their prior consent is required pursuant to the procedure provided in the articles of association. The articles of association may also determine which shares are affected by a capital increase.

Multiple voting rights shares may also be created by amending the rights attached to already issued shares. Such decision requires a three-quarter majority vote of the shares represented at the meeting and have voting rights. It is noted that under the 1997 Company Act any rights attached to a series of shares could be amended to their disadvantage only if it was also approved pursuant to the rules provided in the articles of association, by the series of shares affected with the modification. While this right has been taken away by the 2006 Company Act, if the company does not delete the term from the articles of association when amended to meet the requirements of the 2006 Company Act, it is arguable that the provision contained in the articles of association remain valid unless it is successfully challenged. In practice many articles of association contain this provision.

As a general rule any decision of the general meeting shall usually be made based on the proposal of the board of directors on the relevant matter, which is reviewed by the Supervisory board and, if it affects the financial situation of the company, by the auditor. The general meeting decision shall be published (in many cases in summary form) and submitted to the registration court. Issuance of shares are also specifically registered at the registration court and published in the official journal of the registration court. Public issuance of shares and other securities are also subject to prior approval of the Hungarian Financial Supervisory Authority (the authority responsible for the supervision of the financial and capital market entities) based on the prospectus prepared by the issuer and a publication of the invitation to the subscription for the securities. These rules are regulated by the Capital Market Act based on the EU 809/2004 Regulation. There are however no specific requirements compared to the above general rule in relation to the issuance of this CEM.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Upon authorization of the shareholders	
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<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: $\frac{1}{2}$ (No quorum requirement for the second call)  <input checked="" type="checkbox"/> Majority: $\frac{3}{4}$ or $\frac{1}{2}$ (Enhanced majority requirement, though no precedent yet)	If the shareholders may authorise the Board or the Chairman or GM to implement the CEM:  <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration):  For the term established in the articles of association, but maximum 5 years. Renewal is possible.  <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed?  The board cannot take any step against a takeover, thus in such case no capital increase as a defense may be carried out by the board.
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Specific conditions: None.

**5) Are there ongoing disclosure requirements regarding such CEM?**

There are no special disclosure requirements regarding multiple voting right shares according to Hungarian law. The rules on regular and extraordinary disclosure applicable to public company shall, of course, apply to the companies issuing multiple voting rights shares. As a result the issuance of the shares and any modification to the rights attached to the shares will be disclosed as extraordinary disclosure and the corporate structure will be reported in the regular half-yearly and yearly disclosures as well.

According to the Stock Exchange Rules, the listed companies shall make the regular and the extraordinary reporting to the Stock Exchange as well on, among others, change in the corporate structure of the company. Further the companies listed in category A (the category with the strictest rules) are required to provide to the Stock Exchange a quarterly report, including the most significant financial changes and all extraordinary reports as well.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Issuance of the shares and planned and executed modification of the rights attached to the share  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Issuance of the shares and planned and executed modification of the rights attached to the share
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The company is required to file its articles of association and any amendment thereof at the registration court, the Financial Supervisory Authority and the Stock Exchange. The data registered in the corporate extract held by the registration court, and certain additional information shall be published in the official journal of the registration court, and the company shall also be required to publish the information to be

disclosed as ordinary or extraordinary information to its shareholders at its website and/or a daily newspaper and the Stock Exchange website. The documentation to be submitted to the registration court, the Stock Exchange and the Financial Supervisory Authority includes the documentation on the general meeting, including the financial statements, the management report, the supervisory report, the minutes of the general meetings etc. These documents are available to the public both at the registration court, and in their published versions at the website of the company, and the Stock Exchange as well. According to our interpretation, Hungary officially did not implement Directive 2004/109/EC yet, though many of the provisions, except some of Article 10, are already required by the Capital Market Act, the 2006 Company Act and / or the Accounting Act.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

As a general rule any shareholder, any member of the board of directors or supervisory board member may request the judicial review of resolutions adopted by the general meeting of the company on the grounds that such resolution violates the provisions of the Company Act, other legal regulations, or the articles of association. If the decision is made by the board of directors, the right to challenge the resolution is limited to the shareholders. The right to lodge claims may not be validly excluded, but it cannot be exercised by shareholders who voted for the resolution adopted, except for cases of mistake, misrepresentation or duress. Also the 2006 Company Registry Act<sup>10</sup> provides for a judicial supervision proceeding in the event of unlawful operation. As the criteria for the challenge is violation of the law and/or the articles of association, if the issuance meets the requirements of the law and the articles of association, there is no valid basis of challenging the decision on the grounds that it is in the sole interest or against the interest of certain people.

There is a piercing the corporate veil provision as well stating that if the shareholders who adopted a resolution knew or should have known that such resolution would be clearly against the interest of a significant interest of the company, such shareholders shall have joint and unlimited liability to the company for this decision. Further, the board of directors has to act as is expected in the given situation from a person in such mandate. As a result, if board members act upon a delegation of power, they may be held liable if they misuse such power.

There are however no precedents on the piercing the corporate veil/board liability and therefore it cannot be estimated when a court would consider that a shareholder/a group of shareholders or the board of directors exercised its right against the interest of the company and the other shareholders.

If any provision of the articles of association is illegal or becomes illegal due to the change of law and the registration court has not refused the registration of the change of the articles of association, it is arguable that the illegal provision of the articles of association is valid until it is successfully challenged based on the following:

- According to the 2006 Company Act, articles of association cannot be declared void except for certain basic defaults listed in the law (e.g. the articles of association are not made with the required formalities, the persons establishing the company have no legal capability to do so, the articles of association do not contain the name, registered capital, main business activity of the company or the members interest, or the business activities or the registered capital of the company are against the law);
- According to the 2006 Company Registry Act, the general attorney and any person affected by a resolution of the registration court may challenge such resolution within 30 days from the publication of the resolution on registration. While the modifications themselves are not registered in the registration

<sup>10</sup> Act V of 2006 on Corporate Registration and its procedure and termination without legal succession, issued by the Hungarian Parliament.

court, the fact that the articles of association are modified is registered and there may be certain data in the articles of association which are specifically registered (e.g. registered capital, numbers and types of shares, members of the board of directors, business activities, etc).

- Further as provided in the 2006 Company Registry Act, any provision of the articles of association which do not fall under the above mentioned can be challenged based on the general civil law rules of the Hungarian Civil Code (e.g. voidance, mistake, duress) within 6 months from the adoption of the illegal provision by any person who is affected by the illegal provision.

- Further as a transitory rule to the 2006 Company Act, the companies are required to modify their articles of association pursuant to the new legal requirements by the latest September 1, 2007. The act provides that if a company does not modify its articles within the deadline, it shall be terminated by the registration court. The law does not regulate what happens if a company modifies its articles of association but not in all respects. We are of the opinion that if the registration court accepts the modifications made pursuant to the 2006 Company Act, it later cannot by referring to the provision of the 2006 Company Act order that the company be terminated if the modified articles of association include illegal provisions; it may only initiate a supervisory procedure.

Based on the above, it is arguable that after the 30 days or six months from the adoption of the illegal provision such provision cannot be challenged and thus the shareholders are bound by the illegal provision. If, however, the resolution means maintenance of an illegal situation, the registration court may initiate a so-called supervisory review procedure even after the 30 days or six months, in which procedure it can order the company to terminate the illegal situation and if the company fails to meet the requirement it can terminate the company. We are of the opinion that until the company terminates the illegal status, the company is bound by that illegal resolution. There are however Supreme Court judges' opinion that the company's illegal resolutions do not bind the company.

Thus based on the above mentioned, the decision implementing the CEM can be challenged if that is in the sole interest of the management or if that is in the sole interest of the majority shareholder, or if that is against the corporate interest, as the shareholders and the board of directors when they shall act for the benefit of the company. Further, if the resolution affects the interest of the shareholders as a general group negatively, it is also arguable that even if it were irrelevant to the corporate interest, the decision can be challenged as the basic purpose of the company is to operate to earn profit to its shareholders.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders)
	<input checked="" type="checkbox"/> Such grounds are alternative.

## NON-VOTING SHARES

**1) Is this CEM available?**

Shares without voting rights and special cash-flow rights to compensate for the absence of the voting rights are not provided for by Hungarian law.

A company may issue registered bonds which may be converted to shares on demand of their holder (convertible bonds). Also a company may issue registered bonds which embody the right of subscription of shares of the company upon increase of capital (bonds with subscription rights). The holder of the bonds is not a shareholder and thus it has no voting rights; it may have however the same economic benefit in the form of interest as a shareholder has in the form of dividend. Therefore we consider issuing of convertible bonds or bonds with subscription right the closest to the rights attached to a non-voting share.

Both types of bonds were regulated by the earlier Company Act of 1997 in the same manner.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Act IV of 2006 on Business Associations (2006 Company Act) expressly prohibits the issuance of shares with no voting rights if there is no compensation for the absence thereof.

The 2006 Company Act regulates the issue of the convertible bonds and bonds with subscription rights.

As Hungary has adopted a continental law system all the statutes are binding.

As the 2006 Company Act is in force only for a half-year and as many companies still operate under the 1997 Company Act there are no significant court decisions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**3) If this CEM is available, is it subject to any restrictions?**

There are no non-voting shares. In the following we analyze the bond issue:

A company may issue convertible bonds and bonds with subscription rights up to 50% of the registered capital.

If rights of certain shareholders are affected by the issuance of new shares (at conversion or by the subscription of shares by the holder of bonds when increasing the capital) their prior consent is required pursuant to the procedure provided in the articles of association for the capital increase issuing the new shares.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

There are no non-voting shares. In the following we analyze the bond issue:

The shareholders, or based on the authorization of the general meeting, the board of directors, can decide on the issuance of convertible bond or bonds with subscription rights. The terms of the bond and all other relevant regulation shall be laid down by the articles of association.

The general meeting has a quorum if shareholders representing more than half of the shares having voting rights are represented unless the articles of association provide either for a lower quorum in the case of matters falling under simple majority vote or for a higher quorum in any matter defined in the articles. If pursuant to the law or the articles of association a shareholder is not allowed to vote on a particular matter, he/she will be disregarded when determining the quorum as well. Unless the articles provide otherwise, if a general meeting has no quorum a second one shall be called with the same agenda and such meeting has quorum irrespective of the shares represented.

If a bond is issued at the foundation of the company, the inaugural general meeting shall issue bonds by adopting the articles of association with a three-quarter majority vote; the general meeting may however change the terms of the articles included in the foundation plan, only with unanimous vote of all subscribers.

If bonds are issued later, the issuance and the conditional increase of the registered capital are subject to a simple majority vote of the shares represented at the meeting and having voting rights, or the decision of the board of directors based on the authorization provided by the general meeting.

As noted above, if rights of other shareholders are affected by the conditional capital increase attached to the issuance of convertible bonds their prior consent is required pursuant to the procedure provided in the articles of association.

In practice there are articles of association allowing the issuance or providing for the issuance of convertible bonds. These bonds are in many cases used for corporate management incentive plans due to their preferential tax treatment.

Specific conditions: N/A.

**5) Are there ongoing disclosure requirements regarding such CEM?**

As there are no non-voting shares, there cannot be disclosure requirements on it. In the following we note the disclosure requirements on the corporate bonds:

The rules on regular and extraordinary disclosure applicable to public company shall, of course, apply to the companies issuing convertible bonds and/or bonds with subscription rights. As a result the issuance of the bond, the capital increase at its conversion or at the exercise of the subscription will be disclosed as extraordinary disclosure and the corporate structure will be reported in the regular disclosures as well.

Short form answer: N/A.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

There are no non-voting right shares. If such shares were issued it could be challenged for violating the law according to the following. The following procedure applies to decision on bonds as well if their issuance violates the law:

As a general rule any shareholder, any member of the board of directors or supervisory board member may request the judicial review of resolutions adopted by the general meeting of the company on the grounds that such resolution violates the provisions of the Company Act, other legal regulations, or the

articles of association. If the decision is made by the board of directors, the right to challenge the resolution is limited to the shareholders. The right to lodge claims may not be validly excluded, but it cannot be exercised by shareholders who voted for the resolution adopted, except for cases of mistake, misrepresentation or duress. Also the 2006 Company Registry Act provides for a judicial supervision proceeding in the event of unlawful operation. As the criteria for the challenge is violation of the law and/or the articles of association, if the issuance meets the requirements of the law and the articles of association, there is no valid basis for challenging the decision on the grounds that it is in the sole interest or against the interest of certain people.

There is a piercing the corporate veil provision as well stating that if the shareholders who adopted a resolution knew or should have known that such resolution would be clearly against the interest of a significant interest of the company, such shareholders shall have joint and unlimited liability to the company for this decision. Further, the board of directors has to act as is expected in the given situation from a person in such mandate. As a result, if board members act upon a delegation of power, they may be held liable if they misuse such power. There are however no precedents on the piercing the corporate veil/board liability and therefore it cannot be estimated when a court would consider that a shareholder/a group of shareholders or the board of directors exercised its right against the interest of the company and the other shareholders.

If illegal issuance of the shares is not challenged pursuant to the above mentioned and it is registered in the registration court, by providing for the issuance of the shares and modification of the articles of association it is arguable that the illegal provision of the articles of association is valid until it is successfully challenged based on any of the following:

According to the 2006 Company Act, articles of association cannot be declared void except for certain basic defaults listed in the law (e.g. the articles of association are not made with the required formalities, the persons establishing the company have no legal capability to do so, the articles of association do not contain the name, registered capital, main business activity of the company or the members interest, or the business activities or the registered capital of the company are against the law);

- According to the 2006 Company Registry Act, the general attorney and any person affected by a resolution of the registration court may challenge such resolution within 30 days from the publication of the resolution on registration. While the modifications themselves are not registered in the registration court, the fact that the articles of association are modified is registered and there may be certain data in the articles of association which are specifically registered (e.g. registered capital, numbers and types of shares, members of the board of directors, business activities, etc).

- Further, as provided in the 2006 Company Registry Act, any provision of the articles of association which do not fall under the above mentioned can be challenged based on the general civil law rules of the Hungarian Civil Code (e.g. voidance, mistake, duress) within 6 months from the adoption of the illegal provision by any person who is affected by the illegal provision.

Based on the above, it is arguable that after the 30 days or six months from the adoption of the illegal provision such provision cannot be challenged and thus the shareholders are bound by the illegal provision.

If however the resolution means maintenance of an illegal situation, the registration court may initiate a so-called supervisory review procedure even after the 30 days or six months, in which procedure it can order the company to terminate the illegal situation and if the company fails to meet the requirement it can terminate the company. We are of the opinion that until the company terminates the illegal status, the company is bound by that illegal resolution. There are however Supreme Court judges' opinions that the company's illegal resolutions do not bind the company.

Thus based on the above mentioned, the decision implementing the CEM can be challenged if that is in the sole interest of the management or if that is in the sole interest of the majority shareholder, or if that is

against the corporate interest, as the shareholders and the board of directors when they shall act for the benefit of the company. Further, if the resolution affects the interest of the shareholders as a general group negatively, it is also arguable that even if it were irrelevant to the corporate interest, the decision can be challenged as the basic purpose of the company is to operate to earn profit to its shareholders.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders)
	<input checked="" type="checkbox"/> Such grounds are alternative.

## NON-VOTING PREFERENCE SHARES

**1) Is this CEM available?**

Under the 2006 Company Act the articles of association may provide for the limitation or the exclusion of voting rights of preference shares having dividend or liquidation preference or a combination of these. Dividend preference shares entitle their holders to higher dividend than and/or prior distribution to other shareholders. Liquidation preference shares gives preference in asset distribution at termination of the company without succession. The limitation on the voting of these preference shares can be provided for a defined period or for the whole life of these shares, that is, without limitation in time. Hungarian law does not however know the concept of authorized capital. In Hungary the registered capital is equal to the aggregate nominal value of the shares issued by the company.

Among the companies listed, one company has listed non-voting dividend preference shares. In some other listed companies although there are non-voting dividend preference shares issued, they are not listed.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Limitation or exclusion of the voting rights concerning dividend and/or liquidation preference shares.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Act IV of 2006 on Business Associations (2006 Company Act) expressly authorizes the issuance of certain preference shares without voting rights.

As Hungary has adopted a continental law system all the statutes are binding.

As the 2006 Company Act is in force only for a half-year and as many companies still operate under the 1997 Company Act there are no significant court decisions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**3) If this CEM is available, is it subject to any restrictions?**

As mentioned in section 1) above, the exclusion of the voting rights may only be applied to dividend preference shares and liquidation preference shares or the combination of these. As a general restriction the minimum percentage of common shares shall be 50% of the registered capital, all other types and classes of shares may not exceed in total 50% of the registered capital.

In the case of dividend preference shares, if the dividends are not paid in any year and it is not remedied in the following year, the voting rights shall be reinstated until the overdue dividends are not paid.

The exclusion or limitation of voting rights shall not apply when the general meeting adopts any decision against an on-going takeover attempt. Further, according to the breakthrough provisions of the Capital Market Act, if the articles of association so provide the exclusion or limitation of voting rights, unless that is provided as consideration for certain preference, shall not apply at the first general meeting after a successful takeover as a result of which a shareholder acquired a 75% voting interest. Though the

wording of the provision is ambiguous, as the non-voting preference shares have consideration for loss of the voting right, the above breakthrough provision does not apply in their case.

If the rights of the holders of any types of shares are affected, for a capital increase their prior consent is required pursuant to the procedure provided in the articles of association. A similar rule applies for the decrease of the registered capital. In the practice there are different solutions in the articles of association whether this consent is to be exercised at or prior to the general meeting and whether this provision requires actual consent of the affected shareholders or an implied one, that is, the shareholder is assumed to approve the decision if the shareholder does not protest against the notice on the planned capital increase or decrease. (It is noted that while in the case of capital decrease the 2006 Company Act expressly states that the limitations on the voting power do not apply, this sentence is left out from the same provision for the capital increase. We however believe that the above rule implies that in this decision limitation on the voting power does not apply. As however there is no precedent yet, there is some risk that the court would accept a different interpretation.)

It is noted that under the 1997 Company Act any rights attached to a series of shares could be amended to its disadvantage only if it was also approved, pursuant to the rules provided in the articles of association, by the series of shares affected with the modification. While this right has been taken away by the 2006 Company Act, if the company does not delete the term from the articles of association when amended to meet the requirements of the 2006 Company Act, it is arguable that the provision contained in the articles of association remain valid until it is successfully challenged. In practice many articles of association contain this provision.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Non-voting Preference Shares	The minimum percentage of common shares shall be 50% of the registered capital therefore all other types of shares shall not exceed 50% of the registered capital. The exclusion of voting rights may apply only to dividend and/or liquidation preference shares.
<input checked="" type="checkbox"/> Reinstatement of voting rights in certain circumstances	If the dividends are not paid in any year and it is not remedied in the following year, the voting rights shall be reinstated until the overdue dividends are not paid.  When the increase/reduction of the capital affects the rights of the holders of these preference shares, the consent of the holders of these shares is required.
<input checked="" type="checkbox"/> Application of a Breakthrough Rule	As a mandatory rule of the 2006 Company Act, when the general meeting decides to take any defensive step against a takeover, the limitation of voting rights shall not apply.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The shareholders, or based on the authorization of the general meeting, the board of directors, decide on the issuance of non-voting preference shares.

The general meeting has a quorum if shareholders representing more than half of the shares having voting rights are represented, unless the articles of association provide either for a lower quorum in the case of

matters falling under simple majority vote or for a higher quorum in any matter defined in the articles. If pursuant to the law or the articles of association a shareholder is not allowed to vote on a particular matter, he/she will be disregarded when determining the quorum as well. Unless the articles provide otherwise if a general meeting has no quorum a second one shall be called with the same agenda and such meeting has quorum irrespective of the shares represented.

Non-voting preference shares can be created by issuing shares or changing the terms attached to the shares. At the foundation of the company, the inaugural general meeting shall issue shares by adopting the articles of association with a three-quarter majority vote. The general meeting may however change the terms of the articles included in the foundation plan, only with a unanimous vote of all subscribers. When the shares are issued by increasing the registered capital, the law allows decision with a simple majority vote of the shares represented at the meeting and having voting rights. The capital increase can also be implemented by the board of directors based on the authorization provided in the articles of association determining the period (which is maximum five years) and the maximum amount of the capital increase.

As noted above, if rights of other shareholders are affected by the issuance of new shares their prior consent is required pursuant to the procedure provided in the articles of association. The articles of association may also determine which shares are affected by a capital increase.

Non-voting preference shares may also be created by amending the rights attached to already issued shares. Such decision requires a three-quarter majority vote of the shares represented at the meeting and have voting rights.

As a general rule any decision of the general meeting shall usually be made based on the proposal of the board of directors on the relevant matter, which is reviewed by the supervisory board and if its affects the financial situation of the company by the auditor. The general meeting decision shall be published (in many cases in summary form) and submitted at the registration court. Issuance of shares are also specifically registered at the registration court and published in the official journal of the registration court. Public issuance of shares and other securities are also subject to prior approval of the Hungarian Supervisory Authority based on the prospectus prepared by the issuer and a publication of the invitation to the subscription for the securities. These rules are regulated by the Capital Market based on the EU 809/2004 Regulation. There are however no specific requirements compared to the above general rule in relation to the issuance of this CEM.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Upon authorization of the shareholders	
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<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 1/2 (No quorum requirement for the second call)  <input checked="" type="checkbox"/> Majority: 3/4 or 1/2 (Enhanced majority requirement, though no precedent yet)	If the shareholders may authorise the Board or the Chairman or GM to implement the CEM:  <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration)?  Established in the articles of association, but maximum 5 years. Renewal is possible.  <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed?  The board cannot take any step against a takeover, thus in such case no capital increase as a defense may be carried out by the board.
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Specific conditions: None.

**5) Are there ongoing disclosure requirements regarding such CEM?**

There are no special disclosure requirements regarding non-voting preference shares according to Hungarian law. The rules on regular half-yearly and yearly disclosure rules and extraordinary disclosure rules applicable to public company shall, of course, apply to companies issuing voting preference shares. As a result the issuance of the shares and any modification to the rights attached to the shares will be disclosed as extraordinary disclosure and the corporate structure will be reported in the regular disclosures as well.

According to the Stock Exchange Rules, the listed companies shall make the regular and the extraordinary reporting to the Stock Exchange as well on, among other things, changes in the corporate structure of the company. Further, the companies listed in category A (the category with the strictest rules) are required to provide a quarterly report to the stock exchange, including the most significant financial changes and all extraordinary reports as well.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis Issuance of the shares and planned and executed modification of the rights attached to the share  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Issuance of the shares and planned and executed modification of the rights attached to the share
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The company is required to file its articles of association and any amendment thereof at the registration court, the Financial Supervisory Authority and the Stock Exchange. The data registered in the corporate extract held by the registration court, and certain additional information shall be published in the official journal of the registration court, and the company shall also be required to publish the information to be

disclosed as ordinary or extraordinary information to its shareholders at its website and/or in a daily newspaper and on the Stock Exchange website. The documentation to be submitted to the registration court, the Stock Exchange and the Financial Supervisory Authority includes the documentation on the general meeting, including the financial statements, the management report, the supervisory report, the minutes of the general meetings etc. These documents are available to the public both at the registration court, and in their published versions at the website of the company, and the Stock Exchange as well. According to our interpretation Hungary officially did not implement Directive 2004/ 109/EC yet, though many of the provisions, except some of Article 10, are already required by the Capital Market Act, the 2006 Company Act and/or the Accounting Act.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

As a general rule any shareholder, any member of the board of directors or supervisory board member may request the judicial review of resolutions adopted by the general meeting of the company on the grounds that such resolutions violate the provisions of the Company Act, other legal regulations, or the articles of association. If the decision is made by the board of directors, the right to challenge the resolution is limited to the shareholders. The right to lodge claims may not be validly excluded, but it cannot be exercised by shareholders who voted for the resolution adopted, except for cases of mistake, misrepresentation or duress. Also the 2006 Company Registry Act, provides for a judicial supervision proceeding in the event of unlawful operation. As the criteria for the challenge is violation of the law and/or the articles of association, if the issuance meets the requirements of the law and the articles of association, there is no valid basis of challenging the decision on the grounds that it is in the sole interest or against the interest of certain people.

There is a piercing the corporate veil provision as well stating that if the shareholders who adopted a resolution knew, or should have known, that such resolution would be clearly against the interest of a significant interest of the company, such shareholders shall have joint and unlimited liability to the company for this decision. Further, the board of directors has to act as is expected in the given situation from a person in such mandate. As a result, if board members act upon a delegation of power, they may be held liable if they misuse such power.

There are however no precedents on the piercing the corporate veil/board liability and therefore it cannot be estimated when a court would consider that a shareholder/a group of shareholders or the board of directors exercised its right against the interest of the company and the other shareholders.

If any provision of the articles of association is illegal or becomes illegal due to the change of law and the registration court has not refused the registration of the change of the articles of association, it is arguable that the illegal provision of the articles of association is valid until it is successfully challenged based on the following:

- According to the 2006 Company Act, articles of association cannot be declared void except for certain basic defaults listed in the law (e.g. the articles of association are not made with the required formalities, the persons establishing the company have no legal capability to do so, the articles of association do not contain the name, registered capital, main business activity of the company or the members interest, or the business activities or the registered capital of the company are against the law).

- According to the 2006 Company Registry Act the general attorney and any person affected by a resolution of the registration court may challenge such resolution within 30 days from the publication of the resolution on registration. While the modifications themselves are not registered in the registration court, the fact that the articles of association are modified is registered and there may be certain data in the articles of association which are specifically registered (e.g. registered capital, numbers and types of shares, members of the board of directors, business activities, etc).

- Further as provided in the 2006 Company Registry Act any provision of the articles of association which do not fall under the above mentioned can be challenged based on the general civil law rules of the Civil Code (e.g. voidance, mistake, duress) within 6 months from the adoption of the illegal provision by any person who is affected by the illegal provision.

- Further as a transitory rule to the 2006 Company Act, the companies are required to modify their articles of association pursuant to the new legal requirements by the latest September 1, 2007. The act provides that if a company does not modify its articles within the deadline, it shall be terminated by the registration court. The law does not regulate what happens if a company modifies its articles of association but not in all respects. We are of the opinion that if the registration court accepts the modifications made pursuant to the 2006 Company Act, it later cannot by referring to the provision of the 2006 Company Act, order that the company be terminated if the modified articles of association include illegal provisions; it may only initiate a supervisory procedure.

Based on the above, it is arguable that after the 30 days or six months from the adoption of the illegal provision, such provision cannot be challenged and thus the shareholders are bound by the illegal provision. If however the resolution means maintenance of an illegal situation, the registration court may initiate a so-called supervisory review procedure even after the 30 days or six months, in which procedure it can order the company to terminate the illegal situation and if the company fails to meet the requirement it can terminate the company. We are of the opinion that until the company terminates the illegal status, the company is bound by that illegal resolution. There are however Supreme Court judges' opinions that the company's illegal resolutions do not bind the company.

Thus based on the above mentioned, the decision implementing the CEM can be challenged if that is in the sole interest of the management or if that is in the sole interest of the majority shareholder, or if that is against the corporate interest, as the shareholders and the board of directors when they shall act for the benefit of the company. Further, if the resolution affects the interest of the shareholders as a general group negatively, it is also arguable that even if it were irrelevant to the corporate interest, the decision can be challenged as the basic purpose of the company is to operate to earn profit to its shareholders.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders)
	<input checked="" type="checkbox"/> Such grounds are alternative.

## PYRAMID STRUCTURES

1) **Is this CEM available?**

Pyramid structures are allowed in Hungary. A company may be established only for the purpose of holding of other interests. Under the 2006 Company Act, holding structures may establish a so-called controlling agreement (in Hungarian: *uralmi szerződés*) allowing the group to ignore the corporate veil provisions at the subsidiary level. As the 2006 Company Act is very recent, there is no practice yet on the operation of the controlling agreements.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Act IV of 2006 on Business Associations (2006 Company Act) regulates the so-called controlling agreements and provides that any entity having controlling interest pursuant to the accounting rules may enter into an agreement with its subsidiaries to operate as an acknowledged corporate group where there is no piercing the corporate veil risk if the mother company manages the subsidiary for the interest of the whole group instead of its own interest. The limitation on the shareholder rights in the subsidiaries are regulated in the controlling agreements. The draft agreement shall be adopted by simple majority voting of the shares represented at the general meeting and having voting right unless the articles provide for a higher voting or authorizes the board of directors to execute such agreement. (It is noted that in Hungary the question is not tested whether abstention means vote against the decision or shall not be taken into account at all. We understand that the majority opinion is that in Hungary there is enhanced simple majority requirement.)

The agreement shall provide, among others, the rules for the cooperation within the group and the balanced operation of the corporate group to take into account the interest of the minority shareholders in the subsidiaries as well. Dividend distribution at the subsidiaries can be performed from the profit and profit reserves of the mother entity as well. The agreement shall be published and there must be an employee consultation before it is executed. Within 30 days from the first publication, creditors may request security from the mother entity unless their claim is already secured, and the minority owners may request the purchase of their shares at market value but at least at the *pro rata* equity of the company. The final agreement shall be adopted by a three quarter majority vote of the general meeting of the companies participating in the agreement. The corporate group can start its operation as an acknowledged corporate group from the registration of the final agreement at the registration court.

As the earlier law prohibited that one member company be sole owner of a company, the 2006 Company Act expressly states that one member companies may establish other one member companies.

As the 2006 Company Act is in force only for a half-year and as many companies still operate under the 1997 Company Act there are no significant court decisions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> General principle of contractual freedom	

**3) If this CEM is available, is it subject to any restrictions?**

Unless the companies agree on a so-called control agreement the pyramid structure does not terminate the obligation of the controlling entity to act for the benefit of the relevant controlled entity when it exercises its shareholder rights. In the case of violation of this rule it will have unlimited liability for the obligations of the subsidiary under the piercing-the-corporate-veil rule. Further a public tender offer has to be made pursuant to the Capital Market Act in the case of acquisition in a public company of an interest as a result of which the entity shall hold alone or with others with whom it is acting in concert (i) more than 33% voting interest, or (ii) if none of the other shareholders exceeds 10% voting interest, more than 25% voting interest.

In the case of acquisition of a 75% voting interest, the breakthrough provisions start to apply under the Capital Market Act and under the Company Act.

The Company Act provides that in the case of acquisition as a result of a public takeover of more than 75% voting interest, the limitation on voting ceilings does not apply pursuant to the rules of the Capital Market Act. If a company regulated this limitation before the 2006 Company Act, it shall follow the above rule on losing the voting ceiling as of January 1, 2010.

Under the Capital Market Act the following breakthrough shall apply:

- if the company's articles so provide during the time allowed for acceptance of the bid:
  - a) any restrictions on the transfer of securities provided for in the articles of association shall not apply *vis-à-vis* the offeror; and
  - b) any restrictions on the transfer of securities provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the adoption of the amendment of the articles of association accordingly, shall not apply *vis-à-vis* the offeror.

The provisions provided above shall not apply where the public takeover bid for the acquisition of a participating interest in the offeree company is launched a) by a company that does not apply similar regulations when it is itself being the target of a takeover bid; or b) by a company that is controlled, directly or indirectly, by the company referred to in a).

- at the general meeting of shareholders which decides on any defensive measures:
  - a) restrictions on voting rights provided for in the articles of association of the offeree company shall not have effect, unless the restrictions on voting rights are compensated for by specific pecuniary advantages;
  - b) restrictions on voting rights provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the amendment of the articles of association accordingly, shall not have effect, unless the restrictions on voting rights are compensated for by specific pecuniary advantages; and
  - c) multiple-vote securities shall carry only one vote each, unless it is provided as equitable compensation for any loss suffered by the holders of some other rights.

The provisions provided above shall not apply where the public takeover bid for the acquisition of a participating interest in the offeree company is launched a) by a company that does not apply similar regulations when it is itself being the target of a takeover bid; or b) by a company that is controlled, directly or indirectly, by the company referred to in a).

- where, following a bid, the offeror holds 75% or more of the capital carrying voting rights, the offeror shall have the right to convene a general meeting of shareholders of the offeree company in order to amend the articles of association or to remove or appoint board members and supervisory board members, and at the general meeting;
  - a) the restrictions referred to in Subsections (1) and (2) of Section 76 of the Capital Market Act (it is noted that the act refers to the sections stated above, but we understand that this is a typo and the law should refer to the above mentioned limitations on the voting rights and on the application of the multiple voting rights) or any extraordinary rights of shareholders concerning the appointment or removal of board members and supervisory board members shall not apply; and
  - b) multiple-vote securities shall carry only one vote each, unless it is provided as equitable compensation for any loss suffered by the holders of some other rights.

In compensation for the right to call the general meeting the shareholders shall have the right of sell-out *vis-à-vis* the offeror, which may be exercised within 90 days from the date of publication of the acquisition of seventy-five percent of the voting rights. The shareholders exercising their right of sell-out shall offer their shares at the price quoted in the takeover bid. If any shareholder convening the general meeting has purchased any shares during the past period at a higher price, the shares shall be offered at that price.

The provisions shall not apply where the public takeover bid for the acquisition of a participating interest in the offeree company is launched a) by a company, or a Company Acting in concert, that does not apply similar regulations when it is itself being the target of a takeover bid; or b) by a company that is controlled, directly or indirectly, by the company referred to in a).

Where a holder of preference shares with priority rights did not or could not have had knowledge of the potential restriction as specified above of the voting rights carried by such securities at the time the shares were acquired, and the shareholder suffered any loss in consequence, the offeror or the person or body carrying out the breakthrough shall be liable to pay compensation to the shareholder affected. The minimum amount of compensation shall be fixed in the articles of association of the offeree company. The minimum amount of compensation per share specified in the articles of association may not exceed the value of the common share of the offeree company multiplied by the number of voting rights the preference share carries. The tender offer may, of course, offer higher than the minimum amount. The compensation shall be paid by the offeror in money, not later than by the eighth working day preceding the date of the general meeting convened according to the Breakthrough Rules.

The Capital Market Act further provides the following options in relation to the public tender, regardless whether that is mandatory or voluntarily made:

- If the offeror a) declared his intention to exercise his purchase option in the application for approval of the bid; b) has acquired ninety percent or more of the voting rights within three months from the date of closure of the successful bid in the offeree company; and c) is able to verify having sufficient financial means to cover the purchase of the securities to which his option pertains, he may exercise his option to purchase within three months from the date of closure of the bid the remaining shares of the offeree company.

The offeror shall notify the Financial Supervisory Authority within the deadline provided above and shall simultaneously publish notice of its intention to exercise the purchase option. The price payable for the shares obtained by way of exercising the purchase option shall be the price quoted in the bid or the amount of equity capital per share, whichever is higher. Equity capital means the own funds shown in the last audited annual report, with the exception that if the issuer is required to file

consolidated annual reports in accordance with the Accounting Act<sup>11</sup>, equity capital means the consolidated own funds.

- If the offeror's holding in the offeree company exceeds 90% of the voting rights when closing out the takeover bid, the offeror must purchase the remaining shares if so requested in writing by the owners of these shares within ninety days following the day on which the notice was published for the notification of the acquisition of ninety percent of the voting rights. The minimum amount of consideration payable under such purchase obligation shall be the price quoted in the bid or the amount of equity capital per share, whichever is higher.

If the acquisition of interest is made in a company whose shares are not issued to the public (closed company), instead of the takeover rules, the concern rules of the 2006 Company Act apply. According to the concern rules any person directly or indirectly acquiring 75% voting power in a closed company shall report it to the company and the registration court. With respect to the term of indirect interest, the 2006 Company Act refers to the Civil Code. The Civil Code does not regulate 75% interest but majority interest; it provides that a majority interest exists via (i) having more than 50% voting interest (ii) having right to elect and/or remove the majority of the managers or (iii) having an agreement with other members of the company to exercise more than 50% of the voting right. There is an indirect interest if these rights are ensured through intermediaries, and in the case of voting right the different voting rights are multiplied up to 50% and calculated with 100% above 50%. The minority shareholders have a put option right to sell their shares to the controlling entity within 60 days from the publication of the controlling interest at market value at the time of exercising the put option but at least at the *pro rata* equity unless the option right is excluded in the articles of association with a unanimous decision of the shareholders.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	<p>The Breakthrough Rules of the Capital Market Act apply only if the articles of association so provide and the acquirer has the same breakthrough limitations in its own country.</p> <p>The Breakthrough Rules of the Company Act may apply depending on its interpretation which is not tested yet.</p>
<input checked="" type="checkbox"/> Others	<p>The concern rule or the so-called controlling agreement may apply.</p>

**4) Who decides whether this CEM should be implemented, and under what conditions?**

There are no specific rules on who decides upon acquisition of any interest in any company. Therefore it can be decided by the management of the company unless the articles of association provide that acquisition of a corporate interest (e.g. any interest, or a controlling interest or an interest above a certain value) is within the exclusive competence of either (i) the board of directors or (ii) the general meeting.

In practice, in several companies investment in other companies and/or investment above a certain threshold is within the competence of the general meeting. Many articles of association, if they provide detailed rules on the competence of the board of directors, provide that investment in other companies are within the competence of the board of directors or within the competence of the general meeting.

Short form answer: N/A.

Specific conditions: None.

<sup>11</sup> Act C of 2000 on Accounting, issued by the Hungarian Parliament.

**5) Are there ongoing disclosure requirements regarding such CEM?**

In the case of public companies, pursuant to the Capital Market Act acquisition of 5% and then any further 5% voting interest until 50%, than at 75%, 80%, 85% and 90% and then each additional 1 percent is subject to reporting to the company and the Financial Supervisory Authority. If the articles of association of the relevant company so provide the disclosure starts at achieving 2% voting interest. Non-reporting has a consequence that the voting interest not reported cannot be exercised. The company in which the acquisition of interest regulated in the Capital Market Act takes place shall publish it as extraordinary information. In its regular half-yearly and yearly disclosures, the company shall also report on its shareholders as part of its corporate structure.

According to the Stock Exchange Rules the listed companies shall make the regular and the extraordinary reporting to the Stock Exchange as well on, among others, change in the corporate structure of the company. Further the companies listed in category A (the category with the strictest rules) are required to provide to the Stock Exchange quarterly report, including the most significant financial changes and all extraordinary reports as well.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: The company shall describe its corporate structure in its regular half-yearly and yearly disclosures.  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: The company shall publish acquisition in it of acquisition of 5% and then any further 5% voting interest until 90% and then each additional one percent.
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The company is required to file its articles of association and any amendment thereof at the registration court, the Financial Supervisory Authority and the Stock Exchange. The data registered in the corporate extract held by the registration court, and certain additional information shall be published in the official journal of the registration court, and the company shall also be required to publish the information to be disclosed as ordinary or extraordinary information to its shareholders at its website and/or a daily newspaper and the Stock Exchange website. The documentation to be submitted to the registration court, the Stock Exchange and the Financial Supervisory Authority includes the documentation on the general meeting, including the financial statements, the management report, the supervisory report, the minutes of the general meetings etc. These documents are available to the public both at the registration court, and in their published versions at the website of the company, and the Stock Exchange as well. According to our interpretation Hungary officially did not implement Directive 2004/ 109/EC yet, though many of the provisions, except some of Article 10, are already required by the Capital Market Act, the 2006 Company Act and / or the Accounting Act.

Further, as a specific rule to this CEM, the dominant member shall publish a notice in two consecutive volumes of the official journal of the registration court within 8 days following the decision on the execution of a so-called controlling agreement for the operation of the acknowledged corporate group agreement in order to inform the creditors of the company. The company shall also inform the employees' union and shall arrange for consultation with them. After the execution of the controlling agreement, the management of the controlled company (subsidiary) is obliged to report periodically to its general meeting of the actual execution of the controlling agreement.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The set up of the pyramid structure itself cannot be challenged. The exercise of the shareholder right of the controlling owner can be challenged based on the following:

There is a piercing-the-corporate-veil provision as well stating that if the shareholders who adopted a resolution knew or should have known such resolution to be clearly against the interest of the significant interest of the company, such shareholders shall have joint and unlimited liability for the company for this decision. Further, the board of directors has to act as is expected in the given situation from a person in such mandate. As a result, if board members act upon a delegation of power, they may be held liable if they misuse such power.

The 2006 Company Act further provides that supermajority acquisition in a closed company shall be registered at the registration court and emission of such reporting shall trigger the application of supervisory procedure by the registration court. Further, in the case of insolvency of a closed company, an entity having supermajority control in the closed company will have unlimited liability if, based on request, a court establishes that the controlling entity had a long standing negative influence on the controlled company's operation. It is unclear whether this concern rule applies to public companies. These rules are called concern rules.

There are however no precedents on the piercing-the-corporate-veil/board liability and the concern rules and therefore it cannot be estimated when a court would consider that a shareholder/a group of shareholders or the board of directors exercised its right against the interest of the company and the other shareholders.

Thus based on the above mentioned, the decision implementing the CEM can be challenged if that is in the sole interest of the management or if that is in the sole interest of the majority shareholder, or if that is against the corporate interest, as the shareholders and the board of directors when they shall act for the benefit of the company. Further, if the resolution affects the interest of the shareholders as a general group negatively, it is also arguable that even if it were irrelevant to the corporate interest, the decision can be challenged as the basic purpose of the company is to operate to earn profit to its shareholders.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).
	<input checked="" type="checkbox"/> Such grounds are alternative.

## PRIORITY SHARES

### 1) **Is this CEM available?**

Under the 2006 Company Act no priority shares can be issued. If veto shares were issued under the 1997 Company Act, its veto right can be upheld under the 2006 Company Act as well. As however the 2006 Company Act provides that for the capital increase and decrease the approval of the series of shares affected is also required if different series of shares are issued and the articles may determine which series are affected, there is possibility for a quasi veto right by issuing different series of shares and stating in the articles of association that it is affected. It is noted that a high shareholder interest may in practice result in a veto power if the quorum and the voting requirements are defined in such a way that no decision can be adopted without the shareholder.

In practice there are veto shares issued under the 1997 Company Act.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	The 2006 Company Act prohibits issuance of priority shares, but allows maintaining the veto shares issued under the 1997 Company Act.
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### 2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Act IV of 2006 on Business Associations (2006 Company Act) prohibits issuance of priority shares by public companies. However the 2006 Company Act authorizes the maintenance of the veto shares issued under the 1997 Company Act. As Hungary has adopted a continental law system all the statutes are binding.

As the 2006 Company Act is in force only for a half-year and as many companies still operate under the 1997 Company Act, there are no significant court decisions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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### 3) **If this CEM is available, is it subject to any restrictions?**

It is not allowed to issue priority shares anymore.

### 4) **Who decides whether this CEM should be implemented, and under what conditions?**

It is not allowed to issue priority shares anymore. As the veto shares issued under the 1997 Company Act can be maintained in the following we analyze the practice:

- In privatized companies so-called golden shares are issued.
- In some cases the presence of the veto right share is required for the quorum, which according to our interpretation is an invalid provision.
- In one case the articles of association provide for a defined owner of the common shares the right to elect two members of the board of directors, though such provision is illegal not only under the 2006 Company Act but under the earlier corporate law provisions as well.

There is also one case where the company issued one dividend preference share without a voting power and with nominal dividend right under the 2006 Company Act. This share is probably issued in order to provide its owner an indirect veto right in the capital increase and decrease based on the argumentation that it is a different series of shares.

Short form answer: N/A.

Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

There are no special disclosure requirements regarding priority shares according to Hungarian law. The rules on regular half-yearly and yearly disclosure rules and extraordinary disclosure rules applicable to public company shall, of course, apply to changes to the corporate structure.

According to the Stock Exchange Rules the listed companies shall make the regular and the extraordinary reporting to the Stock Exchange as well on, among others, change in the corporate structure of the company. Further the companies listed in category A (the category with the strictest rules) are required to provide to the Stock Exchange quarterly report, including the most significant financial changes and all extraordinary reports as well.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: The corporate structure of the company shall be reported.  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: As no new issuance is allowed, extraordinary reporting shall affect priority shares only if they are terminated.
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The company is required to file its articles of association and any amendment thereof at the registration court, the Financial Supervisory Authority and the Stock Exchange. The data registered in the corporate extract held by the registration court, and certain additional information shall be published in the official journal of the registration court, and the company shall also be required to publish the information to be disclosed as ordinary or extraordinary information to its shareholders at its website and/or a daily newspaper and the Stock Exchange website. The documentation to be submitted to the registration court, the Stock Exchange and the Financial Supervisory Authority includes the documentation on the general meeting, including the financial statements, the management report, the supervisory report, the minutes of the general meetings etc. These documents are available to the public both at the registration court, and in their published versions at the website of the company, and the Stock Exchange as well. According to our interpretation Hungary officially did not implement Directive 2004/ 109/EC yet, though many of the provisions, except some of Article 10, are already required by the Capital Market Act, the 2006 Company Act and / or the Accounting Act.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

It is not allowed to issue priority shares anymore.

Thus if such CEM is issued it can be challenged under the general rule that any shareholder, any executive officer or supervisory board member may request the judicial review of resolutions adopted by the organs of the company on the grounds that such resolution violates the provisions of the Company Act, other legal regulations, or the articles of association. The right to lodge claims may not be validly

excluded, but it cannot be exercised by shareholders who voted for the resolution adopted, except for cases of mistake, misrepresentation or duress. Further the registration court will probably refuse the registration of issuance of priority shares which means that the issuance is not valid. If the registration court does register the share issue and the 2006 Company Registry Act provides for the right of judicial supervision proceeding in the event of unlawful operation.

If the resolution is not challenged based on the above mentioned and thus is registered or if any provision of the articles of association is illegal or becomes illegal due to the change of law and the registration court has not refused the registration of the change of the articles of association, it is arguable that the illegal provision of the articles of association is valid until it is successfully challenged based on the following:

According to the 2006 Company Act, articles of association cannot be declared void except for certain basic defaults listed in the law (e.g. the articles of association are not made with the required formalities, the persons establishing the company have no legal capability to do so, the articles of association do not contain the name, registered capital, main business activity of the company or the members interest, or the business activities or the registered capital of the company are against the law);

According to the 2006 Company Registry Act the general attorney and any person affected by a resolution of the registration court may challenge such resolution within 30 days from the publication of the resolution on registration. While the modifications themselves are not registered in the registration court, the fact that the articles of association are modified is registered and there may be certain data in the articles of association which are specifically registered (e.g. registered capital, numbers and types of shares, members of the board of directors, business activities, etc).

Further as provided in the 2006 Company Registry Act any provision of the articles of association which does not fall under the above mentioned can be challenged based on the general civil law rules of the Hungarian Civil Code (e.g. voidance, mistake, duress) within 6 months from the adoption of the illegal provision by any person who is affected by the illegal provision.

Based on the above, it is arguable that after the 30 days or six months from the adoption of the illegal provision such provision cannot be challenged and thus the shareholders are bound by the illegal provision.

If however the resolution means maintenance of an illegal situation, the registration court may initiate a so-called supervisory review procedure even after the 30 days or six months, in which procedure it can order the company to terminate the illegal situation and if the company fails to meet the requirement it can terminate the company. We are of the opinion that until the company terminates the illegal status, the company is bound by that illegal resolution. There are, however Supreme Court Judges' opinions that the company's illegal resolutions do not bind the company.

## DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

According to Hungarian law depositary certificates are not available.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Under the Hungarian Civil Code there must be a law authorizing the issuance of securities in order that it would qualify as securities. As there is no regulation regarding depositary certificates, thus its issuance is prohibited.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**Other questions not applicable.**

**VOTING RIGHT CEILINGS**

**1) Is this CEM available?**

The 2006 Company Act stipulates that the articles of association may provide for the maximum voting power to be exercised by any shareholder at the general meeting, this can however not discriminate among the shareholders. In Hungary, there is no one head-one vote rule.

In practice, there are companies which apply this limitation by providing that no shareholder can exercise more than certain, e.g. 25%, 20%, 10%, voting interest.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	The articles of association may provide for the maximum voting powers of the shareholders without discriminating among them.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Act IV of 2006 on Business Associations (2006 Company Act) expressly authorizes the limitation of voting rights in the articles of association. As Hungary has adopted a continental law system all the statutes are binding.

As the 2006 Company Act is in force only for a half-year and as many companies still operate under the 1997 Company Act there are no significant court decisions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**3) If this CEM is available, is it subject to any restrictions?**

Pursuant to the 2006 Company Act the limitation or the exclusion of the voting rights shall not be taken into account for the increase or reduction of capital, when the explicit consent of the holders of the shares which are affected is required. The articles of association may determine which shares are considered to be affected by such decision. Such limitation can, however, not be discriminatory.

The 2006 Company Act provides that according to the rules of the Capital Market Act, the limitation or the exclusion of voting rights according to the article of association terminates in the case of acquisition of 75% voting interest in a public tender. In the case of companies where the limitation was provided before August 3, 2001, the limitation or the exclusion of voting rights terminates only in the case of acquisition of 75% voting interest in a public tender after January 1, 2010. Further, according to the 2006 Company Act, when the company decides during an ongoing public tender about any defensive step, the voting limitations attached to shares shall not apply. As there is no practice yet, it is not clear whether this rule applies only if a limitation on voting is attached to the share itself, or it also applies to voting ceiling rules.

According to Capital Market Act, Hungary has opted for applying Breakthrough Rules only if the company has so provided in the articles of association and the acquiring entity also has the same limitations in its home country. The Capital Market Act provides that at the general meeting deciding on any defense against an on-going public tender takeover if the articles so provide and the acquiring entity also has the same limitations in its home country, any voting limitation provided in the articles of

association shall not apply unless that is provided as consideration for other rights and the multiple voting rights shares shall not have multiple voting right. Further, at the first general meeting after acquisition of 75% voting power in a tender procedure, if the articles so provide and the acquiring entity also has the same limitations in its home country, among others, any voting limitation provided in the articles of association shall not apply unless that is provided as consideration for other rights and the multiple voting rights shares shall not have multiple voting right. It is, however, noted that the wording of the Capital Market Act is wrong and therefore the practice shall develop the above rule applicable at the first general meeting.

As can be seen in the above analysis, the 2006 Company Act and the Capital Market Act are not in harmony (as the 2006 Company Act intends to provide a mandatory rule by reference to the Capital Market Act, while the breakthrough provisions of the Capital Market Act applies only if the company regulates them in the articles of association) and thus the practice will decide on the interpretation of the Capital Market Act and the 2006 Company Act in relation to the application of the breakthrough rules.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	<p>According to the 2006 Company Act when the general meeting decides on any defense step, the voting limitations attached to shares shall not apply, and upon acquisition of 75% voting interest the voting limitations shall terminate pursuant to the provisions of the Capital Market Act.</p> <p>The Capital Market Act provides for application of Breakthrough Rules in the case of deciding about any defense step in an ongoing takeover in public tender and at the first general meeting after the acquisition of at least 75% voting interest in a public tender, only if the articles of association so provides and the acquiring entity also has the same limitations in its home country.</p>
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

This CEM applies if the general meeting provides for a voting ceiling in the articles of association.

The general meeting has a quorum in respect of approval or modification of the articles of association if shareholders representing more than half of the shares having voting right are represented unless the articles of association provide for a higher quorum in any matter defined in the articles. If pursuant to the law or the articles of association, a shareholder is not allowed to vote on a particular matter, he/she will be disregarded when determining the quorum as well. Unless the articles provide otherwise if a general meeting has no quorum a second one shall be called with the same agenda and such meeting has quorum irrespective of the shares represented.

At foundation of the company, the inaugural general meeting shall adopt the articles of association with a three-quarter majority vote. The general meeting may however change the terms of the articles included in the foundation plan, only with unanimous vote of all subscribers. Later the modification of the articles of association is subject to a three-quarter majority vote. It is untested whether the 2006 Company Act allows for the provision in the articles that a higher than supermajority vote is required for the modification of the articles of association, which was allowed in the practice based on the earlier laws.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 1/2 (No quorum requirement for the second call) <input checked="" type="checkbox"/> Majority: 3/4 (Enhanced majority requirement, though no precedent yet)
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Specific conditions: None.

**5) Are there ongoing disclosure requirements regarding such CEM?**

There are no special disclosure requirements regarding voting ceiling limitations. The rules on regular and extraordinary disclosure applicable to public company shall, of course, apply, and thus the modification of the articles of association to provide such limitation shall be published as extraordinary disclosure and a Company Acting with due care will probable note the limitation when discussing the corporate structure in the regular half-yearly and yearly disclosures.

According to the Stock Exchange Rules, the listed companies shall make the regular and the extraordinary reporting to the Stock Exchange as well on, among others, change in the corporate structure of the company. Further the companies listed in category A (the category with the strictest rules) are required to provide to the Stock Exchange quarterly report, including the most significant financial changes and all extraordinary reports as well.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Modification of the articles to provide for the limitation  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Modification of the articles to provide for the limitation
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The company is required to file its articles of association and any amendment thereof at the registration court, the Financial Supervisory Authority and the Stock Exchange. The data registered in the corporate extract held by the registration court, and certain additional information shall be published in the official journal of the registration court, and the company shall also be required to publish the information to be disclosed as ordinary or extraordinary information to its shareholders at its website and/or a daily newspaper and the Stock Exchange website. The documentation to be submitted to the registration court, the Stock Exchange and the Financial Supervisory Authority includes the documentation on the general meeting, including the financial statements, the management report, the supervisory report, the minutes of the general meetings etc. These documents are available to the public both at the registration court, and in their published versions at the website of the company, and the Stock Exchange as well. According to our interpretation Hungary officially did not implement Directive 2004/ 109/EC yet, though many of the provisions, except some of Article 10, are already required by the Capital Market Act, the 2006 Company Act and/or the Accounting Act.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

As a general rule any shareholder, any member of the board of directors or supervisory board member may request the judicial review of resolutions adopted by the general meeting of the company on the grounds that such resolution violates the provisions of the Company Act, other legal regulations, or the articles of association. If the decision is made by the board of directors, the right to challenge the resolution is limited to the shareholders. The right to lodge claims may not be validly excluded, but it cannot be exercised by shareholders who voted for the resolution adopted, except for cases of mistake, misrepresentation or duress. Also the 2006 Company Registry Act provides for a judicial supervision proceeding in the event of unlawful operation. As the criteria for the challenge is violation of the law and/or the articles of association, if the issuance meets the requirements of the law and the articles of association, there is no valid basis of challenging the decision on the grounds that it is in the sole interest or against the interest of certain people.

There is a piercing-the-corporate-veil provision as well stating that if the shareholders who adopted a resolution knew or should have known that such resolution would be clearly against the interest of a significant interest of the company, such shareholders shall have joint and unlimited liability to the company for this decision. Further, the board of directors has to act as is expected in the given situation from a person in such mandate. As a result, if board members act upon a delegation of power, they may be held liable if they misuse such power.

There are however no precedents on the piercing-the-corporate-veil/board liability and therefore it cannot be estimated when a court would consider that a shareholder/a group of shareholders or the board of directors exercised its right against the interest of the company and the other shareholders.

Thus based on the above mentioned, the decision implementing the CEM can be challenged if that is in the sole interest of the management or if that is in the sole interest of the majority shareholder, or if that is against the corporate interest, as the shareholders and the board of directors when they shall act for the benefit of the company. Further, if the resolution affects the interest of the shareholders as a general group negatively, it is also arguable that even if it were irrelevant to the corporate interest, the decision can be challenged as the basic purpose of the company is to operate to earn profit for its shareholders.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).
	<input checked="" type="checkbox"/> Such grounds are alternative.

## OWNERSHIP CEILINGS

1) **Is this CEM available?**

There is no regulation on ownership ceiling in the 2006 Company Act. Although the principle is that if something is not prohibited or regulated in the 2006 Company Act, the shareholders may provide for such rule in the articles of association. We are of the opinion that the corporate rules do not allow provision for ownership ceilings as that would mean potential differentiation between the rights attached to the same series of shares and would go against the general corporate rules.

The requirement that in certain industries approval of the supervisory authority is required for exceeding certain ownership/voting level, could be considered as an indirect ownership ceilings.

In practice there are however listed companies in other industries as well, where the articles of association contain limitations on ownership ceiling by stating, e.g., that (i) there cannot be more than 50% foreign interest in the company or (ii) there cannot be more than 10% interest in the company. In one case the company achieves an ownership ceiling indirectly by providing that in the case of acquisition of 25% interest in the company the acquirer has to make a public tender offer at 250% of the market value. We are of the opinion that these rules are against the 2006 Company Act, and should be ordered by the registration court in a supervisory procedure to be deleted from the articles of association. As however they are in the articles of association, we are of the opinion that in the given companies, the above ownership ceiling limitations apply.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation.	<p>The Unclear Situation is one of the following types:</p> <input checked="" type="checkbox"/> Untested Situation. <input checked="" type="checkbox"/> Other: Not regulated and thus it is subject to different interpretation possibilities.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

As noted above Act IV of 2006 on the Business Associations (the 2006 Company Act) does not regulate ownership ceilings, and according to our interpretation the shareholders cannot provide so in the articles. The indirect ownership ceilings created by requiring approval of the administrative authority for exceeding certain ownership/voting ceilings are the following:

Electricity Act: The Hungarian Electricity Act<sup>12</sup> provides that approval of the Hungarian Energy Office (“HEO”) is required for acquisition of more than 25%, 50%, or 75% interest in a licensed entity, and for acquisition of interest between an entity licensed under the Electricity Act and any entity subject to the Gas Act<sup>13</sup>. (Although it may be argued that in the case of a merger, no approval is needed as the newly merger entity is legal successor. We are of the opinion that the law applies if there is a change in the interest regardless whether it is in the form of merger or acquisition.) The Electricity Act does not provide that indirect acquisition would be subject to a license. Based on the express wording of the Electricity Act, no approval is required

<sup>12</sup> Act CX of 2001 on Electric Energy, issued by the Hungarian Parliament.

<sup>13</sup> Act XLII of 2003 on Natural Gas, issued by the Hungarian Parliament.

as there is no change in the direct owners. It is understood that the Electricity Act intended to regulate the same interest acquisitions which are regulated in the 2006 Company Act, which provides only for direct interest and indirect interest via a wholly owned subsidiary, thus there is though some risk that the HEO will interpret the Electricity Act, by referring to the definition of interest in the Civil Code, that indirect interest is also covered. If there is a licensing requirement, the Office has a 90-day period under the law to review the request, and will require submission of a significant amount of documentation. The permission has to be submitted before the execution of the agreement or the permission has to be a condition precedent to the closing. Registration in the Court Registry is subject to the approval of the HEO, and the new owner can be registered in the share book and the voting right can be exercised only subject to the approval of the HEO.

## Gas Act

The Hungarian Gas Act, similar to the Electricity Act, provides that approval of the HEO is required for acquisition of more than 25%, 50%, or 75% interest in a licensed entity, and for acquisition of interest between an entity licensed under the Electricity Act and any entity subject to the Gas Act. The Gas Act does not provide either that indirect acquisition would be subject to a license.

Based on the express wording of the Gas Act, no approval is required as there is no change in the direct owners. There is though some risk that the HEO will interpret the Gas Act, by referring to the definition of interest in the Civil Code, that indirect interest is also covered. Similar to the Electricity Act, if there is a licensing requirement, the Office has a 90-day period under the law to review the request, and will require submission of a significant amount of documentation. The permission has to be submitted before the execution of the agreement or the permission has to be a condition precedent to the closing.

Registration in the Court Registry is subject to the approval of the HEO, if an approval is needed, under the Gas Act as well and the new owner can be registered in the share book and the voting right can be exercised only subject to the approval of the HEO.

## Heat Supply Act

According to the Heat Supply Act<sup>14</sup>, acquisition of a significant, majority or controlling interest according to the Company Act is, among others, subject to the approval of the relevant authority. (It is noted that the law is not clear as it can be understood as acquisition by a licensee in another licensee is subject to an approval. There is, however, a significant risk that the law intended similar to the Electricity Act license to acquisition interest in any licensee by any entity.) Due to the wording of this law, we are of the opinion that acquisition of interest is as defined in the company act. The 2006 Company Act refers to the Civil Code, as to the definition of indirect interest. According to our understanding it means that a license is required for indirect interest as well.

If permission is required, registration in the Court Registry is subject to the approval of the HEO, and the new owner can be registered in the share book and the voting right can be exercised only subject to the approval of the HEO. Similar to what was analyzed earlier, in the case of indirect transfer where no registration in the share book is needed, the risk is penalty payment and/or withdrawal of the relevant license. The Office has a 90 day period to review the request. The permission has to be

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<sup>14</sup>

Act XVIII of 2005 on Heat supply, issued by the Hungarian Parliament.

submitted before the execution of the agreement or the permission has to be a condition precedent to the closing.

## Banking Act

The Banking Act<sup>15</sup> provides that the approval of the Financial Supervisory Authority is required, among others, for the acquisition of qualifying participation in a financial institution, or the acquisition of additional qualifying participation by which to reach 15%, 33%, 50% or 75% of ownership share or voting rights.

“Qualifying participation” means a direct or indirect holding of a person in a company or a relationship between a person and a company by virtue of which the person a) controls 10% or more of the capital or of the voting rights on the whole, b) has powers to appoint or remove 20% or more of the members of the company’s decision-making, management, supervisory and other bodies, or c) has powers to exercise significant influence over the management of the company as stipulated in the bylaws, the deed of foundation or in contract.

Further, the owner of a financial institution may enter into contracts regarding ownership rights, voting rights or to secure advantages in excess of such rights only upon the Financial Supervisory Authority’s permission. And the permission of the Financial Supervisory Authority must also be obtained prior to the execution of the contract for the acquisition of majority ownership in an enterprise which holds a qualifying participation in a financial institution. When applying for the authorization the applicant has to meet certain technical conditions and have to prove its good standing and reputation by providing cumbersome information.

The applicant or the owner may exercise his voting right in relation to the shares affected by the permission as of the ninetieth day of the Financial Supervisory Authority’s receipt of the application for authorization, unless the Authority rejects the permission within that period of time.

The Financial Supervisory Authority shall refuse to grant the authorization if the applicant’s (or its owner’s or executive officer’s) a) activities, influence on the financial institution endangers the prudential management for effective, reliable and independent operations of the financial institution, or b) the character of its business activities and relations, or its direct or indirect ownership in other enterprises is structured in a manner to obstruct supervisory activities.

In the case of failure to apply for the prescribed authorization, rejection of the application, failure to comply with the obligation of notification as prescribed or refusal to provide information, the Financial Supervisory Authority may prohibit the exercising of voting rights deriving from an agreement for the acquisition of ownership share or for securing advantages until the requirements stipulated by law are fulfilled.

## Capital Market Act

The Capital Market Act provides that acquisition of qualifying holding in a licensed securities market company (except the investment fund management companies) is subject to prior approval of the Financial Supervisory Authority. Qualifying holding shall mean a direct or indirect holding of a person in a company, or a relationship between a person and a company, by virtue of which the person:

a) controls 10% or more of the capital or of the voting rights on the whole, or

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<sup>15</sup>

Act CXII of 1996 on Credit Institutions and Financial Enterprises, issued by the Hungarian Parliament.

- b) has powers to appoint or remove 20% or more of the members of the company's decision making, management, supervisory and other bodies, or
- c) has powers to exercise a significant influence over the management of the company as stipulated in its memorandum and articles of association or in contract.

Any increase of holding in a licensed securities market company so as to achieve 20%, 33%, 50%, 75%, or 100% control of the capital, whether directly or indirectly, shall again be subject to the prior consent of the Financial Supervisory Authority with the same rules as provided above.

The Financial Supervisory Authority shall authorise the acquisition of qualifying holding after meeting some other technical requirements and proving the good records and reputation of the applicant.

The owners shall comply with the requirements for the issue of the approval at all times. If it fails to comply with any of the requirements, the Supervisory Authority may suspend the voting right of such owner until the satisfaction of the requirements.

Insurance Act:

Similar to the above financial market related acts, the approval of the Financial Supervisory Authority is required under the Insurance Act<sup>16</sup> for the acquisition of qualifying holding in an insurance company or reach or exceed the 20%, 33%, 50%, or 75% limit. Further, an agreement relating to ownership rights, voting rights or to secure advantages in excess of such rights may only be concluded in possession of the Financial Supervisory Authority 's permission. The applicant shall meet technical requirements and shall prove the good records and reputation of the applicant. The Financial Supervisory Authority shall refuse the acquisition within three months from the date of submission of the application for authorization if, among others, the applicant's financial and business status is not sufficiently stable; the applicant does not have the appropriate professional qualifications and a good business reputation; or the applicant's financial and economic position is deemed inadequate for the size of the ownership interest he intends to acquire.

In the case of failure to apply for authorization, rejection of the application, failure to comply with the obligation of notification as prescribed or refusal to provide information, the Financial Supervisory Authority may prohibit the exercising of voting rights deriving from an agreement for the acquisition of ownership share or for securing advantages until the requirements stipulated by law are fulfilled.

Media Act

The Media Act<sup>17</sup> provides that natural persons with Hungarian citizenship residing in Hungary and legal entities seated in Hungary shall hold at least 26% of the voting rights in a company with national broadcasting rights, and a single enterprise may hold directly and indirectly maximum 49% voting rights in a company performing surface television broadcasting without being connected to the national network. It further provides limitation to holding interests in more than one media and/or broadcasting entity, by, e.g., providing that those holding a controlling share in a newspaper distributing enterprise may not acquire a controlling share in a broadcasting or broadcast transferring enterprise, and vice versa, or that the operator

<sup>16</sup> Act LX of 2003 on Insurance Institutions and the Insurance Business, issued by the Hungarian parliament.

<sup>17</sup> Act I of 1996 on Radio and Television Broadcasting, issued by the Hungarian parliament.

who broadcasts his own programs may not hold a controlling share in another enterprise performing broadcasting and may not acquire broadcasting rights outside its own system.

It is noted that in addition to the above mentioned, there may be other regulated industries where the operation is subject to an operational license and the supervisory authority supervises the owners of the company holding the license.

Further the laws regulating the management of the state owned assets provide rules on the maximum shareholder ceilings for private companies in these assets.

As the 2006 Company Act is in force only for a half-year and as many companies still operate under the 1997 Company Act there are no significant court decisions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**Other questions not applicable.**

## SUPERMAJORITY PROVISIONS

### 1) Is this CEM available?

The 2006 Company Act provides a list of those strategic matters which belong to the three-quarter majority decision of those shares which have voting rights and are represented at the general meeting (three-quarter majority decision), while certain specific matters are subject to an unanimous decision of the shares which have voting rights and are represented at the general meeting. The articles of association may require three-quarter majority decision for other matters as well, except the recall of the members of the board of directors.

Short form answer:

Yes (Clear Situation)

### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Act IV of 2006 on Business Associations (2006 Company Act) lists the following matters as falling under the three quarter majority decision:

- approval and amendment of the articles of association, unless the law contains provisions to the contrary;
- transformation or termination of the company without succession;
- alteration of the rights attached to the different series of shares, and the conversion of categories or classes of shares;
- reduction of the share capital, unless the law contains provisions to the contrary;
- intervention in an imminent public takeover offer by, e.g., increase of the share capital or acquisition of treasury shares.

The articles of association may provide other matters as well which fall under three quarter majority decision, except the recall of the members of the board of directors.

Unanimous decision is required under the 2006 Company Act in the following cases:

- modification of the terms of the articles of association included in the foundation plan by the inaugural general meeting at foundation of the company;
- to add any matter to the agenda not included in the published agenda provided that all shareholders are present;
- exclusion in the articles of association of the obligation of the qualified holder to purchase the shares of the controlled company (the shareholder of a controlled company may require the purchase of shares by the qualified holder of the company at market price 60 days within the notification of acquisition of a qualifying holding);

As Hungary has adopted a continental law system all the statutes are binding.

As the 2006 Company Act came into force only half a year ago and as many companies still operate under the 1997 Company Act there are no significant court decisions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**3) If this CEM is available, is it subject to any restrictions?**

Three quarter majority decision cannot be provided for the recall of the members of the board of directors.

It is however noted that there is an articles of association already updated to meet the requirements of the 2006 Company Act where the recall of the board of directors is stipulated as a three quarter majority decision. We are of the opinion that such provision is valid as the modification of the articles of association is registered until it is challenged successfully.

Short form answer:

<input checked="" type="checkbox"/> Supermajority Provisions may only be used for certain types of decisions	No supermajority requirement can be provided for the recall of the members of the board of directors.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

The shareholders decide on which matters fall under supermajority votes in addition to those already provided by the 2006 Company Act.

The general meeting has a quorum if shareholders representing more than half of the shares having voting rights are represented unless the articles of association provide for a higher quorum. If pursuant to the law or the articles of association a shareholder is not allowed to vote on a particular matter, he/she will be disregarded when determining the quorum as well. Unless the articles provide otherwise if a general meeting has no quorum a second one shall be called with the same agenda and such meeting has quorum irrespective of the shares represented.

At foundation of the company, the inaugural general meeting shall adopt the articles of association with a three-quarter majority vote; the general meeting may however change the terms of the articles included in the foundation plan, only with unanimous vote of all subscribers. Later the deed of foundation can be modified by a three-quarter majority vote of the shares represented at the general meeting with voting rights. It is untested whether the 2006 Company Act allows for the provision in the articles that a higher than supermajority vote is required for the modification of the articles of association, as it was allowed in the practice based on the earlier laws. There is, however, an example for requiring higher than 75% majority in certain cases in a company (still operating under the 1997 Company Act, which had the same wording as the 2006 Company Act has).

In practice the articles of association provide for three-quarter majority votes in the strategic decisions and for decision above a certain value in addition to those provided by the 2006 Company Act. There are however companies where the competence of the general meeting is extended to cover all matters which are submitted to the general meeting by the board or which are requested by a given percent of the shareholders and/or the holder of the golden share. We are of the opinion that such extension of the competence of the general meeting is against the 2006 Company Act as it intends to avoid the application of the rule that the competence of the board of directors cannot be taken over by the general meeting except in the cases provided in the articles of association.

As a general rule any decision of the general meeting shall usually be made based on the proposal of the board of directors on the relevant matter, which is reviewed by the supervisory board and if it affects the financial situation of the company by the auditor. The general meeting decision shall be published (in many cases in summary form) and submitted to the registration court. However, there are no specific requirements compared to the above general rule above in relation to the issuance of this CEM.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: ½ (No quorum requirement for the second call)  <input checked="" type="checkbox"/> Majority: ¾ (Enhanced majority requirement, though no precedent yet)
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Specific conditions: None.

**5) Are there ongoing disclosure requirements regarding such CEM?**

There are no special disclosure requirements regarding supermajority voting. The rules on regular and extraordinary disclosure applicable to public company shall, of course, apply, and thus the modification of the articles of association to provide for supermajority decision and the decisions of the general meeting shall be published as extraordinary disclosure.

According to the Stock Exchange Rules, the listed companies shall make the regular and the extraordinary reporting to the Stock Exchange as well on, depending on the category they are listed, a quarterly, or half-yearly basis, by including the most significant financial changes and all extraordinary reports as well.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly basis: modification of the articles of association to provide for supermajority decision and the decisions of the general meeting  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: modification of the articles of association to provide for supermajority decision and the decisions of the general meeting
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The company is required to file its articles of association and any amendment thereof at the registration court, the Financial Supervisory Authority and the Stock Exchange. The data registered in the corporate extract held by the registration court, and certain additional information shall be published in the official journal of the registration court, and the company shall also be required to publish the information to be disclosed as ordinary or extraordinary information to its shareholders at its website and/or a daily newspaper and the Stock Exchange website. The documentation to be submitted to the registration court, the Stock Exchange and the Financial Supervisory Authority includes the documentation on the general meeting, including the financial statements, the management report, the supervisory report, the minutes of the general meetings etc. These documents are available to the public both at the registration court, and in their published versions at the website of the company, and the Stock Exchange as well. According to our interpretation, Hungary officially did not implement Directive 2004/ 109/EC yet, though many of the provisions, except some of Article 10, are already required by the Capital Market Act, the 2006 Company Act and/or the Accounting Act.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

As a general rule any shareholder, any member of the board of directors or supervisory board member may request the judicial review of resolutions adopted by the general meeting of the company on the grounds that such resolution violates the provisions of the Company Act, other legal regulations, or the articles of association. If the decision is made by the board of directors, the right to challenge the resolution is limited to the shareholders. The right to lodge claims may not be validly excluded, but it cannot be exercised by shareholders who voted for the resolution adopted, except for cases of mistake, misrepresentation or duress. Also, the 2006 Company Registry Act provides for a judicial supervision proceeding in the event of unlawful operation. As the criteria for the challenge is violation of the law and/or the articles of association, if the issuance meets the requirements of the law and the articles of association, there is no valid basis of challenging the decision on the grounds that it is in the sole interest or against the interest of certain people.

There is a piercing-the-corporate-veil provision as well stating that if the shareholders who adopted a resolution knew or should have known that such resolution would be clearly against the interest of a significant interest of the company, such shareholders shall have joint and unlimited liability to the company for this decision. Further, the board of directors has to act as is expected in the given situation from a person in such mandate. As a result, if board members act upon a delegation of power, they may be held liable if they misuse such power.

There are however no precedents on the piercing-the-corporate-veil/board liability and therefore it cannot be estimated when a court would consider that a shareholder/a group of shareholders or the board of directors exercised its right against the interest of the company and the other shareholders.

If any provision of the articles of association is illegal or becomes illegal due to the change of law and the registration court has not refused the registration of the change of the articles of association, it is arguable that the illegal provision of the articles of association is valid until it is successfully challenged based on the following:

According to the 2006 Company Act, articles of association cannot be declared void except for certain basic defaults listed in the law (e.g. the articles of association are not made with the required formalities, the persons establishing the company have no legal capability to do so, the articles of association do not contain the name, registered capital, main business activity of the company or the members interest, or the business activities or the registered capital of the company are against the law);

According to the 2006 Company Registry Act the general attorney and any person affected by a resolution of the registration court may challenge such resolution within 30 days from the publication of the resolution on registration. While the modifications themselves are not registered in the registration court, the fact that the articles of association are modified is registered and there may be certain data in the articles of association which are specifically registered (e.g. registered capital, numbers and types of shares, members of the board of directors, business activities, etc).

Further, as provided in the 2006 Company Registry Act, any provision of the articles of association which do not fall under the above mentioned can be challenged based on the general civil law rules of the Hungarian Civil Code (e.g. voidance, mistake, duress) within 6 months from the adoption of the illegal provision by any person who is affected by the illegal provision.

Further, as a transitory rule to the 2006 Company Act, the companies are required to modify their articles of association pursuant to the new legal requirements by the latest September 1, 2007. The act provides that if a company does not modify its articles within the deadline, it shall be terminated by the registration court. The law does not regulate what happens if a company modifies its articles of association but not in all respects. We are of the opinion that if the registration court accepts the modifications made pursuant to the 2006 Company Act, it later cannot by referring to the provision of the 2006 Company Act, order

that the company be terminated if the modified articles of association include illegal provisions, it may only initiate a supervisory procedure.

If the resolution means maintenance of an illegal situation, the registration court may initiate a so-called supervisory review procedure even after the 30 days or six months, in which procedure it can order the company to terminate the illegal situation and if the company fails to meet the requirement it can terminate the company. We are of the opinion that until the company terminates the illegal status, the company is bound by that illegal resolution. There are, however, Supreme, Court Judges' opinions that the company's illegal resolutions do not bind the company.

## GOLDEN SHARES

### 1) Is this CEM available?

It is untested whether the golden share is a veto right share issued under the company acts or a special share issued under the Privatization Act<sup>18</sup>.

Under the 2006 Company Act no veto rights shares can be issued anymore, but the veto shares issued under the 1997 Company Act can be maintained.

The Privatization Act stipulates the companies where state ownership has to be 50%, 25% or a voting preference share. With respect to the voting preference share, the Privatization Act provides that where the state has the required voting power it shall vote for the issuance of a preference share giving veto right in the following matters and giving the preference that in the decisions where the holder of the share has veto right, the general meeting has no quorum with respect to the following matters without the holder of the share being present at the meeting and where the company applies limitation to voting powers such limitation shall not apply to this share:

- a) increase or decrease of the share capital;
- b) alteration of the rights attached to the different types of shares;
- c) the company's merger, fusion, demerger or separation from another company, the company's transformation into another company form or its termination without legal successor;
- d) transfer, assignment, lease or encumbrance of the company's intangible assets essential for the company's specific activities or the transfer of such rights for long-term use in any other way, or pledging it as collateral security;
- e) election or recall of a member of the board of directors or supervisory board representing the holder of the priority vote.

According to the Privatization Act the company's articles of association may stipulate additional rights attached to the golden share.

We are of the opinion that the harmony between the two rules can be established as follows: The Privatization Act describes the intent of the state, but such intent is limited by the rules of the 2006 Company Act.

The Concession Act<sup>19</sup> provides that the activities subject to the Concession Act shall be carried out in companies with majority state ownership or with voting preference share to the state. The Concession Act does not provide further rules on these voting preference shares.

In practice many of the privatized and listed companies have golden share provisions in their articles of association with the above rights, and the 1997 Company Act transitory provisions allowed the maintenance of preferences if provided before the issuance of the 1997 Company Act. We are however of the opinion that the 2006 Company Act has not and does not allow that quorum will be subject to the presence of the golden share. Further there are companies where the golden share has more extensive voting power by e.g., requiring its approval to the transfer of common shares, which is clearly against the rule on the free transferability of the shares. In all cases the rights attached to the golden share can be exercised only so long as such share is owned by the state or its representative.

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<sup>18</sup> Act XXXIX of 1995 on Privatization, issued by the Hungarian parliament.

<sup>19</sup> Act XVI of 1991 on Concession, issued by the Hungarian parliament.

Short form answer:

<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Untested Situation <input checked="" type="checkbox"/> Other: It is unclear whether golden share is a veto right share owned by a state entity or it is a share issued under the Privatization Act.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The 2006 Company Act expressly prohibits the issuance of veto right shares in public companies, while the Privatization Act still provides for the state entities' voting for issuance of share with certain rights.

As the 2006 Company Act is in force only for a half-year and as many companies still operate under the 1997 Company Act there are no significant court decisions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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3) **If this CEM is available, is it subject to any restrictions?**

According to our interpretation the Privatization Act is limited by the 2006 Company Act provisions, therefore, no new golden share can be issued in a public company.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

According to our interpretation the Privatization Act is limited by the 2006 Company Act provisions; therefore, no new golden share can be issued in a public company, while the existing golden shares can be maintained within the limitations of the 2006 Company Act. The golden shares were issued by the general meeting at the time when the state had the voting power required for the issuance of shares pursuant to the then applicable Company Act rules. Most of these golden shares were still issued under the 1988 Company Act which did not provide limitations to the voting preferences.

5) **Are there ongoing disclosure requirements regarding such CEM?**

According to our interpretation the Privatization Act is limited by the 2006 Company Act provisions,; therefore, no new golden share can be issued in a public company.

As according to the 2006 Company Act no new golden share can be issued. There are no initial disclosure requirements.

There are no special provisions on this CEM. The general rules on regular and extraordinary information shall apply.

According to the Stock Exchange Rules, the listed companies shall make the regular and the extraordinary reporting to the Stock Exchange as well as, among others, change in the corporate structure of the company. Further the companies listed in category A (the category with the strictest rules) are required to

provide to the stock exchange quarterly report, including the most significant financial changes and all extraordinary reports as well.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: The company shall describe its corporate structure in its regular half-yearly and yearly disclosures.  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: The company shall publish change in its corporate structure.
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The company is required to file its articles of association and any amendment thereof at the registration court, the Financial Supervisory Authority and the stock exchange. The data registered in the corporate extract held by the registration court, and certain additional information shall be published in the official journal of the registration court, and the company shall also be required to publish the information to be disclosed as ordinary or extraordinary information to its shareholders at its website and/or a daily newspaper and the stock exchange website. The documentation to be submitted to the registration court, the stock exchange and the Financial Supervisory Authority, includes the documentation on the general meeting including the financial statements, the management report, the supervisory report, the minutes of the general meetings etc. These documents are available to the public both at the registration court, and in their published versions at the website of the company, and the stock exchange as well. According to our interpretation, Hungary officially did not implement Directive 2004/ 109/EC yet, though many of the provisions, except some of Article 10, are already required by the Capital Market Act, the 2006 Company Act and/or the Accounting Act.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

According to our interpretation the Privatization Act is limited by the 2006 Company Act provisions, therefore no new golden share can be issued in a public company.

Thus if such CEM is issued it can be challenged under the general rule that any shareholder, any executive officer or supervisory board member may request the judicial review of resolutions adopted by the organs of the company on the grounds that such resolution violates the provisions of the Company Act, other legal regulations, or the articles of association. The right to lodge claims may not be validly excluded, but it cannot be exercised by shareholders who voted for the resolution adopted, except for cases of mistake, misrepresentation or duress. Further the registration court will probably refuse the registration of issuance of golden shares which means that the issuance is not valid. If the registration court does register the share issue and the 2006 Company Registry Act provides for the right of judicial supervision proceeding in the event of unlawful operation.

If the resolution is not challenged based on the above mentioned and thus is registered or if any provision of the articles of association is illegal or becomes illegal due to the change of law and the registration court has not refused the registration of the change of the articles of association, it is arguable that the illegal provision of the articles of association is valid until it is successfully challenged based on the following:

- According to the 2006 Company Act, articles of association cannot be declared void except for certain basic defaults listed in the law (e.g. the articles of association are not made with the required formalities, the persons establishing the company have no legal capability to do so, the articles of association do not contain the name, registered capital, main business activity of the company or the members interest, or the business activities or the registered capital of the company are against the law);

- According to the 2006 Company Registry Act the general attorney and any person affected by a resolution of the registration court may challenge such resolution within 30 days from the publication of the resolution on registration. While the modifications themselves are not registered in the registration court, the fact that the articles of association are modified is registered and there may be certain data in the articles of association which are specifically registered (e.g., registered capital, numbers and types of shares, members of the board of directors, business activities, etc).

- Further as provided in the 2006 Company Registry Act any provision of the articles of association which does not fall under the above mentioned can be challenged based on the general civil law rules of the Hungarian Civil Code (e.g., voidance, mistake, duress) within 6 months from the adoption of the illegal provision by any person who is affected by the illegal provision.

Based on the above, it is arguable that after the 30 days or six months from the adoption of the illegal provision such provision cannot be challenged and thus the shareholders are bound by the illegal provision.

If the resolution means maintenance of an illegal situation, the registration court may initiate a so-called supervisory review procedure even after the 30 days or six months, in which procedure it can order the company to terminate the illegal situation and if the company fails to meet the requirement it can terminate the company. We are of the opinion that until the company terminates the illegal status, the company is bound by that illegal resolution. There are, however, Supreme court judges' opinions that the company's illegal resolutions do not bind the company.

## PARTNERSHIPS LIMITED BY SHARES

1) **Is this CEM available?**

Under the provisions of the 2006 Company Act there are partnerships with (i) internal partners having unlimited liability only or (ii) with internal partners having unlimited liability and external partners having limited liability, but in this corporate form there are no shares issued and the ownership interests cannot be publicly traded.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Act IV of 2006 on Business Associations (the 2006 Company Act) regulates partnership; this corporate form does, however, not issue shares and cannot trade publicly its ownership interests.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**Other questions not applicable.**

## CROSS-SHAREHOLDINGS

1) **Is this CEM available?**

If a public company acquires more than 25% interest in another company by share or in another limited liability company, the affiliate cannot acquire share in the public company and has to sell within 60 days all existing interest in the public company. Not following the requirements shall result in losing the shareholder's rights attached to the shares held in the public company. It is untested whether this limitation applies only to direct interest or indirect interest (circular cross-shareholding) as well.

If indirect cross-shareholding is not limited, the treasury share rules may limit its application by providing that if the public company has direct or indirect control over an entity holding shares in the public company, such shares shall be considered to be treasury shares.

If the abovementioned 25% threshold is not crossed, cross-shareholding is available.

Short form answer:

<input checked="" type="checkbox"/> Yes	It is however untested whether the limitation on cross-shareholding applies only to direct interest or indirect interest (circular cross-shareholding) as well.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Act IV of 2006 on Business Associations (the 2006 Company Act) expressly provides for the limitation that if a public company acquires more than 25% interest in a company by shares or in a limited liability company, that company cannot acquire interest in the public company and it has to sell all existing shares in the public company within 60 days.

The 2006 Company Act also regulates the treasury share rules by stating that the shares held directly or indirectly by a controlled entity (and also shares held or the benefit of the public company) shall be considered to be treasury shares.

As the 2006 Company Act is in force only for a half-year, and as many companies still operate under the 1997 Company Act, there are no significant court decisions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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3) **If this CEM is available, is it subject to any restrictions?**

If a public company acquires more than 25% interest in a company by shares or in a limited liability company, that company cannot acquire interest in the public company and it has to sell all existing shares in the public company within 60 days.

If a company holds directly or indirectly shares in any company in which it has a majority control or a decisive influence or when the entity acquires the shares for the benefit of the public company, the shares held by such company in the public company shall be considered to be treasury shares and thus shall not have any voting power and right to dividend.

Short form answer:

<input checked="" type="checkbox"/> The percentage of cross-shareholding is limited	<p>In direct cross-shareholding, if a public company acquires more than 25% interest in another company, such company cannot acquire shares in the public company and has to sell all existing interests in the public company.</p>
<input checked="" type="checkbox"/> Others	<p>If a company holds directly or indirectly shares in any company in which it has a majority control or a decisive influence or when the entity acquires the shares for the benefit of the public company, the treasury share rule shall apply, meaning that the shares held by the controlled company shall be treated as if they were shares held by the mother entity, and thus these shares will not have voting right and dividend right for the period they are not sold to a third party.</p>

**4) Who decides whether this CEM should be implemented, and under what conditions?**

There are no specific rules on who decides upon acquisition of any interest in any company. Therefore it can be decided by the management of the company unless the articles provide that acquisition of a corporate interest (e.g. any interest, or a controlling interest or an interest above a certain value) is within the exclusive competence of either (i) the board of directors or (ii) the general meeting. The general meeting has a quorum if shareholders representing more than half of the shares having voting rights are represented unless the articles of association provide either for a lower quorum in the case of matters falling under simple majority vote or for a higher quorum in any matter defined in the articles. If pursuant to the law or the articles of association a shareholder is not allowed to vote on a particular matter, he/she will be disregarded when determining the quorum as well. Unless the articles provide otherwise if a general meeting has no quorum a second one shall be called with the same agenda and such meeting has quorum irrespective of the shares represented.

Unless the articles of association provide for a higher vote, the decision requires a vote for the decision by more than 50% of those who are present at the meeting and have voting rights. (It is noted that in Hungary the question is not tested whether abstention means vote against the decision or shall not be taken into account at all. We understand that the majority opinion is that in Hungary there is enhanced simple majority requirement.)

If the acquisition of share qualifies as acquisition of treasury shares, it is subject to the authorization of the general meeting. The general meeting may authorise the board of directors to acquire treasury shares by determining the terms and the period of such authorization, which cannot exceed 18 months. It is untested whether this limitation applies, and how it applies, in the case of indirect acquisition of treasury shares.

Short form answer: N/A

Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

There are no special disclosure requirements regarding cross-shareholdings according to Hungarian law. The rules on regular half-yearly and yearly disclosure rules and extraordinary disclosure rules applicable

to public company shall, of course, apply by requiring reporting on treasury shares and on significant investments.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: reporting on treasury shares and on significant investments. <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: reporting on treasury shares and on significant investments.
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The company is required to file its articles of association and any amendment thereof at the registration court, the Financial Supervisory Authority and the stock exchange. The data registered in the corporate extract held by the registration court, and certain additional information shall be published in the official journal of the registration court, and the company shall also be required to publish the information to be disclosed as ordinary or extraordinary information to its shareholders at its website and/or a daily newspaper and the stock exchange website. The documentation to be submitted to the registration court, the stock exchange and the Financial Supervisory Authority includes the documentation on the general meeting, including the financial statements, the management report, the supervisory report, the minutes of the general meetings etc. These documents are available to the public both at the registration court, and in their published versions at the website of the company, and the stock exchange as well. According to our interpretation, Hungary officially did not implement Directive 2004/109/EC yet, though many of the provisions, except some of Article 10, are already required by the Capital Market Act, the 2006 Company Act and/or the Accounting Act.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

If the decision is made by the general meeting or the board of directors, as a general rule any shareholder, any member of the board of directors or supervisory board member may request the judicial review of resolutions adopted by the general meeting of the company on the grounds that such resolution violates the provisions of the Company Act, other legal regulations, or the articles of association. If the decision is made by the board of directors, the right to challenge the resolution is limited to the shareholders. The right to lodge claims may not be validly excluded, but it cannot be exercised by shareholders who voted for the resolution adopted, except for cases of mistake, misrepresentation or duress. Also the 2006 Company Registry Act provides for a judicial supervision proceeding in the event of unlawful operation. As the criteria for the challenge is violation of the law and/or the articles of association, if the decision meets the requirements of the law and the articles of association, there is no valid basis of challenging the decision on the grounds that it is in the sole interest or against the interest of certain people.

There is a piercing-the-corporate-veil provision as well stating that if the shareholders who adopted a resolution knew or should have known that such resolution would be clearly against the interest of a significant interest of the company, such shareholders shall have joint and unlimited liability to the company for this decision. Further, the board of directors has to act as is expected in the given situation from a person in such mandate. As a result, if board members act upon a delegation of power, they may be held liable if they misuse such power.

There are however no precedents on the piercing-the-corporate-veil/board liability and therefore it cannot be estimated when a court would consider that a shareholder/a group of shareholders or the board of directors exercised its right against the interest of the company and the other shareholders.

Thus, based on the above mentioned, the decision implementing the CEM can be challenged if that is in the sole interest of the management or if that is in the sole interest of the majority shareholder, or if that is against the corporate interest, as the shareholders and the board of directors when they shall act for the benefit of the company. Further, if the resolution affects the interest of the shareholders as a general group negatively, it is also arguable that even if it were irrelevant to the corporate interest, the decision can be challenged as the basic purpose of the company is to operate to earn profit to its shareholders.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).
	<input checked="" type="checkbox"/> Such grounds are alternative.

## SHAREHOLDERS' AGREEMENTS

### 1) Is this CEM available?

The shareholders may enter into shareholders' agreements. Such agreements may, however, be considered influence under the Capital Market Act. It is untested whether the agreement may include any type of cooperation as that is a civil law agreement. Also, cooperation against the rules of the 2006 Company Act would be considered illegal. We are of the opinion that the shareholders may enter into civil law shareholders' agreements also on matters not allowed under corporate law (e.g. right of first refusal, agreement on voting in line with the other person on certain matters, non-collection of dividend) to be regulated in the articles of association. The difference is that the shareholders' agreements obligations and rights are not transferred with the transfer of the shares, while the rights and obligations in the articles of association are binding on the new owner of the shares.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The shareholders' agreement is based on the general civil law principle of freedom to contract and the Hungarian Civil Code provision on the same. There are several case precedents where the shareholders' agreements are upheld and in the privatization procedures it was common to regulate for certain rights for the state in the privatized companies.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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### 3) If this CEM is available, is it subject to any restrictions?

The shareholders' agreements are subject to the general limitations of the Civil Code on invalid undertakings, such as duress, significant difference in value and countervalue etc.

According to the Capital Market Act if the company's articles so provide:

- (i) during the time allowed for acceptance of the bid, among others, any restrictions on the transfer of securities provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the adoption of the amendment of the articles of association accordingly, shall not apply *vis-à-vis* the offeror;
- (ii) at the general meeting of shareholders which decides on any defensive measures restrictions on voting rights provided for in contractual agreements between the offeree company and holders of its securities, or in contractual agreements between holders of the offeree company's securities entered into after the amendment of the articles of association accordingly, shall not have effect, unless the restrictions on voting rights are compensated for by specific pecuniary advantages, and
- (iii) where, following a bid, the offeror holds seventy-five percent or more of the capital carrying voting rights, the offeror shall have the right to convene a general meeting of shareholders of the offeree company in order to amend the articles of association or to remove or appoint board members and supervisory board members, and at the general meeting, among others, the restrictions referred to in

Subsections (1) and (2) of Section 76 of the Capital Market Act (It is noted that the act refers as stated above, but we understand that this is a typo and the law should refer to the above mentioned limitations on the restriction on the voting rights and on the application of the multiple voting rights) or any extraordinary rights of shareholders concerning the appointment or removal of board members and supervisory board members shall not apply. In compensation for the right to call the general meeting, the shareholders shall have the put option right to the offeror, which may be exercised within ninety days from the date of publication of the acquisition of seventy-five percent of the voting rights. The shareholders exercising their put option right shall offer their shares at the price quoted in the takeover bid. If any shareholder convening the general meeting has purchased any shares during the past period at a higher price, the shares shall be offered at that price.

Where a holder of preference shares with prior voting rights did not or could not have had knowledge of the potential restriction, as specified above of the voting rights carried by such securities at the time the shares were acquired, and the shareholder suffered any loss in consequence, the offeror carrying out the breakthrough shall be liable to pay compensation to the shareholder affected. The minimum amount of compensation shall be fixed in the articles of association of the offeree company. The minimum amount of compensation per share specified in the articles of association may not exceed the value of the common share of the offeree company multiplied by the number of voting rights the preference share carries. The compensation shall be paid by the offeror in money, not later than the eighth working day preceding the date of the general meeting convened according to the breakthrough rules.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	The breakthrough provisions apply only if the articles of association so provide and the offeror has the same limitations under the laws of its home country
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

There is no limitation in the law on who can enter into shareholders' agreements. We are of the opinion that the decisions are usually made at the level of the board of directors.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors.
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**5) Are there ongoing disclosure requirements regarding such CEM?**

There are no special disclosure requirements regarding shareholders' agreements according to Hungarian law. The rules on regular and extraordinary disclosure applicable to public company shall, of course, apply to the companies entering into shareholders' agreements if that is significant to its operations.

According to the Stock Exchange Rules, the listed companies shall make the regular and the extraordinary reporting to the Stock Exchange as well on, among others, change in the corporate structure of the company. Further the companies listed in category A (the category with the strictest rules) are required to provide to the Stock Exchange quarterly report, including the most significant financial changes and all extraordinary reports as well.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: existence of shareholders' agreements if they are known to the company and their content is significant to operations, by detailing its important terms.  <input checked="" type="checkbox"/> Disclosure to be made when the following events take place: entering into shareholders' agreements if these are known to the company and their content is significant to the operations, by detailing their important terms.
---	---

The company is required to file its articles of association and any amendment thereof at the registration court, the Financial Supervisory Authority and the stock exchange. The data registered in the corporate extract held by the registration court, and certain additional information shall be published in the official journal of the registration court, and the company shall also be required to publish the information to be disclosed as ordinary or extraordinary information to its shareholders at its website and/or a daily newspaper and the stock exchange website. The documentation to be submitted to the registration court, the stock exchange and the Financial Supervisory Authority includes the documentation on the general meeting, including the financial statements, the management report, the supervisory report, the minutes of the general meetings etc. These documents are available to the public both at the registration court, and in their published versions at the website of the company, and the stock exchange as well. According to our interpretation, Hungary officially did not implement Directive 2004/ 109/EC yet, though many of the provisions, except some of Article 10, are already required by the Capital Market Act, the 2006 Company Act and/or the Accounting Act.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

If the decision is made at the general meeting, according to the piercing-the-corporate-veil provision if the shareholders who adopted a resolution knew or should have known such resolution would be clearly against the interest of the significant interest of the company, such shareholders shall have joint and unlimited liability for the company for this decision. Further, if the decision is made by the board of directors, the board of directors has to act as is expected in the given situation from a person in such mandate. As a result, if board members act upon a delegation of power, they may be held liable if they misuse such power.

There are, however, no precedents on the piercing-the-corporate-veil/board liability and therefore, it cannot be estimated when a court would consider that a shareholder/a group of shareholder or the board of directors exercised its right against the interest of the company and the other shareholders.

Thus, based on the above mentioned, the decision implementing the CEM can be challenged if it is in the sole interest of the management or if it is in the sole interest of the majority shareholder, or if it is against the corporate interest, as the shareholders and the board of directors when they shall act for the benefit of the company. Further, if the resolution affects the interest of the shareholders as a general group negatively, it is also arguable that even if it were irrelevant to the corporate interest, the decision can be challenged as the basic purpose of the company is to operate to earn profit to its shareholders.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).
	<input checked="" type="checkbox"/> Such grounds are alternative.

**B – GENERAL BACKGROUND QUESTIONS****1) What are the rules for board elections? How many corporate votes are required to appoint or remove corporate directors?**

The 2006 Company Act provides two possibilities in the case of a public company: (i) there is a board of directors responsible for the management of the company and there is a supervisory board supervising the operation of the company (two-tier system) or (ii) there is a single operation management where the board of directors is responsible for the strategic and policy decisions and the supervisory functions as well (one-tier system).

In the case of the two tier system, the board of directors consists of 3-11 natural person members, of which one member is elected as chairman either by the other members or on authorization of the articles by the general meeting.

In the case of the one-tier system the board of directors shall consist of minimum of 5 and unless the articles of association provide otherwise, with a view to employee participation of a maximum of 11 members, all natural persons. The board of directors shall elect its Chairman from among its members. The articles of association may prescribe that the Chairman of the board of Directors be elected directly by the general meeting.

In the one tier system, the majority of the board of directors unless the company is part of a registered acknowledged corporate group shall be made up of independent persons, unless the articles of association prescribe a higher percentage. In a two-tier system, the supervisory board has the same limitation.

A board member shall not be considered independent, in particular, if:

- a) an employee of the company, or, if a former employee, for five years following the termination of such employment;
- b) providing services to the company or its executive officers for consideration as an expert or other similar services;
- c) a shareholder of the company controlling at least thirty percent of the votes, whether directly or indirectly, or is a close relative as defined in the Civil Code or a domestic spouse of such person;
- d) a close relative of any-non-independent-executive officer or executive employee of the company;
- e) entitled to receive financial benefits based on his board membership if the company operates profitably, or receives any other form of remuneration from the company or an affiliated entity apart from the salary for his board membership;
- f) engaged in a partnership with a non-independent member of the company in another business association on the strength of which the non-independent members attains control;
- g) an independent auditor of the company, or an employee or partner of such auditor, for three years following the termination of such relationship;
- h) an executive officer or executive employee of a business association, whose independent board member also holds an executive office in the public limited company.

In both the one-tier and the two-tier systems, there shall also be an audit committee consisting of three members elected by the general meeting from the independent members of the one-tier board of directors, or from the independent members of the supervisory board in a two-tier system, among others, to assist the board of directors and the supervisory board so as to exercise proper control of the financial reporting system.

In both cases, the company may provide for the set up of additional committees as well, thus, there may be companies who will set up committees to propose members of the board of directors and/or the supervisory board, or propose the remuneration of the members of the board of directors and/or the supervisory board.

According to the 2006 Company Act (i) shareholders having 5% voting right - or a lower percentage if the articles of association so provide, may at any time request that the general meeting be convened, indicating the reason and the purpose thereof. If the board of directors fails to comply with such request within thirty days, upon request the Registration Court shall convene the meeting, and (ii) shareholders having 1% voting right – or a lower percentage if the articles of association so provide may, within eight days from the publication of the agenda to the general meeting, request in writing the board of directors to add an issue to the agenda, indicating the reason and the purpose thereof.

The Company Act requires more than 50% vote of those present at the meeting for the election of board members; however, the articles of association may provide otherwise. The recall of the members of the board of directors may only require more than 50% vote of those present at the meeting. The general meeting has a quorum if shareholders representing more than half of the shares having voting right is represented unless the articles of association provide otherwise.

Board members are elected by the general meeting for a maximum of five years (determined by the articles of association; if not provided for, the term of the mandate of board members is considered to be five years) or for an undefined period of time. Board members may be re-elected and removed without any cause by the general meeting.

The articles of association may contain facilities for general meetings to allow the shareholders to participate by way of proper electronic means of communication, designed to handle dialogues between members and providing adequate facilities for debates without any restriction. Unless the articles of association provide otherwise, shareholders may freely decide the way in which they wish to participate. In these cases the shareholders who wish to attend the general meeting in person shall so notify the company at least five days in advance. The board of directors shall appoint an authorized voting agent for the duration of the general meeting held by conferencing, who will be available for all shareholders during the general meeting held by conferencing and the shareholders may exercise their voting rights through this voting agent. The venue of a general meeting held by conferencing must be the registered office or place of business of the company.

The Company Act prohibits the issuing of shares with preference of appointment of board members. In practice there however are golden shares and there are priority shares for election of members of the board of directors.

The rules of procedure of the board of directors are determined in their bylaws. Unless the articles of association provide that the bylaws are adopted by the general meeting or defines procedural rules for the board of directors, the board of directors is free to define the content of the bylaws and the terms of its operation within the following limits provided by the law.

- The board shall exercise its rights and perform its duties as an independent body.
- The bylaws shall provide for the division of tasks and competence among the members of the management board.
- The bylaws may contain facilities to allow the board members to participate by way of electronic communications instead of attending in person. In this case, the detailed regulations for holding such meetings shall be laid down in the bylaws.
- The board shall present the annual report prepared pursuant to the Accounting Act to the general meeting, and, if the shares are admitted for trading on the Budapest Stock Exchange, the corporate governance and management report.

- The board shall present a report on the management, the financial situation and the business policy of the company at the intervals set out in the articles of association, or at least once every year for the general meeting, and at least once every three months for the Supervisory Board.
- The board shall ascertain that the books of the company are kept according to the rules.
- The board shall, with simultaneous notice to the supervisory board, call a general meeting if the company's equity capital has dropped to two-thirds of the share capital due to losses; or the equity of the company has dropped below HUF 20 million; or the company is on the brink of insolvency or has stopped making payments and its assets do not cover its debts.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for Board election: ½ of the shares having voting right and represented at the meeting.</p> <p>For Board removal: ½ of the shares having voting right and votes represented at the meeting.</p> <p>Quorum required for shareholders' meetings proceeding with the election or removal of Board members: ½ of the shares having voting right is represented at the meeting.</p>	<p><input checked="" type="checkbox"/> Board members may be recalled only if revocation is on the agenda except that matters that were not included in the public notice may be discussed if all shareholders are present and accept unanimously to add the new matter to the agenda.</p> <p><input checked="" type="checkbox"/> Board members may always be removed without cause and without notice and without indemnity (there are though agreements which provide for limitations to the termination, but it is untested whether the court would uphold contractual limitations to termination, or would consider them invalid for being against the provisions of the 2006 Company Act).</p>
<p><input checked="" type="checkbox"/> Electronic voting is authorized if the articles of association so provide.</p>	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened: shareholders having 5% of the voting rights may request the convention of the general meeting, and shareholders having 1% voting right may request within eight days from the publication of the agenda to put a matter on the agenda.</p>

**2) What shareholders' decisions require a vote from more than a simple majority?**

According to the 2006 Company Act the shareholders usually decide at the general meeting with a simple majority of the shares represented at the meeting with voting rights.

The 2006 Company Act requires a three-quarter majority for the following decisions:

- approval and amendment of the articles of association, unless the law contains provisions to the contrary;
- transformation or termination of the company without succession;
- alteration of the rights attached to the different series of shares, and the conversion of categories or classes of shares;
- reduction of the share capital, unless the law contains provisions to the contrary;
- intervention in an imminent public takeover offer by, e.g., increase of the share capital or acquisition of treasury shares.

The Company Act stipulates that the articles of association may prescribe a three-quarter majority for other matters as well with the exception of the recall of the members of the board of directors, which has to be a decision subject to simple majority vote pursuant to the 2006 Company Act.

There is one listed company although which has already updated its articles of association to the requirements of the 2006 Company Act, and provides in it its articles of association that the members of the board of directors are recalled with a three-quarter majority decision.

It is unclear whether the articles of association may provide for a higher than three-quarter majority requirement in any case. We are of the opinion that as the 2006 Company Act expressly states that it is permitted to increase the voting requirement to three quarter majority, no higher than three quarter majority vote can be provided in the articles of association, except when the law required unanimous decision.

Unanimous decision is required under the 2006 Company Act in the following cases:

- modification of the terms of the articles of association included in the foundation plan by the inaugural general meeting at foundation of the company;
- adding any matter to the agenda not included in the published agenda, provided that all shareholders are present;
- exclusion in the articles of association of the obligation of the qualified holder to purchase the shares of the controlled company (the shareholder of a controlled company may require the purchase of shares by the qualified holder of the company at market price sixty days within the notification of acquisition of a qualifying holding).

In practice, many companies have chosen to provide a three-quarter majority decision or a veto power in strategic decisions with or without a veto right share. Thus there are articles of association which contain illegal provisions even under the earlier law and/or would contain illegal provisions if they are not modified to meet the 2006 Company Act requirements. If any provision of the articles of association is illegal or becomes illegal due to the change of law and the registration court has not refused the registration of the change of the articles of association, the illegal provision of the articles of association is valid until it is successfully challenged.

There is no express provision in the 2006 Company Act (nor in the earlier 1997 Company Act) on how the shareholders who do not cast their vote shall be considered. There is no court precedent either and the articles of association also provide different rules. The 2006 Company Act provides that a shareholder who cannot cast a vote on a matter shall not be counted in the quorum either, and the same rule applies to the treasury shares as well. Though there is practice whether abstention is considered to be not counting to the quorum or where abstention from voting will not be considered either a “yes” or a “no” vote, in the majority of the cases – according to our understanding – abstention is either not allowed or is treated as a no vote, as whether the required majority vote has been received for a proposal is calculated based on the votes for the proposal divided by the shareholder votes present. Thus, according to our interpretation there is enhanced majority (that is, for the simple or three quarter majority of the shares represented at the meeting and having voting right, but this is not tested yet in front of court.)

In the above, we have not analyzed any special rules applicable to European company established pursuant to Council Regulation (EC) No 2157/2001 of 8 October 2001. In other companies registered in Hungary, change of nationality (thus change of nationality of the company) does not apply. In Hungary there are two European companies, where change of nationality of the company is provided in the articles as requiring only a simple majority vote.

Short form answer:

- |   |
|---|
| <ul style="list-style-type: none"><li><input checked="" type="checkbox"/> All changes in bylaws/articles of association</li><li><input checked="" type="checkbox"/> Mergers/acquisitions of the company by a third party.</li></ul> |
|---|



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES: EXTERNAL  
STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

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**PROPORTIONALITY BETWEEN OWNERSHIP AND  
CONTROL IN EU LISTED COMPANIES:  
COMPARATIVE LEGAL STUDY**

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Reviewed by:

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For ease of reference, the following terms are used in this questionnaire:

“AFM”	the Dutch Authority for the Financial Markets ( <i>Autoriteit Financiële Markten</i> );
“Articles”	the articles of association of a BV or NV, which are made public by means of deposit at the Trade Register;
“BV”	private limited liability company under Dutch law ( <i>besloten vennootschap</i> );
“CC”	Dutch Commercial Code ( <i>Wetboek van Koophandel</i> );
“CEM”	Control Enhancing Mechanism;
“Company”	NV or BV;
“DCC”	Dutch Civil Code ( <i>Burgerlijk Wetboek</i> );
“Dutch Corporate Governance Code”	The Corporate Governance Committee (Tabaksblat Committee) published the Dutch Corporate Governance Code on the 9th of December 2003. This document includes the Code itself, as well as a preamble and explanation of and notes to certain terms used in the Code. On the 30th of December 2004, the legislator designated the Dutch Corporate Governance Code as a code of conduct to which listed companies should refer in their annual report, in which they should indicate to what extent they have complied with the principles and best practice provisions (“the comply or explain principle”);
“Enterprise Chamber”	the Enterprise Chamber of the Amsterdam Court of Appeal that deals with the inquiry procedure which is set out under “General remarks” below;
“Euronext Rule Book II”	General Rules for the Euronext Amsterdam Stock Market;
“General Meeting”	the general meeting of shareholders of a Company, being a corporate body of the Company;
“General Meeting of Shareholders”	the gathering of the shareholders in a meeting;
“LP”	limited partnership under Dutch law ( <i>commanditaire vennootschap</i> );
“NV”	public limited liability company (or joint stock corporation) under Dutch law ( <i>naamloze vennootschap</i> );

“Parent Company”

(a) a company or one or more of its subsidiaries that can exercise, pursuant to an agreement with other persons entitled to vote or otherwise, solely or jointly, more than one half of the voting rights at a general meeting in a legal person (as reflected in the definition of subsidiary in article 2:24a paragraph 1a DCC);

(b) a company or one or more of its subsidiaries that is a member or shareholder of a legal person and, pursuant to an agreement with other persons entitled to vote or otherwise, can appoint or dismiss, solely or jointly, more than one half of the directors or officers or of the supervisory board members in such legal person, if all persons entitled to vote were to cast their vote (as reflected in the definition of subsidiary in article 2:24a paragraph 1b DCC);

“Structure Regime Company”

a Company that has announced to meet the following criteria for a consecutive period of three years (article 2:153 DCC for the NV and article 2:263 for the BV):

- (a) the sum of the issued capital and reserves – according to the balance sheet and explanatory notes thereto – exceeds € 16,000,000;
- (b) the company, or a dependent company<sup>20</sup> has established a Works Council pursuant to a legal obligation; and
- (c) the company and its dependent companies together employ at least 100 employees in the Netherlands;

“Subsidiary”

(a) a legal entity in which the legal entity or one or more of its subsidiaries, pursuant to an agreement with other entities entitled to vote or otherwise, can exercise, solely or jointly, more than one half of the voting rights at a general meeting (article 2:24a paragraph 1a);

(b) a legal entity of which the legal entity or one or more of its subsidiaries is a member or shareholder and, pursuant to an agreement with other persons entitled to vote or otherwise, can appoint or dismiss, solely or jointly, more than one half of the directors or officers or of the supervisory board members, if all persons entitled to vote were to cast their vote (article 2:24a paragraph 1b);

<sup>20</sup>

A dependent company is (a) an entity for which the company or one or more of its dependent companies alone or together provide for its own account at least 50% of the issued capital; or (b) a company having its enterprise registered at the trade register for which the company or a dependent company as a partner is fully liable for all debts towards third parties.

(c) in terms of the Wft a Subsidiary of a person is:

a. a legal entity in which this person or one or more of its subsidiaries, pursuant to an agreement with other persons entitled to vote or otherwise, can exercise, solely or jointly, more than one half of the voting rights at a general meeting; b. a legal entity of which this person or one or more of its subsidiaries is a member or shareholder and, pursuant to an agreement with other persons entitled to vote or otherwise, can appoint or dismiss, solely or jointly, more than one half of the directors or officers or of the supervisory board members, if all persons entitled to vote were to cast their vote. The AFM takes the position that also a company that is not a legal entity can qualify as a subsidiary, provided that the Company Acts under its own name, if the parent or one of its subsidiaries is a managing partner.

“Takeover directive”

EU Directive 2004/25/EG;

“Trade Register”

the Dutch trade register held by the Chamber of Commerce;

“Wft”

the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*).

General remarks:

- Type of company: This document focuses on listed NVs. In many cases the Rules for NVs and BVs are the same. The relevant legal provision for NVs will be mentioned and if the Rules for BVs deviate from the Rules for NVs this will be indicated.
- Group law: Dutch law does not recognize Group law as such.
- State Rules: All rules in the Netherlands are “State Rules.”
- Enterprise Chamber/ Inquiry procedure (“*Enquête procedure*”): Dutch Company law provides for a special court procedure (besides the regular procedures before the civil courts), which opens the possibility that a specialized court (the Enterprise Chamber of the Amsterdam Court of Appeal) orders an inquiry into the affairs of the Company, hence the term “Inquiry procedure.” The Inquiry procedure is divided in three distinct stages:

1. Stage 1: the request for an inquiry.

Shareholders holding 10% of the issued and outstanding share capital of a company or if less € 225,000. of the nominal value of the Company’s share capital may file a request for an inquiry into the affairs of the Company on the basis that there are substantive reasons to doubt that the Company (irrespective of which corporate body) is conducting the right policies. In anticipation of the decision on the inquiry, the Enterprise Chamber may order provisional measures “to restore the order in a Company”. These provisional measures may be extremely far reaching. The authority of the Enterprise Chamber in this respect is very broad. The definitive measures which may be ordered in Stage 3, see

below, give an idea of the type of provisional measures the Enterprise Chamber may order; it has not hesitated, however, to go much further.

2. Stage 2: Inquiry.

If the Enterprise Chamber concludes that there are substantive reasons to doubt whether the Company was conducting the right policies, it may order an inquiry by investigators who are appointed for the purpose by the Enterprise Chamber. The aim of the inquiry is to investigate and report on the policies of the Company. The Enterprise Chamber normally restricts the scope of the investigation both in subject matter and in relevant period of time.

3. Stage 3.

Upon the request of the parties who originally filed the petition for the inquiry or any other persons entitled to file a request for an inquiry, the Enterprise Chamber may, on the basis of the Inquiry Report determine that there was mismanagement of the Company. If the Enterprise Chamber determines there was mismanagement it may order certain measures:

- the suspension or nullification of a resolution of the management board, the supervisory board, the general meeting or of any other corporate body of the company;
- the suspension or dismissal of one or more managing directors or supervisory directors;
- the temporary appointment of one or more managing directors or supervisory directors;
- the temporary derogation from such provisions in the Articles as shall be specified by the Enterprise Chamber;
- the temporary transfer of shares to a nominee;
- the dissolution of the company.

Comment

The Inquiry Procedure has proven to be an effective instrument to - mostly - shareholders to influence the course of affairs within a Company. By means of provisional measures the Enterprise Chamber has suspended anti take-over defences (Gucci), extended the tender period in a public tender offer (Begemann), sidelined supervisory directors on crucial policy items (Stork), killed any attempt to create a loyalty dividend for longstanding shareholders (DSM), prevented the integration of bidder and target after a successful public offer (Versatel/Tele2).

In only very few - recent - cases concerning listed companies has the Enterprise Chamber determined that there was mismanagement. Very often the situation is solved by the parties after provisional measures or after the inquiry.

It is obvious that the Inquiry procedure has been a powerful instrument in the development of Dutch Company law and specifically Corporate Governance practices. Certainly over the last ten years has the Enterprise Chamber been prepared to use that instrument.

Evolving situations:

1. The Dutch government is in the process of preparing a modernization of the DCC with respect to BVs. In general the provisions regarding BVs will become more flexible, i.e. less mandatory rules are included in the DCC which means that contractual deviation from many of the rules is possible. These new BV provisions are still under governmental discussion. It is

envisaged to implement the new provisions at the end of 2007 or in 2008. Where this is relevant we will mention the new provisions.

2. The Takeover directive is not implemented in Dutch Rules yet. New Dutch Takeover Rules based on the Takeover directive are expected to be implemented soon in 2007. Until implementation of the Takeover directive the present Rules will stay in force.

One of the (anticipated) amendments (based on the Takeover directive) of the Dutch Rules will be the introduction of a mandatory bid in case of the acquisition of control in a NV by a natural person or legal entity (including the acquisition by the persons acting in concert with him). “Control” is defined as 30% of the voting rights in a General Meeting of Shareholders. The New Dutch Takeover Rules provide for the possibility to include a provision in the Articles of a listed NV that in case of a hostile takeover bid (a) no defensive measures shall be taken, (b) restrictions by virtue of the Articles or by virtue of a shareholders’ agreement on the transferability of the shares shall cease to have effect for the bidder, (c) restrictions by virtue of the Articles or by virtue of a shareholders’ agreement on the exercise of voting rights shall cease to have effect for the bidder, or (d) each share gives the right to one vote with respect to proposals in the General Meeting of Shareholders which relate to the bid despite other provisions on voting rights in the Articles or in a shareholders’ agreement, all this with the exception of financing preference shares of which the voting rights are based on the fair value of the capital contribution. Moreover the Articles of the listed NV can provide that the holder of at least 75% of the issued share capital (including the shares he will hold as a consequence of the bid) is authorized to convene a General Meeting of Shareholders (after the period for acceptance of the bid) in which the special statutory rights of shareholders in connection with the appointment or dismissal of a managing director or supervisory director are not applicable. In this General Meeting of Shareholders each share gives the right to one vote and restrictions by virtue of the Articles or by virtue of a shareholders’ agreement on the exercise of voting rights are not applicable, all this with the exception of financing preference shares of which the voting rights are based on the fair value of the capital contribution.

- General standards of review: reasonableness and fairness / equality principle: According to a general provision of the DCC (article 2:8 DCC) a Company and the persons who by virtue of the law and the Articles of the Company are concerned with its organization must, in such capacity, conduct themselves in relation to each other in accordance with the dictates of reasonableness and fairness. A rule which binds them by virtue of the law, custom, the Articles, bylaws or a resolution shall not be applicable to the extent that, in the circumstances, it is unacceptable according to standards of reasonableness and fairness.

Another general principle is laid down in article 2:92 DCC for NVs and 2:201 for BVs: Save as is otherwise provided in the Articles, all shares shall rank *pari passu* in proportion to their amount. A company must treat in the same manner shareholders and holders of depositary receipts for shares (Depositary Certificates) whose circumstances are equal. “One share, one vote and one dividend”: Recently the Enterprise Chamber ruled that the proposed loyalty dividend programme of DSM – a Dutch listed life science and speciality chemicals group - was unlawful because it did not treat shareholders having the same type of shares equally (OK 28 March 2007). Under the scheme, shareholders who held shares for more than 3 years would be entitled to a 30% loyalty bonus over the average dividend in that period and 10% a year thereafter. According to the Enterprise Chamber DSM wanted to make an unlawful distinction between shareholders.

- Company interest: According to unwritten rules of Dutch company law and as laid down in the Dutch Corporate Governance Code, which contains non-binding principles and best practice provisions for listed companies, the board of managing directors shall at all times be guided by the interests of the company and its affiliated enterprise, taking into consideration the interests of

the company's stakeholders. The stakeholders include groups and individuals who directly or indirectly influence (or are influenced by) the achievement of the aims of the company, such as employees, shareholders and other providers of capital, suppliers and customers, but also government and civil society.

- Disclosure obligations: The Dutch Act on Financial Supervision (*Wet op het financieel toezicht, hereafter Wft*) came into force on 1 January 2007. The disclosure requirements under the Wft apply to a Dutch NV, provided that shares or depository receipts for shares relating to this NV have been admitted to trading on a regulated market in the Netherlands or in another EU Member State. The Wft contains disclosure obligations for the issuer as well as for its shareholders and its members of the management board and supervisory board. The disclosure obligations relating to the issuer's shareholders apply to persons who control shares and/or voting rights. The definition of "shares" includes:

(1) shares as referred to in article 2:79 paragraph 1 DCC;

(2) depository receipts for shares or other transferable securities that are equivalent to depository receipts for shares;

(3) other transferable securities, other than options as referred to under (4), used to acquire the shares referred to under (1) or the securities referred to under (2); and

(4) options to acquire the shares referred to under (1) or the securities referred to under (2).

"Voting rights" are the voting rights conferred by the shares held, including rights resulting from an agreement to acquire votes. Issuers that are subject to the disclosure requirements under the Wft must disclose the outstanding capital, the shares into which this capital is divided and the voting rights attached to these shares to the AFM. The issuer must also disclose each change in its capital, voting rights attached to the shares that it has issued and changes in the depository receipts that are issued with the cooperation of the issuer. When an issuer that is subject to the disclosure requirements is aware - or should be aware - of the fact that there has been a change in its capital and/or the voting rights, it must notify the AFM of this particular change. Briefly, a change of 1% or more must be disclosed immediately, other changes (less than 1%) may be disclosed once per calendar quarter.

Based upon the disclosures by the issuer, holders of a "substantial interest" (basically this term refers to at least 5% of the issued capital or the voting rights) or one or more shares with special controlling rights in an issuer under the Articles have an obligation to file a notification with the AFM. If the Parent Company or any other shareholder acquires or disposes of an interest in the capital and/or the voting rights of the issuer, it must file a notification with the AFM if, as a result of this acquisition or disposal the percentage of capital interest and/or voting rights meets, exceeds or falls below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95%. The same applies if these thresholds are met or passed in an upward or downward direction as a result of changes in the capital or the voting rights or the issuer and the shareholder is or should be aware of these changes. Also a disclosure obligation applies if any shareholder acquires or disposes of shares that have a special right pursuant to the issuer's Articles relating to the issuer's control irrespective of any thresholds. Examples of such special rights are priority shares or "golden shares."

A legal entity or individual "controls" the shares and the voting rights in its possession. In addition, a legal entity or individual is considered to control the shares and the voting rights of its Subsidiaries. In order to avoid multiple notifications within corporate groups, only the ultimate

Parent Company is regarded as the person that has the control. A subsidiary is not entitled to make a notification.

The obligation to notify also applies to persons that have been granted a proxy to exercise the principal's voting rights in the issuer at their own discretion and without instructions from the principal. A depositary receipt holder who has been granted a proxy must also disclose his control. If the depositary receipts for shares were not issued with the cooperation of the issuer, the principal must disclose his voting rights. In the case of the granting of a proxy to a holder of depositary receipts for shares that were issued with the cooperation of the issuer and the depositary receipt holder has not (yet) obtained the proxy, the depositary receipt holder must disclose his voting rights. If there is a substantial holding, the principal also has an obligation to disclose his voting rights. If the depositary receipt holder did obtain a proxy, he must disclose his voting rights if a substantial holding is involved. The principal must then also disclose his (potential) voting rights.

If the parties have concluded an agreement that provides for a long-term joint policy on voting, each party is deemed to have the votes that are at the other party's disposal. Such an agreement is involved if these persons have agreed to conduct a long-term policy in relation to the issuer, which policy is expressed through the joint exercising of their voting rights (i.e. the agreement should not apply to one single general meeting of shareholders). The agreement does not necessarily have to be a written agreement. However, a voting rights agreement as referred to in article 2:24a paragraph 1 DCC does not qualify as an agreement as referred to in article 5:45(5) Wft but this does not influence the applicability of this article 2:24a paragraph 1 DCC, meaning that the company can qualify as Subsidiary within the meaning of this article.

Finally, members of the management board and supervisory board have a duty to disclose immediately changes to their holdings and voting rights. Newly appointed board members have to disclose their holdings and voting rights immediately with respect to the issuer and related entities. If a board member is a legal entity, these obligations apply to the private persons that determine the day-to-day policy or supervise the management of the issuer.

## MULTIPLE VOTING RIGHTS SHARES

### 1) Is this CEM available?

According to the DCC (article 2:118 paragraph 1 DCC) each shareholder shall have at least one vote. The DCC further provides that:

(a) if the authorized capital is divided into shares of an equal nominal amount, each shareholder may cast as many votes as he holds shares (article 2:118 paragraph 2 DCC); and

(b) if the authorized capital is divided into shares of unequal nominal amounts, the number of votes of each shareholder shall equal the multiple of the nominal amount of the smallest share included in the aggregate nominal amount of his shares (article 2:118 paragraph 3 DCC). Fractions of votes shall be disregarded.

The system under (b) can be illustrated as follows. If the authorized capital is divided into shares of a nominal amount (par value) of EUR 100 and EUR 1,000, then the shares of EUR 100 give right to one vote and the shares of EUR 1,000 give right to 10 votes.

Nominal value and payment obligation: On subscription for a share in a NV payment must be made of the nominal amount and, in addition, if the share is subscribed for at a higher amount, the difference between such amounts (share premium). It may be stipulated that a part, not exceeding  $\frac{3}{4}$  of the nominal amount, need only be paid up after it is called by the NV (article 2:80 paragraph 1 DCC for NV). The same applies to a BV, except that the share premium is not included in the payment obligation (article 2:191 paragraph 1 DCC).

The nominal value of the shares determines the voting right. The amount over the nominal value paid up on the shares (share premium) is not taken into consideration. In practice, it is possible to create multiple classes of shares with *an unequal nominal value* but similar contribution obligations. For instance it is possible to introduce in the Articles class A shares having a nominal value of EUR 100 and class B shares having a nominal value of EUR 1,000. In addition it is stipulated that EUR 1,000 must be paid on both the class A shares (EUR 100 nominal value and EUR 900 share premium) and the class B shares (only nominal value). The class A shares of EUR 100 give right to one vote and the class B shares of EUR 1,000 give right to 10 votes while the payment obligation is the same.

This mechanism is sometimes called “high/low voting stock.” It was for instance used for KPNQwest when it was listed in 1999 (a dual listing at that time at Nasdaq and the Amsterdam Stock Exchange). The issued capital of KPNQwest was divided into 200 million class A shares, 200 million class B shares and 44 million class C shares. The nominal value of the class A shares and the class B shares was EUR 0.50 and the nominal value of the class C shares was EUR 0.05. The class A and B shares were held by the founders while the class C shares were held by the public. All shares were listed. The economic rights (dividend and liquidation rights) of the shares were equal. However each class A and class B share gave the right to cast 10 votes and each class C share gave the right to cast 1 vote.

Instead of stipulating a share premium for certain shares and not for other shares, it is also possible to allow that on a certain class of shares only part of the nominal amount is paid-up upon issue, without affecting the voting rights attached to the nominal value of the shares. The issuance of preference shares as an anti-takeover measure is based upon the system. This system works as follows: A listed company has a capital divided into ordinary shares with a nominal value of EUR 1 and preference shares with a nominal value of EUR 1. The preference shares give the right to a certain fixed percentage of the

dividend. The ordinary shares are listed and the price at the Stock Exchange of the ordinary shares is EUR 50. The acquisition price of a vote through buying ordinary shares is EUR 50. Preference shares are issued as a defensive measure to a trust office, being a foundation (stichting) or another legal entity, for their nominal value of EUR 1. At the issuance it is agreed that only 25% will be paid up. As a consequence the price to buy one vote by buying preference shares is EUR 0.25.

According to the Corporate Governance Code, the voting right on financing preference shares (as opposed to protective preference shares as described above) shall ideally be based on the fair value of the capital contribution.

Summarizing: the voting right is linked to nominal value of the shares. In other words: all shares shall rank *pari passu* in proportion to their nominal amount. It is not possible to determine that shares of a certain class (for instance class A shares) give the right to cast one vote and shares of another class (for instance class B shares) give the right to cast two votes if the nominal value is equal. As a general principle a company must treat in the same manner shareholders (and holders of depositary receipts) whose circumstances are equal. The following two types of deviation are possible under the DCC. These are Voting Right Ceilings.

Modernization DCC: Under the new DCC (see general remarks) a flexible voting right will be introduced for shares in BVs. Article 2:228 paragraphs 4 and 5 will be deleted as soon as the new DCC comes into force. This means that the Articles can provide for shares with more than one vote (without the Voting Right Ceiling mentioned above). If the Articles are amended in order to include these shares with multiple voting rights, the resolution of the General Meeting can only be taken with unanimous votes in a meeting in which the entire capital is present or represented. In this way minority shareholders will not be faced with new share proportions without their consent. The rule that each share shall have at least one vote will remain.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	The voting rights are linked to the nominal value of the shares.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Article 2:118/228 paragraph 3 DCC is a provision which contains non-mandatory law (“default rule”): if the authorized capital is divided into shares of unequal nominal amounts, the number of votes of each shareholder shall equal the multiple of the nominal amount of the smallest share included in the aggregate nominal amount of his shares. The number of votes may be limited by the Articles. The possible deviations are mentioned in article 2:118/228 paragraph 4 and 5 (Voting Right Ceilings).

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Article 2:118 DCC for NV and article 2:228 for BV. Default: each shareholder has at least one vote. If the authorized capital is divided into shares of an equal nominal amount, one share equals one vote. However, in the event of unequal nominal values, the nominal amount of the smallest amount determines the number of
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		votes per share (Articles may contain deviations).
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**3) If this CEM is available, is it subject to any restrictions?**

There are no statutory restrictions, but see article 2:118/228 paragraph 3 DCC: if the authorized capital is divided into shares of unequal nominal amounts, the number of votes of each shareholder shall equal the multiple of the nominal amount of the smallest share included in the aggregate nominal amount of his shares.

All shares shall rank *pari passu* in proportion to their nominal amount. Only two types of deviation can be included in the Articles:

- (1) The amount of votes to be cast by the same shareholder can be limited in the Articles, provided that shareholders whose amount of shares is equal can cast the same amount of votes and the limitation is not more favorable for holder of a larger amount of shares than for holder of a smaller amount of shares (“Decreasing Voting Rights”).
- (2) Other deviations to a maximum of 6 votes for any shareholder (or 3 votes, if the capital is divided into less than one hundred shares (unequal voting rights or “Statutory Limitation”).

According to Euronext Rule Book II cumulation of anti-takeover measures (protective Preference Shares, Depositary Certificates, limited voting right, joint ownership constructions or national ownership constructions and Priority Shares) is limited.

Short form answer:

<input checked="" type="checkbox"/> Maximum number of votes per share	Article 2:118/228 paragraph 3, 4 and 5 DCC
<input checked="" type="checkbox"/> Application of a Breakthrough Rule	The New Dutch Takeover Rules are not implemented yet.
<input checked="" type="checkbox"/> Others: Stock Exchange Rules	The Stock Exchange Rules prohibit certain cumulations of anti-takeover measures.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Article 2:118/228 paragraph 3 DCC is a default rule: if the authorized capital is divided into shares of unequal nominal amounts, the number of votes of each shareholder shall equal the multiple of the nominal amount of the smallest share included in the aggregate nominal amount of his shares. The number of votes may be limited by the Articles. The possible deviations are mentioned in article 2:118/228 paragraph 4 and 5 (Voting Right Ceilings). The Articles can be amended through a resolution of the General Meeting to this effect.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum N/A <input checked="" type="checkbox"/> Majority: simple [50%+1 of the votes cast] (rules for amendment of the Articles are applicable)
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Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Officially verified copy of the Articles should be filed with the Trade Register.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Reference is made to the general remarks.

Annual report: According to article 2:391 paragraph 5 DCC by Regulation further provisions may be set with regard to the contents of the annual report. These provisions may relate in particular to compliance with a code of conduct to be designated (article 2:391 paragraph 5 DCC). The code of conduct which is designated is the Corporate Governance Code. Moreover the Resolution of 5 April 2006 to implement article 10 of the Takeover directive (Directive 2004/25/EG) is a Regulation which contains further provisions. Pursuant to this Regulation information shall be given in the annual report with respect to (among others): (a) the capital structure of a company, the classes of shares and the rights and obligations attached thereto as well as the percentage of shares of each class in relation to the total issued capital, (b) each restriction by the company in transfer of shares or depositary receipts issued with the co-operation of the company (c) shareholdings in the company for which a disclosure must be made pursuant to the Wft, (d) special rights with regard to control and the name of the holder thereof, (e) each limitation of voting rights.

Euronext Rulebook II contains several provisions which include an obligation of the listed NV to disclose certain information to its shareholders. The listed NV must - when proposing to amend its Articles to the effect of introducing the possibility of issuing Multiple Voting Rights by way of anti-takeover measure – explicitly disclose in the explanatory notes to such proposal the protective nature thereof.

Upon implementation of this CEM, the listed NV must disclose in its annual report to whom these shares have been issued or transferred or with whom agreements have been concluded for the allocation of such shares. In the case a foundation or association is the beneficiary of such shares, the publication must name the members of the body which decides on the exercise of the votes carried by the shares and contain a statement to the effect that, in the joint opinion of the listed NV and the managing directors of such foundation or association, the foundation or association is independent of the listed NV, in the sense as referred to in the (Appendix X of the) Euronext Rulebook.

In addition, the listed NV must make a list of the functions currently held or previously held by such members, insofar as the same are relevant to the discharge of their duties, and deposit the list at its offices for the inspection by shareholders and holders of Depositary Certificates.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half yearly or yearly basis: Annual report: article 2:391 paragraph 5 DCC and Stock Exchange Rules.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>If the Articles are amended, the new Articles must be made public by means of filing with the Trade Register held by the Chamber of Commerce. The Chamber of Commerce is responsible for announcement of this filing in the Official Gazette. In the explanatory notes to the amendment of the Articles the protective nature of the amendment must be disclosed to the shareholders.</p> <p>An NV whose shares are admitted to trading on a regulated market in the Netherlands or another EU Member State, or a state that is a party to the Agreement on the European</p>
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	<p>Economic Area is subject to certain disclosure requirements under the Wft. Such NV has to disclose (changes to) its capital and voting rights.</p> <p>Changes in the capital of 1% or more must be disclosed immediately to the AFM under the Wft. Changes that amount together to less than 1% of the capital can be disclosed per calendar quarter.</p> <p>Changes in the voting rights attached to the shares that the NV has issued must be disclosed immediately, insofar as it has not already been disclosed at the same time as a related capital change of 1% or more. Changes of less than 1% that result from total capital changes of less than 1% of the capital at the same time as it discloses the capital changes concerned.</p> <p>Shareholders also have an obligation to disclose to the AFM (changes to) their capital interest and voting rights in an NV that is subject to the disclosure requirements under the Wft. If the percentage of capital interest and/or voting rights of a shareholder meets, exceeds or falls below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent, the obligations to file a notification with the AFM applies.</p> <p>A shareholder has to disclose both the total number of votes at his disposal and the total capital interest at his disposal. Subsequently, the number of votes per share that a shareholder has will become clear from the public AFM-register, provided that the shareholder has at least 5% of the voting rights or the capital interest at his disposal.</p> <p>Please refer to the general remarks for more information about the disclosure obligations under the Wft.</p>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Save as is otherwise provided in the Articles, all shares shall rank *pari passu* in proportion to their nominal amount. A company must observe principles of reasonableness and fairness and must treat in the same manner shareholders and holders of depositary receipts whose circumstances are equal. As indicated the Enterprise Chamber has recently ruled that the proposed loyalty dividend programme of DSM was unlawful because it did not treat shareholders having the same type of shares equally (OK 28 March 2007). Moreover, the (minority) shareholders rights must be observed.

Short form answer:

<p><input checked="" type="checkbox"/> The company does not treat in the same manner shareholders whose circumstances are equal.</p> <p><input checked="" type="checkbox"/> The decision is contrary to the law or the articles and as a consequence the decision is null and void or the decision may be declared a nullity because the rules of the DCC and/or the Articles regulating the passing of resolutions are not fully observed or on the grounds that it is contrary to the principles of reasonableness and fairness required by the DCC (article 2:8 DCC).</p>
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NON-VOTING SHARES

1) **Is this CEM available?**

No, according to the DCC each shareholder shall have at least one vote (article 2:118/228 paragraph 1 DCC). Under certain limited circumstances the shareholder does not have or cannot exercise its voting rights:

- The Articles may provide that a shareholder shall not be entitled to exercise the right to vote as long as he is in default in complying with an obligation under the DCC or the Articles (article 2:87b/195b DCC).
- No vote may be cast by the company if the share belongs to the company or to a Subsidiary thereof or in respect of a share in respect of which either of them holds the depositary receipts (article 2:118/228 paragraph DCC).
- After a transfer of shares in the capital of a BV or non-listed NV the voting rights cannot be exercised until the company has acknowledged the transfer or the juridical instrument has been served on it (article 2:86a/196a DCC).

Alternatives: Although it is not possible to introduce non-voting shares, as an alternative depositary receipts for shares can be introduced. In general these depositary receipts only provide an economic right; the voting right remains with the holder of the share. The holders of depositary receipts issued with the cooperation of the company which are listed will be granted the authority to cast a vote in certain circumstances. Formerly some NVs applied a system in which no shareholder was entitled to have more than 1% of the shares; voting rights on shares a shareholder held over and above this percentage were suspended (to the extent the shareholder has obtained valid title to the shares). This restriction did not apply or was waived by the trust office which issued the depositary receipts. Reference is made to the relevant CEMs (Depositary Certificates and Ownership Ceilings). Another alternative is the introduction of statutory participation or profit sharing bonds (*participatie* of *winstbewijzen*). These “bonds” give the right to share in the (yearly) profits and/or liquidation profits of the company. The bonds must have a basis in the Articles; a document in writing or physical document is not necessary. In practice, these participation or profit-sharing bonds are not frequently used.

Modernization DCC: For BVs it is investigated whether non-voting shares should be introduced. However, it is not likely that this will be included with the modernization of the DCC in short run.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	article 2:118/228 paragraph 1 DCC
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer: This CEM is not available.

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	As each shareholder must have at least one vote the DCC prohibits non-voting shares.
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**Other questions not applicable.**

**NON-VOTING PREFERENCE SHARES**

**1) Is this CEM available?**

No, according to the DCC each shareholder shall have at least one vote. Non-voting preference shares are not available.

Preference shares (with the right to vote) are mentioned in article 2:96a DCC for NVs and article 2:206a DCC for BVs. Preference shares have their basis in the Articles of the company and normally give right to a preferred fixed dividend and/or liquidation amount. Sometimes the Articles provide that if the distribution payable to the holders of preference shares was not made or was not made in full in any previous financial year on account of insufficient profits, this distribution shall, as far as possible, first be made to these shareholders (cumulative preference shares). However, the right to share in the remaining profits and/or liquidation surplus is excluded or limited.

As the financial risks of preference shares are limited they are sometimes attractive for investors (financing preference shares). According to the Corporate Governance Code, the voting right on financing preference shares shall ideally be based on the fair value of the capital contribution. According to the DCC each shareholder shall have at least one vote.

Preference shares in NVs are also used as an anti-takeover measure in case of a hostile takeover (defensive preference shares) of listed NV's. The pre-emption right for existing shareholders that applies to ordinary shares does not apply to preference shares (article 96a paragraph 2 and 206a paragraph 2 DCC). The preference shares are issued to a foundation or a friendly third party under the obligation to pay up 25% of the nominal value of the shares. If they have the same nominal value as the listed ordinary shares they provide for the same voting rights while the acquisition price is minimal.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	As each shareholder must have at least one vote; the DCC prohibits non-voting shares.
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**Other questions not applicable.**

**PYRAMID STRUCTURES**

**1) Is this CEM available?**

Pyramid structures are as such not illegal in the Netherlands. An example of a pyramid structure for a listed company is Heineken NV. The Heineken family (indirectly) owns the majority (50.001%) of the shares in Heineken Holding NV, a listed holding company, which in its turn holds the majority (50.001%) of the shares in Heineken NV, which is also listed. Through this construction, the Heineken family effectively controls Heineken NV, even though it only provides slightly more than 25% of the capital. A listed company may list the shares in a Newco to which it has contributed certain assets. This has happened frequently in the Netherlands but almost always with the subsequent sale of the majority of the shares. In only a limited number of cases a Parent retained such control. An example presently is Endemol Entertainment NV which was listed by Telefonica SA which retained 75% of the shares.

As a general rule of the Dutch Corporate Governance Code the board of managing directors shall at all times be guided by the interests of the company and its affiliated enterprise, taking into consideration the interests of the company’s stakeholders. The stakeholders include the minority shareholders. Moreover a company should always observe the general principle of reasonableness and fairness which is laid down in the DCC (article 2:8 DCC).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The Enterprise Chamber ruled that the structure of Heineken NV does not qualify as misconduct within the meaning of the DCC although this structure indisputably aims at and leads to control of Heineken NV by the Heineken family. As a general rule the board of Heineken Holding NV must protect the interest of the company. This includes observing the interest of minority shareholders. The object of Heineken Holding NV is to safeguard the continuity of the Heineken Group by providing the members of the Heineken family a majority in the share capital of Heineken NV and this has always been known to the investors of both Heineken Holding NV and Heineken NV.

A company and the persons who by virtue of the law and its Articles are concerned with its organization must, in such capacity, conduct themselves in relation to each other in accordance with the dictates of reasonableness and fairness. A rule which binds them by virtue of the law, custom, the Articles, bylaws or a resolution shall be inapplicable to the extent that, in the circumstances, it is unacceptable according to standards of reasonableness and fairness (article 2:8 DCC). In other words: a controlling shareholder has to take into consideration the interests of his fellow minority shareholders in decisions which affect the interests of minority shareholders. As indicated, the Corporate Governance Code also prescribes that the interests of individual shareholders are taken into account.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	article 2:8 DCC
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	As a general rule a company must observe the interest of the company. This includes observing the interest of minority shareholders.

<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> High Court Case Law	OK Hof Amsterdam 18 October 2001, NJ 2001/641. Principle Ruling, see narrative answer.
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**3) If this CEM is available, is it subject to any restrictions?**

A company and the persons who by virtue of the law and its Articles are concerned with its organization must, in such capacity, conduct themselves in relation to each other in accordance with the dictates of reasonableness and fairness. A rule which binds them by virtue of the law, custom, the Articles, bylaws or a resolution shall be inapplicable to the extent that, in the circumstances, it is unacceptable according to standards of reasonableness and fairness (article 2:8 DCC). In other words: a controlling shareholder has to take into consideration the interests of his fellow minority shareholders in decisions which affect the interests of minority shareholders. As indicated, the Corporate Governance Code also prescribes that the interests of individual shareholders are taken into account.

Short form answer:

<input checked="" type="checkbox"/> Others	article 2:8 DCC
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

This CEM is implemented through the transfer by a Parent of a stake in a Subsidiary to outside shareholders. For a listed company no decisions are required under the DCC.

Parent:

NVs: Resolutions of the management board of the Parent require approval of the General Meeting when these relate to an important change in the identity or character of the company or its enterprise, including in any case:

- (a) transfer of the enterprise or practically the entire enterprise to a third party;
- (b) the entry into or termination of a long-term cooperation of the company or a Subsidiary with another legal entity if such cooperation or termination is of a far-reaching significance for the company;
- (c) the acquisition or divestment by it or a Subsidiary of a participating interest in the capital of a company having a value of at least 1/3 of the amount of its assets according to its balance sheet and explanatory notes or, if the company prepares a consolidated balance sheet, according to its consolidated balance sheet and explanatory notes in the last adopted annual accounts of the company (article 2:107a paragraph 1 DCC).

Structure Regime Companies: Resolutions of the management board of the Parent regarding any far-reaching change in the size of a participation in the capital of another company, the value of which equals at least the sum of 1/4 of the issued capital and the reserves of the participating company, as shown in its balance sheet with explanatory notes, require approval of the supervisory board (article 2:164/274 paragraph 1 DCC).

However, the absence of approval by the General Meeting of the Parent or the supervisory board of the Subsidiary of a resolution as referred to above shall not affect the representative authority of the management board or the directors (article 2:107a paragraph 2 DCC and article 2:164/274 paragraph 2 DCC).

Subsidiary:

The transfer of shares in a BV is subject to transfer restrictions (article 2:195 DCC). For NVs transfer restrictions are optional (article 2:87 DCC). The transfer restriction is laid down in the Articles and may provide that a decision by the shareholders and/or the board of managing directors is required.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the board of directors	<input checked="" type="checkbox"/> Autonomous decision
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders only for BVs if the transfer restriction laid down in the Articles requires a resolution.	<input checked="" type="checkbox"/> Quorum: N/A unless the transfer restriction laid down in the Articles requires this. <input checked="" type="checkbox"/> Majority: Simple unless the transfer restriction laid down in the Articles requires a qualified majority.

Specific conditions: None.

**5) Are there ongoing disclosure requirements regarding such CEM?**

The legal entity or person that has control of the relevant shares in the issuing institution is required to make a Wft notification. The ultimate parent company is regarded as the company that has control. Reference is made to the general remarks.

Annual report: According to article 2:391 paragraph 5 DCC by Regulation further provisions may be set with regard to the contents of the annual report. These provisions may relate in particular to compliance with a code of conduct to be designated (article 2:391 paragraph 5 DCC). The code of conduct which is designated is the Corporate Governance Code. Moreover the Resolution of 5 April 2006 to implement article 10 of the Takeover directive (Directive 2004/25/EG) is a Regulation which contains further provisions. Pursuant to this Regulation information shall be given in the annual report with respect to (among others): (a) the capital structure of a company, the classes of shares and the rights and obligations attached thereto as well as the percentage of shares of each class in relation to the total issued capital, (b) each restriction by the company in transfer of shares or depositary receipts issued with the co-operation of the company (c) shareholdings in the company for which a disclosure must be made pursuant to the Wft, (d) special rights with regard to control and the name of the holder thereof, (e) each limitation of voting rights.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Annual report: article 2:391 paragraph 5 DCC. <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: An NV whose shares are admitted to trading on a regulated market in the Netherlands or another EU Member State, or a state that is a party to the Agreement on the European Economic Area is subject to certain disclosure requirements under the Wft. Such NV has to disclose (changes to) its capital and voting rights. Changes in the capital of 1% or more must be disclosed immediately to the AFM under the Wft. Changes that amount together to less than 1% of the capital can be disclosed per calendar quarter. Changes in the voting rights attached to the shares that the NV has issued must be disclosed
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	<p>immediately, insofar as it has not already been disclosed at the same time as a related capital change of 1% or more. Changes of less than 1% that result from total capital changes of less than 1% of the capital at the same time as it discloses the capital changes concerned.</p> <p>Shareholders also have an obligation to disclose to the AFM (changes to) their capital interest and voting rights in an NV that is subject to the disclosure requirements under the Wft. If the percentage of capital interest and/or voting rights of a shareholder meets, exceeds or falls below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent, the obligations to file a notification with the AFM applies.</p> <p>The Wft contains specific provisions regarding the allocation of capital interest and/or voting rights. In some cases the person that actually holds the shares or the voting rights in the NV is another person than the person that has the shares ‘at his disposal’ within the meaning of the Wft.</p> <p>For example, a person is deemed to have the disposal of the shares and the votes attached to these shares that are held by a subsidiary. This means that the parent company has to disclose such ‘indirect’ capital interest and voting rights. A subsidiary is understood to mean a subsidiary within the meaning of Section 2:24a DCC. A company in which a natural person can exercise the rights and powers as referred to in Section 2:24a DCC (i.e. for example a natural person who can cast more than half the votes at the General Meeting) is also considered to be a subsidiary. As a result, in the case of a pyramid structure, it may become clear from the public AFM-register which persons are ‘on top of the pyramid’ and actually control the NV.</p> <p>Please refer to the general remarks for more information about the disclosure obligations under the Wft.</p>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

A company must observe principles of reasonableness and fairness and must treat in the same manner shareholders and holders of depositary receipts for shares whose circumstances are equal. Moreover, the (minority) shareholders’ rights must be observed. This CEM is implemented through the transfer by a Parent of a stake in a Subsidiary to outside shareholders. The transfer of shares in a BV is subject to transfer restrictions (article 2:195 DCC). For NVs transfer restrictions are optional (article 2:87 DCC). The transfer restriction is laid down in the Articles and may provide that a decision by the shareholders and/or the board of managing directors is required.

Short form answer:

<p><input checked="" type="checkbox"/> The decision (to approve a transfer of shares in a BV) is contrary to the law or the articles and as a consequence the decision is null and void or the decision may be declared a nullity because the rules of the DCC and/or the Articles regulating the passing of resolutions are not fully observed or on the grounds that it is contrary to the principles of reasonableness and fairness required by the DCC (article 2:8 DCC).</p>
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## PRIORITY SHARES

### 1) Is this CEM available?

According to article 2:92 DCC (2:201 for BVs) all shares shall rank *pari passu* in proportion to their amount save as is otherwise provided in the Articles. A company must treat in the same manner shareholders and holders of depositary receipts whose circumstances are equal. The articles may provide that special rights with regard to control of the company specified in the Articles shall be vested in shares of a particular class: priority shares.

**Directors Designated by Shareholders:** The most important function often attributed to priority shares is the right of the general meeting of holders of priority shares to nominate directors (article 2:133/243 DCC for managing directors and article 2:142/252 DCC for supervisory directors). **Exclusive Powers of the GMS:** However under the DCC it is not possible to grant a direct right to appoint directors to certain persons. Similarly, apart from the resolutions mentioned hereafter, the DCC does not allow a priority shareholder to adopt shareholders resolutions in stead of the General Meeting. The valid adoption of resolutions can be made subject to prior approval of the holders of priority shares. Consequently, apart from the nomination right and the following limited number of resolutions, a priority shareholder can only exercise negative control. This veto right can for instance be granted in the Articles with respect to the resolution to amend the Articles or to dissolve the company.

The Articles of NVs can provide that the right to resolve to issue new shares and to exclude pre-emptive rights are delegated by the General Meeting to the general meeting of holders of priority shares for a period of 5 years. The general meeting of holders of priority shares as a corporate body of a BV can be granted the right to resolve the following by virtue of a provision in the Articles of the BV (a) to issue new shares of any class or a certain class, (b) to exclude pre-emptive rights with respect to the relevant shares and (c) to approve a transfer of shares of any class or a certain class pursuant to the (obligatory) transfer restrictions of a BV.

Priority shares are sometimes issued to a trust office, being for instance a foundation (*stichting*), for control purposes of listed NVs. In practice both the use and popularity of priority shares in NVs decline as a result of capital market pressures. To some extent as a general principle following from the Corporate Governance Code, the good governance requires the fully-fledged participation of shareholders in the decision-making in the general meeting of shareholders. The general meeting of shareholders should be able to exert such influence on the policy of the company that it plays a fully-fledged role in the system of checks and balances in the company.

**New Dutch Takeover Rules:** Reference is made to the General Remarks above. The Articles of the listed NV may provide (under the opt in arrangement of the Takeover directive) that the holder of at least 75% of the issued capital (including the shares he will hold as a consequence of the bid) is authorized to convene a General Meeting of Shareholders (after the period for acceptance of the bid) in which the special statutory rights of shareholders in connection with the appointment or dismissal of a managing director or supervisory director are not applicable. In this General Meeting of Shareholders each share gives the right to one vote and restrictions by virtue of the Articles or by virtue of a shareholders' agreement on the exercise of voting rights are not applicable. The rights attached to Priority Shares are then *ipso facto* cancelled. The New Dutch Takeover Rules are not implemented yet.

**Modernization DCC:** As indicated it is not possible to grant a direct right to appoint directors to certain persons. With respect to BVs this is likely to change as soon as the new provisions of the DCC are implemented (see general remarks). Reference is also made to the General Background Question under 1). After modernization of the DCC, holders of a specific class of shares, such as holders of priority shares, may be granted the right to appoint a director in the Articles.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	The Articles may provide that special rights with regard to control of the company specified in the articles shall be vested in priority shares. Article 2:92/201 paragraph 3 DCC.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

None.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Pursuant to Section 10 of Appendix X of Euronext Rule Book II, an issuer of which the shares have been admitted to trading on Euronext Amsterdam must ensure that no more than fifty per cent of the priority shares are held by managing directors of the issuer and that where priority shares are held by a legal person, no more than fifty per cent of the number of votes which may be cast, directly or indirectly, at meetings of the body or bodies empowered to decide on the exercise of the voting rights are carried by the priority shares, can be exercised by persons who are also managing directors of the issuer.  With regard to the disclosure obligations, please refer to (5).
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	To some extent: good governance requires the fully-fledged participation of shareholders in the decision-making in the general meeting of shareholders. The general meeting of shareholders should be able to exert such influence on the policy of the company that it plays a fully-fledged role in the system of checks and balances in the company.

**3) If this CEM is available, is it subject to any restrictions?**

According to Euronext Rule Book II cumulation of anti-takeover measures (protective Preference Shares, Depositary Certificates, limited voting right, joint ownership constructions or national ownership constructions and Priority Shares) is limited.

The principle of exclusive powers of the General shall apply: all directors must be appointed by the General Meeting unless the company is a so-called Structure Regime Company. In the latter case, the directors are appointed by the supervisory board.

Moreover, no more than 50% of the Priority Shares can be held by managing directors of the issuer (“Limited Management Control”). In addition, where priority shares are held by a legal entity, no more than 50% of the number of votes which may be cast, directly or indirectly, at meetings of the body or bodies empowered to decide on the exercise of the voting rights are attached to the priority shares, can be exercised by persons who are also managing directors of the issuer (“Maximum”).

Short form answer:

<input type="checkbox"/> Application of a Breakthrough Rule	The New Dutch Takeover Rules are not implemented yet.
<input checked="" type="checkbox"/> Others (please specify): Stock Exchange Rules	The Stock Exchange Rules prohibit certain cumulations of anti-takeover measures.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

None.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: N/A <input checked="" type="checkbox"/> Majority: simple (50%+1 of the votes cast) (rules for amendment of the Articles are applicable)
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Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Officially verified copy of the Articles should be filed with the Trade Register.
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**5) Are there ongoing disclosure requirements regarding such CEM?**

Reference is made to the general remarks.

Annual report: According to article 2:391 paragraph 5 DCC by Regulation further provisions may be set with regard to the contents of the annual report. These provisions may relate in particular to compliance with a code of conduct to be designated. The code of conduct which is designated is the Corporate Governance Code. Moreover the Resolution of 5 April 2006 to implement article 10 of the Takeover directive (Directive 2004/25/EG) is a Regulation which contains further provisions. Pursuant to this Regulation information shall be given in the annual report with respect to (among others): (a) the capital structure of a company, the classes of shares and the rights and obligations attached thereto as well as the

percentage of shares of each class in relation to the total issued capital, (b) each restriction by the company in transfer of shares or depositary receipts issued with the co-operation of the company (c) shareholdings in the company for which a disclosure must be made pursuant to the Wft, (d) special rights with regard to control and the name of the holder thereof, (e) each limitation of voting rights. The management shall supplement the annual report and accounts with a list of names of the persons having special rights of control in relation to the legal person under the articles and particulars of the nature of such rights (article 2:392 paragraph 1 sub e DCC).

Euronext Rulebook II requires the listed NV that has issued priority shares to publish in its annual report the names of the persons who have the ultimate responsibility for the way in which the voting rights vested in the holders of the Priority Shares are exercised.

Each year, together with the publication of the names concerned, the listed NV must also publish a statement to the effect that, in the joint opinion of the listed NV and the aforesaid persons, the requirement outlined below has been satisfied. The aforementioned requirement implies that the listed NV must ensure that no more than fifty per cent of the Priority Shares are held by managing directors of the listed NV and that where Priority Shares are held by a legal person, no more than fifty per cent of the number of votes which may be cast, directly or indirectly, at meetings of the body or bodies empowered to decide on the exercise of the voting rights carried by the Priority Shares, can be exercised by persons who are also managing directors of the listed NV. Additionally, the listed NV must make a list of the functions currently or previously held by the managing directors of the trust office, insofar as these functions are relevant to the way in which the voting rights vested in the holders of Priority Shares are exercised, and deposit the list at its offices for the inspection of holders of shares and Depositary Certificates.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis.</p> <p>- Annual report: article 2:391 paragraph 5 DCC and article 2:392 paragraph 1 sub e DCC.</p> <p>- Pursuant to Section 9 of Appendix X of Euronext Rule Book II, an issuer of which the shares are admitted to trading on Euronext Amsterdam must each year, in the publication containing its annual report and/or annual accounts, publish the names of the persons who have the ultimate responsibility for the way in which the voting rights vested in the holders of priority shares are exercised. The issuer must make a list of the functions currently or previously held by the managing directors of the trust office, insofar as these functions are relevant to the way in which voting rights vested in the holders of priority shares are exercised, and deposit the list at its offices for inspection of holders of shares and depositary receipts. Pursuant to Section 11 of Appendix X of Euronext Rule Book II, the issuer must each year, together with the publication of the names concerned, publish a statement to the effect that, in the joint opinion of the issuer and thee aforesaid persons, the requirement referred to in Section 10 of Appendix X of Euronext Rule Book II has been satisfied (please refer to (2) in this respect).</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>If the Articles are amended, the new Articles must be made public by means of filing with the Trade Register held by the Chamber of Commerce. The Chamber of Commerce is responsible for announcement of this filing in the Official Gazette.</p> <p>An NV whose shares are admitted to trading on a regulated market in the Netherlands or another EU Member State, or a state that is a party to the Agreement on the European</p>
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	<p>Economic Area is subject to certain disclosure requirements under the Wft. Such NV has to disclose (changes to) its capital and voting rights.</p> <p>Changes in the capital of 1% or more must be disclosed immediately to the AFM under the Wft. Changes that amount together to less than 1% of the capital can be disclosed per calendar quarter.</p> <p>Changes in the voting rights attached to the shares that the NV has issued must be disclosed immediately, insofar as it has not already been disclosed at the same time as a related capital change of 1% or more. Changes of less than 1% that result from total capital changes of less than 1% of the capital at the same time as it discloses the capital changes concerned.</p> <p>Shareholders also have an obligation to disclose to the AFM (changes to) their capital interest and voting rights in an NV that is subject to the disclosure requirements under the Wft. If the percentage of capital interest and/or voting rights of a shareholder meets, exceeds or falls below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent, the obligations to file a notification with the AFM applies.</p> <p>Under the Wft, an obligation to file a notification also arises if a person acquires or loses the disposal of one or more shares with special rights under the articles of association regarding the control of an NV that is subject to the disclosure requirements. Priority shares qualify as shares with special rights under the articles of association regarding the control within the meaning of the Wft.</p> <p>Please refer to the general remarks for more information about the disclosure obligations under the Wft.</p>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The company must observe principles of reasonableness and fairness and must treat in the same manner shareholders and holders of depositary receipts whose circumstances are equal. As indicated the Enterprise Chamber has recently ruled that the proposed loyalty dividend programme of DSM was unlawful because it did not treat shareholders having the same type of shares equally (OK 28 March 2007). Moreover, the (minority) shareholders rights must be observed

Short form answer:

<p><input checked="" type="checkbox"/> The company does not treat in the same manner shareholders whose circumstances are equal.</p> <p><input checked="" type="checkbox"/> The decision is contrary to the law or the articles and as a consequence the decision is null and void or the decision may be declared a nullity because the rules of the DCC and/or the Articles regulating the passing of resolutions are not fully observed or on the grounds that it is contrary to the principles of reasonableness and fairness required by the DCC (article 2:8 DCC).</p>
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## DEPOSITARY CERTIFICATES

**1) Is this CEM available?**

The construction of depositary receipts is used in situations where it is desirable to split the legal and the beneficial ownership of shares. Usually this is established by transferring the legal ownership of the shares to a (separate) legal entity (as a trust office having the form of a foundation under Dutch law), which on its turn issues depositary receipts. The holder of a depositary receipt has the beneficial rights attached to the shares for which depositary receipts are issued. The voting rights remain with the legal owner of the shares. Beneficial rights consist of the right to receive dividends and liquidation payments. This construction is, as such, not explicitly laid down in Dutch rules. However, the CEM is generally accepted and the DCC and Regulatory Rules refer to depositary receipts for shares.

There are two types of depositary receipts: (a) depositary receipts issued with the cooperation of the Company and (b) depositary receipts issued without the cooperation of the Company. In general holders of depositary receipts issued with the cooperation of the Company have more rights by virtue of the DCC, for instance the right to attend a General Meeting of Shareholders and consequently the holders of the depositary receipts will have to be invited for shareholder meetings. In practice (but this is mainly true for BVs) companies usually try to avoid that the depositary receipts are considered to be issued with the cooperation of the company. The administrative conditions of the trust office and/or the Articles of the company determine in which cases the depositary receipts can be converted into shares (convertibility restrictions).

Listed NVs: It is generally felt that depositary receipts for shares are a means of preventing minority shareholders (who happen to be at the General Meeting of Shareholders) from controlling the decision-making process as a result of absenteeism at a General Meeting of Shareholders.

The issuance of depositary receipts was many times combined with a system in which no shareholder was entitled to have more than 1% of the shares; voting rights on shares a shareholder held over and above this percentage were suspended (to the extent the shareholder has obtained valid title to the shares). Reference is also made to the paragraph on Ownership Ceilings. This restriction in convertibility did not apply to the trust office which issued the depositary receipts. According to Euronext Rule Book II, convertibility restrictions laid down in the Articles of the issuer or in the administrative conditions may not be deemed unreasonably onerous. Depositary receipts in listed companies which are under no circumstances convertible are in any case unreasonably onerous.

If the depositary receipts issued with the cooperation of the company are listed, the holder of the depositary receipts will be granted the authority to cast a vote for the relevant shares at the General Meeting to the exclusion of the grantor of the proxy (many times the shareholder, being the trust office) (article 2:118a DCC). A holder of a depositary receipt will be given a proxy upon his request and may exercise this voting right in his own discretion (article 2:118a DCC). This proxy can only be limited, excluded or revoked in the following cases and in this respect the DCC is deviating from the Corporate Governance Code as described below (see article 2:118a paragraph 2 DCC) (1) “in time of war” (a public bid has been announced or is made without the support of the management board and supervisory Board of the company on such bid); (2) a holder of depositary receipts or several holders of depositary receipts whether or not pursuant to a concert party arrangement provide at least 25% of the issued capital of the company; or (3) in the opinion of the person with the right to vote (the shareholder), the exercise of the voting right by a holder of depositary receipts is effectively in conflict with the interest of the company. There shall be no right to limit, exclude or revoke a proxy if the person with the right to vote (the

shareholder) is a legal entity and a majority of the votes of the management of the legal entity can be exercised by

- a) managing directors or former managing directors and supervisory directors or former supervisory directors of the company or its group companies;
- b) natural persons employed by the company or its group companies;
- c) permanent advisors of the company or its group companies.

According to the (non-binding) Corporate Governance Code, the management of a trust office shall issue proxies in *all circumstances and without limitation* to the holders of depositary receipts who so request. The holders of depositary receipts thus authorized can exercise the voting right at their discretion. The company shall not disclose to the trust office information which has not been made public.

Depositary receipts for shares shall, as a (non-binding) principle laid down in the Corporate Governance Code, not be used as anti-takeover measure.

Non-listed companies: Dutch family firms typically try to contract around company law defaults by establishing a foundation that holds shares and issues depositary receipts for the shares to the family members to ensure the continuity of management, despite the distribution of the depositary receipts among a large group of family members. Holders of depositary receipts in non-listed companies which are issued with the cooperation of the company have the right to attend General Meetings of Shareholders and to address the meeting either in person or by means of a legal representative (article 2:227 paragraph 2 DCC).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	article 2:118a DCC for NVs
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

None.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	article 2:118a DCC
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Pursuant to Section 5 of Appendix X of Euronext Rule Book II, depositary receipts issued for shares with the cooperation of the issuer may not be eligible for admission to listing on Euronext Amsterdam if their convertibility is impossible or unreasonably onerous. Convertibility restrictions laid down in the Articles of the issuer may not be deemed unreasonably onerous.  In addition, Section 6 of Appendix X of Euronext Rule Book II states that the administration

		<p>conditions of depositary receipts must in all cases prescribe the criterion for the voting conduct of the trust office. This criterion must refer to the promotion and protection of the interests of the issuer, its connected enterprise and of all those involved therein. A non-exhaustive specification of possible elements to be considered within the scope of such promotion and protection of interests may be added, always provided that the sole addition of the element of “individual status” or “independence” or elements of similar purport, or a combination of these elements shall not be allowed.</p> <p>Section 7 of Appendix X of Euronext Rule Book II states that the Articles of the trust office must provide that the majority of the votes in the management board of the trust office shall vest in others than the persons associated with the issuer (as referred to in Section 2.b.II. of Appendix X of Euronext Rule Book II).</p> <p>Please refer to (5) with regard to the Euronext rules in respect of disclosure obligations.</p>
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	<p>Comply or explain in the Articles of the listed company.</p>

**3) If this CEM is available, is it subject to any restrictions?**

If the depositary receipts issued with the cooperation of the company are listed, the holder of the depositary receipts will be granted the authority to cast a vote for the relevant shares at the General Meeting to the exclusion of the grantor of the proxy (many times the shareholder, being the trust foundation) (article 2:118a DCC). A holder of a depositary receipt will be given a proxy to this extent upon his request and may exercise this voting right in his own discretion (article 2:118a DCC).

This proxy can only be limited, excluded or revoked in the following cases and in this respect the DCC is deviating from the Corporate Governance Code (see article 2:118a paragraph 2 DCC) (1) “in time of war” (a public bid has been announced or is made without the support of the management board and supervisory board of the company on such bid); (2) a holder of depositary receipts or several holders of depositary receipts whether or not pursuant to a concert party arrangement provide at least 25% of the issued capital of the company; or (3) in the opinion of the person with the right to vote (the shareholder), the exercise of the voting right by a holder of depositary receipts is effectively in conflict with the interest of the company. There shall be no right to limit, exclude or revoke a proxy if the person with the right to vote (the shareholder) is a legal entity and a majority of the votes of the management of the legal person can be exercised by

a) managing directors or former managing directors and supervisory directors or former supervisory directors of the company or its group companies;

- b) natural persons employed by the company or its group companies;
- c) permanent advisors of the company or its group companies.

According to the Corporate Governance Code, the management of a trust office shall issue proxies in all circumstances and without limitation to the holders of depositary receipts who so request. The holders of depositary receipts thus authorized can exercise the voting right at their discretion. The company shall not disclose to the trust office information which has not been made public.

The administration conditions of the depositary receipts must in all cases prescribe the criterion for the voting conduct of the trust office; this criterion shall refer to the promotion and protection of the interests of the issuer, its connected enterprise and of all those involved therein. A non-exhaustive specification of possible elements to be considered within the scope of such promotion and protection of interests may be added, always provided that the sole addition of the element of “individual status” or “independence” or elements of similar purport, or a combination of these elements shall not be allowed.

Depositary receipts for shares shall, as a principle of the Corporate Governance Code, not be used as anti-takeover measure. According to Euronext Rule Book II cumulation of anti-takeover measures (protective Preference Shares, Depositary Certificates, limited voting right, joint ownership constructions or national ownership constructions and Priority Shares) is limited.

According to Euronext Rule Book II, convertibility restrictions laid down in the Articles of the issuer or in the administrative conditions may not be deemed unreasonably onerous. Depositary receipts which are under no circumstances convertible are in any case unreasonably onerous.

Short form answer:

<input checked="" type="checkbox"/> Voting rights are granted to the holder of the Depositary Certificates in a listed NV except in certain circumstances (such as unsolicited bids)	article 2:118a DCC for listed companies
<input checked="" type="checkbox"/> Others: Corporate Governance Code	Depositary receipts for shares in listed companies shall, as a principle of the Corporate Governance Code, not be used as anti-takeover measure. The Stock Exchange Rules prohibit certain cumulations of anti-takeover measures.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

(a) depositary receipts are issued with the cooperation of the Company upon a decision of the General Meeting and/or a decision of the board of managing directors of the company.

(b) depositary receipts are issued without the cooperation of the Company only upon a decision of the General Meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the board of directors	<input checked="" type="checkbox"/> Autonomous decision
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: N/A <input checked="" type="checkbox"/> Majority: simple [50%+1 of the votes cast] unless the Articles provide otherwise.

Specific conditions: None.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Reference is made to the general remarks.

Annual report: According to article 2:391 paragraph 5 DCC by Regulation further provisions may be set with regard to the contents of the annual report. These provisions may relate in particular to compliance with a code of conduct to be designated. The code of conduct which is designated is the Corporate Governance Code. Moreover the Resolution of 5 April 2006 to implement article 10 of the Takeover directive (Directive 2004/25/EG) is a Regulation which contains further provisions. Pursuant to this Regulation information shall be given in the annual report with respect to (among others): (a) the capital structure of a company, the classes of shares and the rights and obligations attached thereto as well as the percentage of shares of each class in relation to the total issued capital, (b) each restriction by the company in transfer of shares or depositary receipts issued with the co-operation of the company (c) shareholdings in the company for which a disclosure must be made pursuant to the Wft, (d) special rights with regard to control and the name of the holder thereof, (e) each limitation of voting rights.

Euronext Rulebook II requires the listed NV to yearly publish the names of the managing directors of the trust office in its annual and this publication shall contain a statement to the effect that, in the joint opinion of the listed NV and the managing directors of the trust office, the requirements as to independence of the managing directors of the trust office have been satisfied, in the sense as described below.

The independence of the managing directors is satisfied once the majority of the votes in the management Board of the trust office is vested in others than the following persons:

- i) managing directors or supervisory directors of the listed NV and/or any of its subsidiaries;
- ii) spouses and relations by blood and by marriage, up to and including the fourth remove, of managing directors or supervisory directors of the listed NV or any of its subsidiaries;
- iii) employees of the listed NV and/or any of its subsidiaries;
- iv) regular advisers to the listed NV, including the expert referred to in Book 2, section 393 of the Dutch Civil Code, the civil law notary and the lawyer of the listed NV;
- v) former managing directors, supervisory directors and employees of the listed NV and/or any of its subsidiaries;
- vi) former regular advisers to the listed NV as referred to in iv), but only during the first three years after termination of their advisory capacities;
- vii) managing directors and employees of any banker with which the listed NV maintains a lasting and significant relationship.

Furthermore, the listed NV must make a list of the functions currently or previously held by the managing directors of the trust office, insofar as these are relevant to the discharge of their managerial duties, and deposit the list at its offices for the inspection of shareholders and holders of Depositary Certificates.

Short form answer:

<p><input checked="" type="checkbox"/> Yes</p>	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis</p> <p>- Annual report: article 2:391 paragraph 5 DCC.</p> <p>- Best practice provision of the Corporate Governance Code for listed companies: The trust office shall report periodically, but at least once a year, on its activities. The report shall, in any event, be posted on the company's website. This report shall, in any event, set out:</p> <p>(a) the number of shares for which depositary receipts have been issued and an explanation of changes in this number;</p> <p>(b) the work carried out in the year under review;</p> <p>(c) the voting behaviour in the General Meeting of Shareholders held in the year under review;</p> <p>(d) the percentage of votes represented by the trust office during the meetings referred to at (c);</p> <p>(e) the remuneration of the members of the management of the trust office;</p> <p>(f) the number of meetings held by the management and the main items dealt with in them;</p> <p>(g) the costs of the activities of the trust office;</p> <p>(h) any external advice obtained by the trust office;</p> <p>(i) the positions of the managers of the trust office;</p> <p>(j) the contact details of the trust office.</p> <p>- Pursuant to Section 8 of Appendix X of Euronext Rule Book II, the names of the managing directors of the trust office must each year be published in the publication containing the annual report and/or the annual accounts of the issuer, and this publication has to contain a statement to the effect that, in the joint opinion of the issuer and the managing directors of the trust office, the requirements as to independence of the managing directors of the trust office have been satisfied (in the sense as referred to in Appendix X of Euronext Rule Book II to the General Rules for the Amsterdam Stock Market).</p> <p>Furthermore, the issuer has to make a list of the functions currently or previously held by the managing directors of the trust office, insofar as these are relevant to the discharge of their managerial duties, and deposit the list at its offices for the inspection of shareholders and holders of depositary receipts.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>An NV whose shares are admitted to trading on a regulated market in the Netherlands or another EU Member State, or a state that is a party to the Agreement on the European Economic Area is subject to certain disclosure requirements under the Wft. Such NV has to disclose (changes to) its capital and voting rights. Depositary certificates generally qualify as</p>
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‘shares’ within the meaning of the Wft.

Changes in the capital of 1% or more must be disclosed immediately to the AFM under the Wft. Changes that amount together to less than 1% of the capital can be disclosed per calendar quarter.

Changes in the voting rights attached to the shares that the NV has issued must be disclosed immediately, insofar as it has not already been disclosed at the same time as a related capital change of 1% or more. Changes of less than 1% that result from total capital changes of less than 1% of the capital at the same time as it discloses the capital changes concerned.

The NV must immediately disclose changes amounting to 1% or more of the capital in the depository receipts. However, this obligation only applies with regard to depository receipts that are issued with the cooperation of the NV. Changes in the capital of less than 1% in relation to the depository receipts that are issued with the cooperation of the NV may be disclosed on a periodic basis. Subsequently, the conversion of depository receipts into shares also leads to an obligation to disclose.

Shareholders also have an obligation to disclose to the AFM (changes to) their capital interest and voting rights in an NV that is subject to the disclosure requirements under the Wft. If the percentage of capital interest and/or voting rights of a shareholder meets, exceeds or falls below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent, the obligations to file a notification with the AFM applies.

Normally, the trust office that issues the depository receipts has an obligation to disclose the capital interest and votes attached to the underlying shares. Furthermore, the depository receipt holder also has an obligation to disclose. Sometimes, the holder of the depository receipts is entitled to exchange the depository receipts for the underlying shares. Under the Wft, the depository receipt holder has so-called ‘potential’ voting rights and must disclose the number of votes attached to the underlying shares. If the trust office has given a proxy to the depository receipt holder to exercise the voting rights attached to the underlying shares, the depository receipt holder must disclose these voting rights as ‘actual’ voting rights.

Please refer to the general remarks for more information about the disclosure obligations under the Wft.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The company must observe principles of reasonableness and fairness and must treat in the same manner holders of Depository Certificates whose circumstances are equal.

Depository receipts for shares shall, as a principle of the Corporate Governance Code (non-binding), not be used as anti-takeover measure.

The refusal to grant a proxy to vote can be challenged on certain grounds such “violation of the law”, “abuse of right” or being contrary to principles of reasonableness and fairness.

Short form answer:

- The company does not treat in the same manner shareholders whose circumstances are equal.
- The decision is contrary to the law or the articles and as a consequence the decision is null and void or the decision may be declared a nullity because the rules of the DCC and/or the Articles regulating the passing of resolutions are not fully observed or on the grounds that it is contrary to the principles of reasonableness and fairness required by the DCC (article 2:8 DCC).

VOTING RIGHT CEILINGS

1) **Is this CEM available?**

As mentioned under the CEM “Multiple Voting Rights,” the DCC provides that each shareholder shall have at least one vote. The DCC further provides that:

- (a) if the authorized capital is divided into shares of an equal nominal amount, each shareholder may cast as many votes as he holds shares); and
- (b) if the authorized capital is divided into shares of unequal nominal amounts, the number of votes of each shareholder shall equal the multiple of the nominal amount of the smallest share included in the aggregate nominal amount of his shares. Fractions of votes shall be disregarded.

The following voting right ceilings are mentioned in the DCC:

- (1) The amount of votes to be cast by the same shareholder can be limed in the Articles, provided that shareholders whose amount of shares is equal can cast the same amount of votes and the limitation is not more favorable for holder of a larger amount of shares than for holder of a smaller amount of shares (“Decreasing Voting Rights”).
- (2) Provisions in deviation of those mentioned under (a) and (b) may also be included in the Articles, provided that not more than six votes are conferred on any shareholder if the authorized capital is divided into one hundred or more shares and not more than three votes, if the capital is divided into less than one hundred shares (unequal voting rights or “Statutory Limitation”).

Decreasing Voting Rights:

Example: All shares have a nominal value (par value) of EUR 1,000. It is possible to include a provision in the Articles according to which a shareholder holding an amount of EUR 1,000 up to EUR 5,000 can cast one vote, a shareholder holding an amount of EUR 5,000 up to EUR 10,000 two votes, etc. This provision may never be more favorable for higher amounts than lower amounts. The Articles can also limit the amount of votes which can be cast in general. For instance, shareholders can never cast more than four votes.

Statutory Limitation:

As indicated the voting rights for an individual shareholder can be limited to 6 (or 3 depending on the authorized capital) votes.

In practice, the systems of Decreasing Voting Rights and Statutory Limitation are not frequently used.

New Dutch Takeover Rules: In case of a public bid the Articles of a NV can provide that restrictions by virtue of the Articles on the exercise of voting rights are not applicable for the bidder or that each share gives the right to one vote with respect to proposals in the General Meeting of Shareholders which relate to the bid , all this with the exception of the voting rights of financing preference shares as far as they are based on the fair value of the capital contribution. Reference is made to the General Remarks. The New Dutch Takeover Rules are not implemented yet.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	The DCC only provides two systems (1) system of Decreasing Voting Rights and (2) system of Statutory Limitation.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

None.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	<p>Article 2:118 DCC for NV and article 2:228 for BV). Mandatory: Each shareholder has at least one vote.</p> <p>For the Decreasing Voting Rights the following restrictive Rules are binding</p> <ul style="list-style-type: none"> <li>- shareholders whose amount of shares is equal (regardless of the class of shares) can cast the same amount of votes and</li> <li>- the provision is not more favorable for a holder of a larger amount of shares than for a holder of a smaller amount of shares.</li> </ul> <p>For the Statutory Limitation the following Rule is binding: not more than six votes can be conferred on any shareholder if the authorized capital is divided into one hundred or more shares and not more than three votes, if the capital is divided into less than one hundred shares.</p>
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3) **If this CEM is available, is it subject to any restrictions?**

There are no restrictions in the Articles, but see article 2:118/228 paragraph 3 DCC (if the authorized capital is divided into shares of unequal nominal amounts, the number of votes of each shareholder shall equal the multiple of the nominal amount of the smallest share included in the aggregate nominal amount of his shares).

Only two types of deviation can be included in the Articles:

1. The amount of votes to be cast by the same shareholder can be limited in the Articles, provided that shareholders whose amount of shares is equal can cast the same amount of votes and the limitation is not more favorable for holder of a larger amount of shares than for holder of a smaller amount of shares (“Decreasing Voting Rights”).

2. Other deviations to a maximum of 6 votes for any shareholder (or 3 votes, if the capital is divided into less than one hundred shares (unequal voting rights or “Statutory Limitation”

According to Euronext Rule Book II cumulation of anti-takeover measures (protective Preference Shares, Depositary Certificates, limited voting right, joint ownership constructions or national ownership constructions and Priority Shares) is limited.

Short form answer:

<input type="checkbox"/> Application of a Breakthrough Rule	The New Dutch Takeover Rules are not implemented yet.
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<input checked="" type="checkbox"/> Others (please specify): Stock Exchange Rules	The Stock Exchange Rules prohibit certain cumulations of anti-takeover measures.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: N/A <input checked="" type="checkbox"/> Majority: simple (50%+1 of the votes cast) (rules for amendment of the Articles are applicable)
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Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Officially verified copy of the Articles should be filed with the Trade Register.
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**5) Are there ongoing disclosure requirements regarding such CEM?**

Reference is made to the general remarks.

Annual report: According to article 2:391 paragraph 5 DCC by Regulation further provisions may be set with regard to the contents of the annual report. These provisions may relate in particular to compliance with a code of conduct to be designated. The code of conduct which is designated is the Corporate Governance Code. Moreover the Resolution of 5 April 2006 to implement article 10 of the Takeover directive (Directive 2004/25/EG) is a Regulation which contains further provisions. Pursuant to this Regulation information shall be given in the annual report with respect to (among others): (a) the capital structure of a company, the classes of shares and the rights and obligations attached thereto as well as the percentage of shares of each class in relation to the total issued capital, (b) each restriction by the company in transfer of shares or depositary receipts issued with the co-operation of the company (c) shareholdings in the company for which a disclosure must be made pursuant to the Wft, (d) special rights with regard to control and the name of the holder thereof, (e) each limitation of voting rights.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis Annual report: According to article 2:391 paragraph 5 DCC <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: If the Articles are amended, the new Articles must be made public by means of filing with the Trade Register held by the Chamber of Commerce. The Chamber of Commerce is responsible for announcement of this filing in the Official Gazette. An NV whose shares are admitted to trading on a regulated market in the Netherlands or another EU Member State, or a state that is a party to the Agreement on the European Economic Area is subject to certain disclosure requirements under the Wft. Such NV has to disclose (changes to) its capital and voting rights. Changes in the capital of 1% or more must be disclosed immediately to the AFM under
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	<p>the Wft. Changes that amount together to less than 1% of the capital can be disclosed per calendar quarter.</p> <p>Changes in the voting rights attached to the shares that the NV has issued must be disclosed immediately, insofar as it has not already been disclosed at the same time as a related capital change of 1% or more. Changes of less than 1% that result from total capital changes of less than 1% of the capital at the same time as it discloses the capital changes concerned.</p> <p>Shareholders also have an obligation to disclose to the AFM (changes to) their capital interest and voting rights in an NV that is subject to the disclosure requirements under the Wft. If the percentage of capital interest and/or voting rights of a shareholder meets, exceeds or falls below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent, the obligations to file a notification with the AFM applies.</p> <p>A shareholder has to disclose both the total number of votes at his disposal and the total capital interest at his disposal. Subsequently, the number of votes per share that a shareholder has will become clear from the public AFM-register, provided that the shareholder has at least 5% of the voting rights or the capital interest at his disposal.</p> <p>However, no specific disclosures with regard to voting right ceilings have to be made by the issuer or a shareholder.</p> <p>Please refer to the general remarks for more information about the disclosure obligations under the Wft.</p>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The company must observe principles of reasonableness and fairness and must treat in the same manner shareholders and holders of depositary receipts whose circumstances are equal. Moreover, the (minority) shareholders rights must be observed

Short form answer:

<p><input checked="" type="checkbox"/> The company does not treat in the same manner shareholders whose circumstances are equal.</p> <p><input checked="" type="checkbox"/> The decision is contrary to the law or the articles and as a consequence the decision is null and void or the decision may be declared a nullity because the rules of the DCC and/or the Articles regulating the passing of resolutions are not fully observed or on the grounds that it is contrary to the principles of reasonableness and fairness required by the DCC (article 2:8 DCC).</p>
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**OWNERSHIP CEILINGS**

**1) Is this CEM available?**

As an anti-takeover measure, the Articles of listed NVs sometimes contain a requirement that shareholders can only be legal persons holding not more than a certain percentage of shares (usually 1%). This is called a X% provision. This is usually combined with convertibility restrictions of the depositary receipts for shares (Depositary Certificates) issued for the shares which are registered and the quality requirement that shareholders can only be natural persons (excluding the trust foundation holding the shares for which depositary receipts are issued). This CEM is only possible if the company has listed its depositary receipts at the stock exchange and the Articles provide that all shares shall be registered shares. Only in such case can the Ownership Ceiling be enforced.

This CEM has lost much of its practical relevance in view of the limitation in the use of depositary receipts as a CEM. See relevant paragraph on Depositary Certificates. A holder of depositary receipts who cannot convert these into shares over and above a certain percentage may request to obtain voting rights.

The Articles of a company may include a quality requirement for shareholders. It is under discussion whether the aforementioned X% provision is deemed to be a quality requirement or also a transfer restriction. Besides a quality requirement, the Articles may provide (article 2:87a DCC) that in certain cases, such as the case that a shareholder is not or no longer complying with the quality requirement, the shareholder must offer its shares and transfer its shares. The Articles may also provide that a shareholder shall not be entitled to exercise the right to vote and/or to attend General Meetings of Shareholders and/or receive dividend as long as he is in default in complying with an obligation under the DCC or the Articles (article 2:87b). The shareholder that is not entitled to exercise the aforementioned rights can demand the company to appoint prospective purchasers to which he can sell his shares. In these cases the shareholders must be known to the relevant company in order to apply the quality requirement.

This provision may not be in violation with the general principle of reasonableness and fairness (article 2:8 DCC); for instance, if the shares are practically non-transferable as a consequence of a strict quality requirement.

Generally, the acquisition of a certain amount of shares in a financial institution in the Netherlands is subject to regulatory approval. The law prohibits companies who own energy distribution networks to be owned for more than 50% by others than governmental entities. In the Netherlands there are also restrictions on newspaper publishers and broadcasting companies.

New Dutch Takeover Rules: In case of a public bid the Articles of a NV can provide that restrictions by virtue of the Articles on the transferability of shares or on the exercise of voting rights are not applicable for the bidder or that each share gives the right to one vote with respect to proposals in the General Meeting of Shareholders which relate to the bid. These Rules are not implemented yet.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	article 2:87b/195b DCC
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- 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	article 2:87b DCC
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**3) If this CEM is available, is it subject to any restrictions?**

New Dutch Takeover Rules: In case of a public bid the Articles of a NV can provide that restrictions by virtue of the Articles on the transferability of shares or on the exercise of voting rights are not applicable for the bidder or that each share gives the right to one vote with respect to proposals in the General Meeting of Shareholders which relate to the bid. These Rules are not implemented yet.

Short form answer:

<input type="checkbox"/> Application of a Breakthrough Rule	New Dutch Takeover Rules are not implemented yet.
<input checked="" type="checkbox"/> Others	Shareholder must be known to the company.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: N/A <input checked="" type="checkbox"/> Majority: simple (50%+1 of the votes cast) (rules for amendment of the Articles)
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Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Officially verified copy of the Articles should be filed with the Trade Register.
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**5) Are there ongoing disclosure requirements regarding such CEM?**

Reference is made to the general remarks.

Annual report: According to article 2:391 paragraph 5 DCC by Regulation further provisions may be set with regard to the contents of the annual report. These provisions may relate in particular to compliance with a code of conduct to be designated. The code of conduct which is designated is the Corporate Governance Code. Moreover the Resolution of 5 April 2006 to implement article 10 of the Takeover directive (Directive 2004/25/EG) is a Regulation which contains further provisions. Pursuant to this Regulation information shall be given in the annual report with respect to (among others): (a) the capital structure of a company, the classes of shares and the rights and obligations attached thereto as well as the percentage of shares of each class in relation to the total issued capital, (b) each restriction by the company in transfer of shares or depositary receipts issued with the co-operation of the company (c) shareholdings in the company for which a disclosure must be made pursuant to the Wft, (d) special rights with regard to control and the name of the holder thereof, (e) each limitation of voting rights.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis :</p> <p>Annual report: According to article 2:391 paragraph 5 DCC</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>If the Articles are amended, the new Articles must be made public by means of filing with the Trade Register held by the Chamber of Commerce. The Chamber of Commerce is responsible for announcement of this filing in the Official Gazette.</p> <p>An NV whose shares are admitted to trading on a regulated market in the Netherlands or another EU Member State, or a state that is a party to the Agreement on the European Economic Area is subject to certain disclosure requirements under the Wft. Such NV has to disclose (changes to) its capital and voting rights.</p> <p>Changes in the capital of 1% or more must be disclosed immediately to the AFM under the Wft. Changes that amount together to less than 1% of the capital can be disclosed per calendar quarter.</p> <p>Changes in the voting rights attached to the shares that the NV has issued must be disclosed immediately, insofar as it has not already been disclosed at the same time as a related capital change of 1% or more. Changes of less than 1% that result from total capital changes of less than 1% of the capital at the same time as it discloses the capital changes concerned.</p> <p>Shareholders also have an obligation to disclose to the AFM (changes to) their capital interest and voting rights in an NV that is subject to the disclosure requirements under the Wft. If the percentage of capital interest and/or voting rights of a shareholder meets, exceeds or falls below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent, the obligations to file a notification with the AFM applies.</p> <p>A shareholder has to disclose both the total number of votes at his disposal and the total capital interest at his disposal. Subsequently, the number of votes per share that a shareholder has will become clear from the public AFM-register, provided that the shareholder has at least 5% of the voting rights or the capital interest at his disposal.</p> <p>However, no specific disclosures with regard to ownership ceilings have to be made by the issuer or a shareholder.</p> <p>Please refer to the general remarks for more information about the disclosure obligations under the Wft.</p>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The company must observe principles of reasonableness and fairness and must treat in the same manner shareholders and holders of depositary receipts whose circumstances are equal. Moreover, the (minority) shareholders rights must be observed

Short form answer:

- The company does not treat in the same manner shareholders whose circumstances are equal.
- The decision is contrary to the law or the articles and as a consequence the decision is null and void or the decision may be declared a nullity because the rules of the DCC and/or the Articles regulating the passing of resolutions are not fully observed or on the grounds that it is contrary to the principles of reasonableness and fairness required by the DCC (article 2:8 DCC).

## SUPERMAJORITY PROVISIONS

1) Is this CEM available?

All resolutions in respect of which no greater majority is required by law or the Articles shall be passed by an absolute majority of the votes cast (article 2:120/230 DCC). If there is a tie in voting at the election of persons, a drawing of lots shall determine the issue. If there is a tie in voting on other matters, the proposal shall be considered rejected provided that no alternative solution is indicated by the law or the Articles. The validity of a resolution shall not depend on the proportion of the capital represented at a meeting, unless the law or the Articles otherwise provide.

The DCC prescribes a qualified majority for the following shareholders resolutions (not limitative):

- (a) resolution to limit or exclude the pre-emptive rights at an issuance of shares in a NV (a majority of at least 2/3 if less than 1/2 of the issued capital is represented at the General Meeting of Shareholders) (article 2:96a paragraph 7 DCC);
- (b) resolution to reduce the NV's capital (a majority of at least 2/3 if less than 1/2 of the issued capital is represented at the General Meeting of Shareholders) (article 2:99 paragraph 6 DCC);
- (c) resolution to legally merge the company (a majority of at least 2/3 if less than 1/2 of the issued capital is represented at the General Meeting of Shareholders) (article 2:330 DCC).

These are minimum requirements. If at least 1/2 of the issued capital is represented in the aforementioned examples, a simple majority (50%+1 of the votes cast) is sufficient.

With an absolute majority of the votes cast representing not less than one-third of the issued capital the general meeting may pass a motion of no confidence in the supervisory board of a structure company (article 2:158/268 paragraph 9 DCC).

If a resolution is taken by the General Meeting without the required majority, there is no valid resolution. Unless the Articles provide otherwise, the judgement of the chairman of the General Meeting of Shareholders on the result of the votes is binding (article 2:13 paragraph 3 DCC).

If the Articles provide that the resolution to suspend or remove managing directors may only be passed by a qualified majority in a General Meeting at which a specific part of the capital is represented, such qualified majority *may not exceed* 2/3 of the votes cast representing more than 1/2 of the capital (article 2:134/244 paragraph 2 DCC for managing directors and 2:144/254 paragraph 2 DCC for supervisory directors). If a nomination is made with respect to the appointment of managing directors by a corporate body of the company (such as the meeting of holders of priority shares) or a third party, the General Meeting may, at all times, by a resolution passed with a majority of at least 2/3 the votes cast representing more than 1/2 of the issued capital, resolve that such nomination shall not be binding (article 2:133/243 paragraph 2 DCC). The same applies to quality requirements, the General Meeting may, at all times, by a resolution passed with a majority of at least 2/3 the votes cast representing more than 1/2 of the issued capital, resolve that such quality requirements are set aside (article 2:132/242 paragraph 2 DCC). Please note that this does not apply to Structure Regime Companies as the managing directors in such companies are appointed and removed by the supervisory board.

Otherwise the Articles may provide "supermajority" decisions or qualified majorities of any nature.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Maximum majority for resolutions to suspend or remove managing directors or not to follow a nomination is 2/3 of the votes representing 1/2 of the capital (limitation by law on supermajority for these issues): article 2:134/244 paragraph 2 DCC for managing directors and 2:144/254 paragraph 2 DCC for supervisory directors, article 2:133/243 paragraph 2 DCC.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	article 2:120/230 DCC
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3) **If this CEM is available, is it subject to any restrictions?**

Short form answer:

<input checked="" type="checkbox"/> Others: Maximum majority for resolutions to suspend or remove managing directors or not to follow a nomination is 2/3 of the votes representing 1/2 of the capital (limitation by law on supermajority for these issues):	Article 2:134/244 paragraph 2 DCC for managing directors and 2:144/254 paragraph 2 DCC for supervisory directors, article 2:133/243 paragraph 2 DCC.
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4) **Who decides whether this CEM should be implemented, and under what conditions?**

If a supermajority provision is incorporated in the Articles the Articles must be amended pursuant to a resolution of the General Meeting in this respect.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: N/A <input checked="" type="checkbox"/> Majority: simple (50%+1 of the votes cast), unless the Articles provide otherwise.
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Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Officially verified copy of the Articles should be filed with the Trade Register.
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5) **Are there ongoing disclosure requirements regarding such CEM?**

Reference is made to the general remarks.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>If the Articles are amended, the new Articles must be made public by means of filing with the Trade Register held by the Chamber of Commerce. The Chamber of Commerce is responsible for announcement of this filing in the Official Gazette.</p> <p>An NV whose shares are admitted to trading on a regulated market in the Netherlands or another EU Member State, or a state that is a party to the Agreement on the European Economic Area is subject to certain disclosure requirements under the Wft. Such NV has to disclose (changes to) its capital and voting rights.</p> <p>Changes in the capital of 1% or more must be disclosed immediately to the AFM under the Wft. Changes that amount together to less than 1% of the capital can be disclosed per calendar quarter.</p> <p>Changes in the voting rights attached to the shares that the NV has issued must be disclosed immediately, insofar as it has not already been disclosed at the same time as a related capital change of 1% or more. Changes of less than 1% that result from total capital changes of less than 1% of the capital at the same time as it discloses the capital changes concerned.</p> <p>Shareholders also have an obligation to disclose to the AFM their capital interest and changes to it and voting rights in an NV that is subject to the disclosure requirements under the Wft. If the percentage of capital interest and/or voting rights of a shareholder meets, exceeds or falls below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent, the obligations to file a notification with the AFM applies.</p> <p>However, no specific disclosures have to be made regarding supermajority provisions.</p> <p>Please refer to the general remarks for more information about the disclosure obligations under the Wft.</p>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

None.

## GOLDEN SHARES

1) **Is this CEM available?**

The concept of “Golden Shares” is not mentioned in Dutch Rules. In practice golden shares are priority shares. Priority shares may be issued to the government or a governmental body. The government is treated in the same way as a private shareholder. Reference is also made to the narrative answer at the CEM Priority Shares.

Restricted use: the government may not use its public authority to stipulate certain favorable conditions. The European Court of Justice has recently (28 September 2006) ruled illegal the Dutch government’s controlling minority shareholding in telecom company Royal KPN NV (“KPN”) and the Dutch Post Office TNT Postgroep NV (“TPG”). The government’s golden shares gave it the right to authorise new share issues, dividend payments, raising capital and any proposed mergers or takeovers. According to the European Court these shares were an obstacle to the right of businesses to invest anywhere in EU and were likely to deter investors of other member states from investing in KPN and TPG. The Dutch government had failed to prove that it had a special interest to justify keeping such a stake in KPN. The golden shares in TPG also went beyond what was necessary to protect the interest of the state to preserve the quality of a national mail system. The government gave up its KPN golden shares in December 2005 and has now also given up its golden shares in TPG.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> As far as these are “normal” priority shares, the CEM is available. For golden shares issued to the government, EU case law is relevant.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Article 43 and 56 paragraph 1 EU Treaty.
<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> Highest Court Case Law	EU case law on article 43 and 56 paragraph 1 EU Treaty.

3) **If this CEM is available, is it subject to any restrictions?**

According to Euronext Rule Book II cumulation of anti-takeover measures (protective Preference Shares, Depositary Certificates, limited voting right, joint ownership constructions or national ownership constructions and Priority Shares) is limited.

The principle of exclusive powers of the General Meeting shall apply: all directors must be appointed by the General Meeting unless the company is a so-called Structure Regime Company. In the latter case, the directors are appointed by the supervisory board.

In addition, where priority shares are held by a legal entity, no more than 50% of the number of votes which may be cast, directly or indirectly, at meetings of the body or bodies empowered to decide on the

exercise of the voting rights are attached to the priority shares, can be exercised by persons who are also managing directors of the issuer (“Maximum”).

Short form answer:

<input type="checkbox"/> Application of a Breakthrough Rule	The New Dutch Takeover Rules are not implemented yet.
<input checked="" type="checkbox"/> Others: Stock Exchange Rules	The Stock Exchange Rules prohibit certain cumulations of anti-takeover measures.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: N/A <input checked="" type="checkbox"/> Majority: simple (50%+1 of the votes cast) (Rules for amendment of the Articles are applicable)
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Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Officially verified copy of the Articles should be filed with the Trade Register.
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**5) Are there ongoing disclosure requirements regarding such CEM?**

Reference is made to the general remarks.

Annual report: According to article 2:391 paragraph 5 DCC by Regulation further provisions may be set with regard to the contents of the annual report. These provisions may relate in particular to compliance with a code of conduct to be designated. The code of conduct which is designated is the Corporate Governance Code. Moreover the Resolution of 5 April 2006 to implement article 10 of the Takeover directive (Directive 2004/25/EG) is a Regulation which contains further provisions. Pursuant to this Regulation information shall be given in the annual report with respect to (among others): (a) the capital structure of a company, the classes of shares and the rights and obligations attached thereto as well as the percentage of shares of each class in relation to the total issued capital, (b) each restriction by the company in transfer of shares or depositary receipts issued with the co-operation of the company (c) shareholdings in the company for which a disclosure must be made pursuant to the Wft, (d) special rights with regard to control and the name of the holder thereof, (e) each limitation of voting rights.

Euronext Rulebook II requires the listed NV that has issued priority shares to publish in its annual report the names of the persons who have the ultimate responsibility for the way in which the votings rights vested in the holders of the Priority Shares are exercised.

Each year, together with the publication of the names concerned, the listed NV must also publish a statement to the effect that, in the joint opinion of the listed NV and the aforesaid persons, the requirement outlined below has been satisfied. The aforementioned requirement implies that the listed NV must ensure that no more than fifty per cent of the Priority Shares are held by managing directors of the listed NV and that where Priority Shares are held by a legal person, no more than fifty per cent of the number of votes which may be cast, directly or indirectly, at meetings of the body or bodies empowered

to decide on the exercise of the voting rights carried by the Priority Shares, can be exercised by persons who are also managing directors of the listed NV. Additionally, the listed NV must make a list of the functions currently or previously held by the managing directors of the trust office, insofar as these functions are relevant to the way in which the voting rights vested in the holders of Priority Shares are exercised, and deposit the list at its offices for the inspection of holders of shares and Depositary Certificates.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Annual report: article 2:391 paragraph 5 DCC.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>If the Articles are amended, the new Articles must be made public by means of filing with the Trade Register held by the Chamber of Commerce. The Chamber of Commerce is responsible for announcement of this filing in the Official Gazette.</p> <p>An NV whose shares are admitted to trading on a regulated market in the Netherlands or another EU Member State, or a state that is a party to the Agreement on the European Economic Area is subject to certain disclosure requirements under the Wft. Such NV has to disclose (changes to) its capital and voting rights.</p> <p>Changes in the capital of 1% or more must be disclosed immediately to the AFM under the Wft. Changes that amount together to less than 1% of the capital can be disclosed per calendar quarter.</p> <p>Changes in the voting rights attached to the shares that the NV has issued must be disclosed immediately, insofar as it has not already been disclosed at the same time as a related capital change of 1% or more. Changes of less than 1% that result from total capital changes of less than 1% of the capital at the same time as it discloses the capital changes concerned.</p> <p>Shareholders also have an obligation to disclose to the AFM (changes to) their capital interest and voting rights in an NV that is subject to the disclosure requirements under the Wft. If the percentage of capital interest and/or voting rights of a shareholder meets, exceeds or falls below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent, the obligations to file a notification with the AFM applies.</p> <p>Under the Wft, an obligation to file a notification also arises if a person acquires or loses the disposal of one or more shares with special rights under the articles of association regarding the control of an NV that is subject to the disclosure requirements. Golden shares qualify as shares with special rights under the articles of association regarding the control within the meaning of the Wft.</p> <p>Please refer to the general remarks for more information about the disclosure obligations under the Wft.</p>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The company must observe principles of reasonableness and fairness and must treat in the same manner shareholders and holders of depositary receipts whose circumstances are equal. Moreover, the (minority) shareholders rights must be observed.

Short form answer:

- The company does not treat in the same manner shareholders whose circumstances are equal.
- The decision is contrary to the law or the articles and as a consequence the decision is null and void or the decision may be declared a nullity because the rules of the DCC and/or the Articles regulating the passing of resolutions are not fully observed or on the grounds that it is contrary to the principles of reasonableness and fairness required by the DCC (article 2:8 DCC).

## PARTNERSHIPS LIMITED BY SHARES

1) Is this CEM available?

The CC recognizes a limited partnership (LP). A LP is a contractual cooperative venture without legal personality. A bill to modernize LP Rules is currently being considered by the Dutch Upper House of Parliament (Eerste Kamer). One of the amendments is the introduction of partnerships with legal personality. The liability of the managing partner, as mentioned hereafter, will remain. However, both the chapter relating to tax matters and the transitional legislation are still missing in this bill and it is not certain when the new Rules are adopted. The current CC contains only a few articles about this legal concept.

The following characteristics of the LP may be derived from the legal precedents of the Dutch Supreme Court (Hoge Raad):

- (g) A LP is an agreement to cooperate for joint account by two or more persons or legal entities, being the partners. It aims at achieving a joint advantage for the benefit of the partners by means of contributions by each of the partners.
- (h) A LP does not have a capital divided into shares. The business assets of each of the partners of the LP are separated from their private assets.
- (i) In most respects, a limited partnership is governed by the same rules that are applicable to general partnerships. What is unique is the presence of limited partners who could be viewed as passive investors with very limited power to participate in the internal management of the firm. Limited partners who do participate in the control of the business, who represent the firm, or who permit their names to appear in the partnership name may thereby lose their shield of liability (article 20 and 21 CC). In addition to one or more managing partners, the LP has one or more limited partners. A limited partner is a partner that cannot perform legal acts on behalf of and for the account of the LP and that does share in the losses of the LP for more than the amount of its contribution. A managing partner is liable for all the debts of the LP.
- (j) Regarding the control over the LP a distinction should be made between internal and external control. Only the managing partner is authorized, within the objects of the LP, to represent the LP in external affairs, to act on behalf of the LP and to sign and to commit the LP to third parties and vice versa. If there are two or more managing partners to the LP, the LP contract can contain a provision that the authorization of another managing partner is required for specific matters as described in the contract. A limited partner shall not act as a managing partner or transact any business for or in the name of the LP, or has the right, power or authority to act for, execute any document or instrument on behalf of, or otherwise bind the LP in any manner.
- (k) Internally, in principle each partner has equal votes unless the LP contract determines otherwise. The number of voting rights may be linked to the capital contribution of the partners, however under Dutch Rules, it is possible to separate the capital contribution of the partners from the voting rights.

To be sure, the partnership limited by shares was abolished in 1975 (see article 19 paragraph 3 CC). However, one could distinguish between two forms of LPs in the Netherlands.

THE NETHERLANDS

1. A closed LP requires that the transfer of a limited partner's interest (except in the case of legacy or inheritance) be subject to the approval of all limited and general partners.
2. An open LP provides for less restricted transfer of partnership interests.

A closed LP is not a taxable entity under Dutch tax law and is considered to be transparent for tax purposes. An open LP is, broadly speaking, a limited partnership whose interests are freely transferable. Open limited partnerships are taxable entities subject to Dutch corporate income tax. Since the Netherlands does not explicitly recognize limited partnerships by shares, it is questionable whether the offering of interests in a limited partnership is subject to the Securities Markets Supervision Act of 1995.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	article 19 paragraph 3 CC
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- 2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	article 19 paragraph 3 CC and open LP tax rules
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**Other questions not applicable.**

**CROSS-SHAREHOLDINGS**

**1) Is this CEM available?**

There is no common practice in the Netherlands that listed companies have cross-shareholdings. However, there have been substantial holdings of listed financial conglomerates in other listed financial conglomerates, which was allegedly not strategic but partly for investment purposes (managed by asset-management subsidiaries). Another type of cross-shareholdings could be through subsidiaries acquiring shares in the parent. Acquisition of shares in this context should be treated as an acquisition of treasury shares. Article 2:98/207 DCC and 2:98d/207d DCC: A Subsidiary may not, for its own account, subscribe or cause the subscription for shares in the capital of a Company. Subsidiaries may only acquire or cause the acquisition of such shares for their own account insofar as the company may itself acquire its own shares. This is the case if it acquires fully paid-up shares in its own capital gratuitously or if: (a) the Company has freely distributable reserves, (b) the nominal amount of the shares to be acquired and of the shares in its capital held by the Company and its Subsidiaries is not more than a certain percentage of the issued capital (being 1/10 for NVs and 1/2 for BVs), (c) the Articles permit the acquisition, and (d) the authorization to acquire is granted by the General Meeting. In the event of a breach of this provision, the directors of a company shall be jointly and severally liable to compensate the Subsidiary for the acquisition price with interest thereon from the time of the subscription or acquisition of the shares. Payment of the compensation shall be made against the transfer of the shares. A director need not pay any compensation for the acquisition price if he proves that the company cannot be held responsible for the subscription or the acquisition. The term “share” also includes depositary receipts issued therefore.

A Subsidiary may, (a) after it becomes a Subsidiary, (b) after the company, of which it is a Subsidiary, is converted into a NV, or (c) after, as a Subsidiary, it acquired shares in the capital of a company limited by shares gratuitously or by succession by general (universal) title jointly with the NV and its other Subsidiaries hold, or cause to be held for its own account, shares constituting more than 1/10 of the issued capital, for no more than three years. The directors of a NV shall be jointly and severally liable to compensate the subsidiary for the value of any shares in excess of the permitted amount which it holds or causes to be held at the end of the last day of such three years, with interest from that time onwards. Payment of the compensation shall be made against the transfer of the shares. A director need not pay such compensation, if he proves that the NV cannot be held responsible for the fact that the shares are still being held.

No vote may be cast by the company at a General Meeting of Shareholders in respect of a share belonging to the company or to a Subsidiary thereof or in respect of a share in respect of which either of them holds the depositary receipts (article 2:118 paragraph 7 DCC).

Modernization DCC: The aforementioned conditions will change for BVs as soon as the modernization of the DCC has become effective. Only the condition mentioned under (a) will remain and in addition a test on liquidity and solvency will be introduced and at least one share must be held by a third party.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Availability is subject to restrictions. See narrative answer (article 2:98/207 DCC and 2:98d/207d DCC).
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Article 2:98, 2:98d DCC for NV and 2: 207, 2:207d DCC for BV.
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3) **If this CEM is available, is it subject to any restrictions?**

Direct Control Cross-Shareholdings and Indirect Control Cross-Shareholdings: Availability is subject to restrictions (article 2:98/207 DCC and 2:98d/207d DCC). For instance the 10% limit. No vote may be cast by the company at a General Meeting of Shareholders in respect of a share belonging to the company or to a Subsidiary thereof or in respect of a share in respect of which either of them holds the depositary receipts (article 2:118 paragraph 7 DCC).

Concerning Basic Cross-Shareholdings, no specific restrictions apply as long as the company acquiring a cross shareholding (Company B) is not already a Subsidiary of its shareholder (Company A). This is the case if Company B is (a) a legal entity in which Company A or one or more of its subsidiaries, pursuant to an agreement with other persons entitled to vote or otherwise, can exercise, solely or jointly, more than 50% of the voting rights at a General Meeting (article 2:24a paragraph 1a DCC) or (b) a legal entity of which Company A or one or more of its subsidiaries is a member or shareholder and, pursuant to an agreement with other persons entitled to vote or otherwise, can appoint or dismiss, solely or jointly, more than 50% of the directors or officers or of the supervisory board members, if all persons entitled to vote were to cast their vote (article 2:24a paragraph 1b DCC).

4) **Who decides whether this CEM should be implemented, and under what conditions?**

As far as new shares are issued the General Meeting decides unless it has delegated this authority to the board.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum N/A <input checked="" type="checkbox"/> Majority: simple (50%+1 of the votes cast) (unless the Articles provide a larger majority)
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5) **Are there ongoing disclosure requirements regarding such CEM?**

Reference is made to the general remarks.

Annual report: According to article 2:391 paragraph 5 DCC by Regulation further provisions may be set with regard to the contents of the annual report. These provisions may relate in particular to compliance with a code of conduct to be designated. The code of conduct which is designated is the Corporate Governance Code. Moreover the Resolution of 5 April 2006 to implement article 10 of the Takeover directive (Directive 2004/25/EG) is a Regulation which contains further provisions. Pursuant to this Regulation information shall be given in the annual report with respect to, among others: (a) the capital structure of a company, the classes of shares and the rights and obligations attached thereto as well as the percentage of shares of each class in relation to the total issued capital, (b) each restriction by the company in transfer of shares or depositary receipts issued with the co-operation of the company

(c) shareholdings in the company for which a disclosure must be made pursuant to the Wft, (d) special rights with regard to control and the name of the holder thereof, (e) each limitation of voting rights.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis</p> <p>Annual report: According to Article 2:391 paragraph 5 DCC</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>An NV whose shares are admitted to trading on a regulated market in the Netherlands or another EU Member State, or a state that is a party to the Agreement on the European Economic Area is subject to certain disclosure requirements under the Wft. Such NV has to disclose its capital and voting rights and any changes.</p> <p>Changes in the capital of 1% or more must be disclosed immediately to the AFM under the Wft. Changes that amount together to less than 1% of the capital can be disclosed per calendar quarter.</p> <p>Changes in the voting rights attached to the shares that the NV has issued must be disclosed immediately, insofar as it has not already been disclosed at the same time as a related capital change of 1% or more. Changes of less than 1% that result from total capital changes of less than 1% of the capital at the same time as it discloses the capital changes concerned.</p> <p>Shareholders also have an obligation to disclose to the AFM (changes to) their capital interest and voting rights in an NV that is subject to the disclosure requirements under the Wft. If the percentage of capital interest and/or voting rights of a shareholder meets, exceeds or falls below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent, the obligations to file a notification with the AFM applies.</p> <p>The Wft does not contain specific provisions with regard to this CEM.</p> <p>Please refer to the general remarks for more information about the disclosure obligations under the Wft.</p>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Short form answer:

<p><input checked="" type="checkbox"/> The company does not treat in the same manner shareholders whose circumstances are equal.</p> <p><input checked="" type="checkbox"/> The decision is contrary to the law or the articles and as a consequence the decision is null and void or the decision may be declared a nullity because the rules of the DCC and/or the Articles regulating the passing of resolutions are not fully observed or on the grounds that it is contrary to the principles of reasonableness and fairness required by the DCC (Article 2:8 DCC).</p>
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## SHAREHOLDERS' AGREEMENTS

### 1) Is this CEM available?

Shareholders may enter into voting agreements. There is no provision in the DCC regarding shareholders' agreements but, according to case law, voting agreements may as such not be in violation with the DCC or other Rules nor contrary to the public moral (HR 19 February 1960, NJ 1960, 473 (Aurora) and HR 30 June 1944, NJ 1944, 465 (NV Wennex)). The contractual commitment does not affect the corporate voting right provisions laid down in the DCC. A shareholder may pursue its own interest in exercising his voting rights, taking into account the general principles of corporate law such as article 2:8 DCC. The following rules can be derived from relevant case law and literature on this subject.

- (1) An agreement pursuant to which a shareholder is under the obligation to vote in favour of a certain proposal where the proposal has been specifically described is allowed.
- (2) An agreement to have a prior meeting is allowed. The shareholders commit themselves to have a meeting before the General Meeting and to vote in the General Meeting in accordance with the result of the prior meeting (HR 13 November 1959, NJ 1960, 472 (*Distilleerderij Melchers*)).
- (3) It is a generally accepted principle that an agreement to always vote in accordance with the instruction of a third party or a fellow shareholder is unlawful if the circumstances are not fully foreseeable. A shareholder should at all times be able to form its independent opinion.
- (4) As a general restriction, the agreement may not have improper consequences. For instance if the purpose of the agreement is to evade the law.

New Dutch Takeover Rules: In some situations relating to a public bid each share gives the right to one vote and restrictions by virtue of a Shareholders' Agreement on the exercise of voting rights are not applicable. Reference is made to the General Remarks above.

Modernization of the DCC: With respect to BVs the modernization of the DCC leads to less mandatory rules, i.e. more flexibility with respect to deviation of the provisions of the DCC. In many provisions it will be stated that a deviation can be included in the BV's Articles. The new Article 2:192 DCC will (most likely) also state that the Articles can provide that certain obligations towards the BV or between the shareholders, which are clearly described in the Articles, can be attributed to the capacity of being shareholder. These obligations can only be introduced by means of amendment of the Articles which required a resolution taken with a majority of at least 2/3. In this way the shareholders' agreements will be given a statutory basis. However it is still possible to choose for an agreement. The difference between a shareholders' agreement and provisions in the Articles is that shareholders' agreements are only effective between the parties involved whereas obligations in the Articles will also be effective towards new shareholders. By subscribing for and accepting shares in the BV, the new shareholder is bound by the obligations. Moreover, as the Articles must be made public, third parties can take cognizance of these obligations.

In addition the Articles may state that as long as a shareholder is in default with complying with the obligations laid down in the Articles, he cannot attend General Meetings of Shareholders and/or exercise his voting rights.

The general provision of reasonableness and fairness (Article 2:8 DCC) must be observed when it is resolved to amend the Articles in this respect. A minority shareholder that is confronted with a new statutory obligation against his will can decide to resign from the BV if the obligation will make the transfer of his shares impossible or very difficult.

As indicated, these provisions are not implemented yet. After implementation it is possible that they will have a certain influence on the interpretation of certain NV provisions.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	See restrictions above deriving from case law.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> Highest Court Case Law	Principal Ruling, see Narrative answer under 1)
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3) **If this CEM is available, is it subject to any restrictions?**

In principle, contractual freedom.

Mandatory Takeover: a mandatory takeover bid has to be launched if shareholders entering into certain types of shareholders' agreements are deemed to be acting in concert and represent together more than a certain percentage (30%) of capital and/or voting rights of the company. However please note that the New Dutch Takeover Rules are not implemented yet.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

None.

5) **Are there ongoing disclosure requirements regarding such CEM?**

Reference is made to the general remarks.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>An NV whose shares are admitted to trading on a regulated market in the Netherlands or another EU Member State, or a state that is a party to the Agreement on the European Economic Area is subject to certain disclosure requirements under the Wft. Such NV has to disclose (changes to) its capital and voting rights.</p> <p>Changes in the capital of 1% or more must be disclosed immediately to the AFM under the Wft. Changes that amount together to less than 1% of the capital can be disclosed per calendar quarter.</p> <p>Changes in the voting rights attached to the shares that the NV has issued must be disclosed immediately, insofar as it has not already been disclosed at the same time as a related capital change of 1% or more. Changes of less than 1% that result from total capital changes of less than 1% of the capital at the same time as it discloses the capital changes concerned.</p> <p>Shareholders also have an obligation to disclose to the AFM (changes to) their capital interest and voting rights in an NV that is subject to the disclosure requirements under the Wft. If the percentage of capital interest and/or voting rights of a shareholder meets, exceeds or falls</p>
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	<p>below any of the following thresholds: 5, 10, 15, 20, 25, 30, 40, 50, 60, 75 and 95 per cent, the obligations to file a notification with the AFM applies.</p> <p>For the purposes of shareholding notifications under the Wft, in the case of a shareholders' agreement, each individual party is deemed to have the disposal of the votes that are at the other party's disposal. This 'allocation-provision' only applies in the case of an agreement that provides for a long-term joint policy on voting. The agreement should not apply to only one General Meeting. The agreement does not necessarily have to be a written agreement. According to AFM-policy, a verbal agreement may also qualify as an agreement that provides for a long-term joint policy on voting. All parties to the agreement must allocate themselves the total number of votes that are part of the agreement. Therefore, if a shareholder enters into a shareholders' agreement and as a result the shareholder exceeds any of the thresholds mentioned above, a disclosure obligation applies.</p> <p>Please refer to the general remarks for more information about the disclosure obligations under the Wft.</p>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

None.

**B – GENERAL BACKGROUND QUESTIONS****1) What are the rules for Board elections? How many corporate votes are required to appoint or remove corporate directors?**

The managing directors and supervisory directors of a BV or a NV are appointed and removed by a resolution of the General Meeting taken an absolute majority of the votes cast (i.e. more than 50%). A greater majority can be laid down in the Articles. However for the suspension or removal this qualified majority may not exceed 2/3 of the votes cast representing more than 1/2 of the capital. The Articles may provide that an appointment by the general meeting shall be made from a list of candidates drawn up by a corporate body (such as the meeting of holders of priority shares) or a third party containing the names of at least two persons for each vacancy to be filled. This binding nomination can always be overruled by a resolution passed with a 2/3 majority of the votes cast representing more than 1/2 of the issued capital (article 2:133/243 paragraph 2 DCC).

Modernization DCC: With respect to BV's this is likely to change as soon as the new provisions of the DCC are implemented (see general remarks). Under the new provisions it is possible for holders of a certain class of shares of BV to directly appoint managing directors or supervisory directors of the BV.

Structure Regime Company: If a NV or BV qualifies as a Structure Regime Company, the managing directors are appointed and dismissed by the supervisory board; this power may not be restricted by any binding list of candidates. The supervisory board shall notify the general meeting of shareholders of an intended appointment of a director of the company. It shall not remove a director until the general meeting has been consulted on the intended dismissal. The supervisory directors of a Structure Company are appointed by the General Meeting upon a nomination drawn up by the supervisory board. Before the supervisory board can make the nomination, the General Meeting and the works council have the right to make recommendations. The supervisory board may decide not to adopt this recommendation but only on the grounds that the relevant person is unfit or that the supervisory board will not be properly composed if this nomination is followed. The General Meeting has the right to dismiss the entire supervisory board for reasons of lack of confidence with a simple majority of the votes cast representing at least 1/3 of the issued capital (articles 2:158-162 DCC for NVs and 2:268-272 DCC for BVs).

Listed companies: According to the Corporate Governance Code which is applicable to listed companies, a management board member is appointed for a maximum period of 4 years. A member may be reappointed for a term of not more than 4 years at a time. The Code also contains specific provisions on conflicts of interest and independency of members of the supervisory board.

Boards members may be dismissed only if dismissal is on the agenda (or during any meeting if the entire issued capital is represented at the meeting and the entire capital votes in favor of the proposal) (article 2:114 DCC). Any matter which one or more holders of shares who are so entitled have requested in writing to be considered, shall be included in the convening notice or announced in the same manner, provided that the company has received the request no later than the sixtieth day prior to the date of the meeting and that there is no serious conflicting interest of the company. Consideration of the matter may be requested by one or more holders of shares who alone or jointly represent not less than 1% of the issued capital or, if the shares are listed, representing a value of not less than € 50 million according to the pricelist of such Stock Exchange (article 2:114a DCC). The Articles may provide that the required part of the capital or the value of the shares shall be lower and the period for lodging the request shortened. Holders of shares are equated with holders of depositary receipts issued for shares with the cooperation of the company.

The directors may enter an employment agreement with the company. It is unusual to dismiss a director without ending the employment agreement. In most cases the corporate and labor law relationships are

linked. It is possible for instance that the director is dismissed as director of a group company but the employment agreement with the other group company remains.

Board members may always be removed without cause but not without notice. They have an advisory vote at the General Meetings of Shareholders in that capacity (i.e. they have the right to be heard in the meeting) and/or without indemnity as far as it concerns the corporate relation (as opposed to the labor law relationship).

Minority shareholders are entitled to require a general meeting of shareholders to be convened. One or more shareholders, who jointly represent at least 1/10 of the issued capital or such lesser amount as is provided by the Articles, may, on their application, be authorized by the court to convene a General Meeting of Shareholders (article 2:110 DCC). The court shall disallow the application if it does not appear to him that the applicants have previously requested the managing directors and the supervisory board in writing, stating the exact matters to be considered, to convene a General Meeting of Shareholders and neither the board of managing directors nor the supervisory board, which in this case have equal powers, have taken the necessary steps so that the General Meeting of Shareholders could be held within six weeks after the request. Holders of registered depositary receipts issued for shares with the cooperation of the company shall have the same rights as shareholders.

Listed NVs: Proxy solicitation is authorized (article 2:119 DCC). The General Meeting may, for a period not exceeding five years, authorise the board of managing directors to determine when convening a General Meeting of Shareholders that those persons shall be deemed entitled to attend and to vote at meetings who, at the time then to be set (record date), have such rights and are so on record in a register kept by the board of managing directors, irrespective of who may be entitled to the shares or depositary receipts at the time of the General Meeting of Shareholders. Most listed NVs use the registration system of the special foundation: Foundation Communication Channel of Shareholders.

New Dutch Takeover Rules: Regarding public bids, the Articles of the listed NV can provide that the holder of at least 75% of the issued share capital (including the shares he will hold as a consequence of the bid) is authorized to convene a General Meeting of Shareholders (after the period for acceptance of the bid) in which the special rights of shareholders laid down in the Articles in connection with the appointment or dismissal of a managing director or supervisory director are not applicable. In this General Meeting of Shareholders each share gives the right to one vote and restrictions by virtue of the Articles or by virtue of a shareholders' agreement on the exercise of voting rights are not applicable.

Modernization DCC: With respect to BVs the binding nomination restriction and the impossibility for holders of a certain class to directly appoint their directors is likely to change as soon as the new provisions of the DCC are implemented (see general remarks). Under the new provisions it is possible for holders of a certain class of shares of BV to directly appoint managing directors or supervisory directors of the BV.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for Board election: simple majority unless the Articles prescribe a qualified majority. For Board removal: simple majority unless the Articles prescribe a qualified majority. Quorum required for shareholders' meetings proceeding with the election or removal of Board members: none unless the Articles prescribe a qualified majority.</p>	<p><input checked="" type="checkbox"/> Board members may be revoked only if revocation is on the agenda.</p> <p><input checked="" type="checkbox"/> Board members may always be removed without cause but not without notice. They have an advisory vote at the General Meetings of Shareholders in that capacity (i.e. they have the right to be heard in the meeting). They may be removed without indemnity as far as it concerns the corporate relation (as opposed to the labor law relationship).</p>
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<input checked="" type="checkbox"/> Electronic voting is authorized	<input checked="" type="checkbox"/> Minority shareholders (together) holding at least 1/10 are entitled to require a general meeting of shareholders to be convened (article 2:110 DCC). Minority shareholders (together) holding 1% are entitled to add item on the agenda. <input checked="" type="checkbox"/> Proxy solicitation is authorized (article 2119 DCC).
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**2) What shareholders’ decisions require a vote from more than a simple majority?**

The DCC prescribes a qualified majority for the following shareholders resolutions (not limitative):

- resolution to limit or exclude the pre-emptive rights at an issuance of shares in a NV (a majority of at least 2/3 if less than 1/2 of the issued capital is represented at the General Meeting of Shareholders) (article 2:96a paragraph 7 DCC);
- resolution to reduce the NV’s capital (a majority of at least 2/3 if less than 1/2 of the issued capital is represented at the General Meeting of Shareholders) (article 2:99 paragraph 6 DCC);
- resolution to legally merge the company (a majority of at least 2/3 if less than 1/2 of the issued capital is represented at the General Meeting of Shareholders) (article 2:330 DCC);
- Demerger/split of (article 2:334ee DCC).

These are minimum requirements. If at least 1/2 of the issued capital is represented in the aforementioned examples, a simple majority is sufficient.

With an absolute majority of the votes cast representing not less than one-third of the issued capital the general meeting may pass a motion of no confidence in the supervisory board of a structure company (article 2:158/268 paragraph 9 DCC).

If a resolution is taken by the General Meeting without the required majority, there is no valid resolution. Unless the Articles provide otherwise, the judgement of the chairman of the General Meeting of Shareholders on the result of the votes is binding (article 2:13 paragraph 3 DCC).

If the Articles provide that the resolution to suspend or remove managing directors may only be passed by a qualified majority in a General Meeting at which a specific part of the capital is represented, such qualified majority may not exceed 2/3 of the votes cast representing more than 1/2 of the capital (article 2:134/244 paragraph 2 DCC for managing directors and 2:144/254 paragraph 2 DCC for supervisory directors). If a nomination is made with respect to the appointment of managing directors by a corporate body of the company (such as the meeting of holders of priority shares) or a third party, the General Meeting may, at all times, by a resolution passed with a majority of at least 2/3 the votes cast representing more than 1/2 of the issued capital, resolve that such list shall not be binding (article 2:133/243 paragraph 2 DCC).

Otherwise the Articles may provide “supermajority” decisions or qualified majorities of any nature.

If a resolution is taken without the required majority, then the resolution is null and void.

Short form answer:

<input checked="" type="checkbox"/> Mergers / acquisitions of the company by a third party (only a legal merger)
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PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES: EXTERNAL  
STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

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**PROPORTIONALITY BETWEEN OWNERSHIP AND  
CONTROL IN EU LISTED COMPANIES:  
COMPARATIVE LEGAL STUDY**

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## MULTIPLE VOTING RIGHTS SHARES

### 1) Is this CEM available?

The Code of Commercial Companies (2001), here-and-after “CCC” adopted the principle of “one share one vote” for listed companies (Art. 351 § 2). However, pursuant to Art. 613 § 1-2 of the CCC multiple voting rights in shares subscribed for before the entry into force of the Code have remained in force as “acquired shares”.

Short form answer:

- |   |
|---|
| <input checked="" type="checkbox"/> Yes (Clear Situation) (Before 2001) |
| <input checked="" type="checkbox"/> No (Clear Situation) (After 2001)   |

### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The Code of Commercial Companies sets forth binding rules prohibiting on multiple voting rights shares. Art. 351 § 1 states that “the company may issue shares with special rights attached to them, such right to be stipulated in the statutes (preference shares). Preference shares, with the exception of non-voting shares, shall be registered shares”, non-voting preference shares (Art. 351 § 2 “Such privileges referred to in § 1 may concern in particular the right to vote, the right to dividends or participation in the division of assets in the case of liquidation of the company. Such privileges in respect of the right to vote shall not apply in the case of a public company.”

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
--	--

### 3) If this CEM is available, is it subject to any restrictions?

In principle, such shares cannot be traded in on the regulated market, unless only such shares of a given company have been admitted to the regulated market which seems to be a theoretical option.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Multiple Voting Rights Shares	5 votes per share in “old” shares subscribed for before January 1st, 2001.
<input checked="" type="checkbox"/> Loss of multiple voting rights in certain circumstances	No new multiple voting shares may be issued in public companies.

### 4) Who decides whether this CEM should be implemented, and under what conditions?

All CEMs shall have been authorized by GMS and adopted in the articles of association (statutes), except for Golden Shares regulated by Golden Veto Statute (see answer regarding Golden Shares p.30, *infra*), which are adopted by the Council of Ministers (or shareholders’ agreements which are subject to general rules of contract and CCC).

Short form answer:

Who decides:

GMS – however, no longer available for implementation.

5) **Are there ongoing disclosure requirements regarding such CEM?**

“Old” multiple shares shall be specified in the articles of association (statutes)

Short form answer:

The following disclosure requirements apply:

- Filing of articles of association
- Publication in a Legal Gazette
- Admission documentation
- Annual Reports
- Periodic Reports
- Special Reports – as long as the creation of new CEM was allowed, YES
- Website – if the company decided to obey the pertinent WSE Corporate Governance Principle.<sup>21</sup>

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Resolutions implementing new CEMs may be challenged as they are contrary to law.

If implemented prior to January 1, 2001, the CEM cannot be challenged.

Short form answer: N/A.

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<sup>21</sup> The new draft Best Practices Code (currently at the very advanced stage, likely to enter into force soon) provides for that any WSE-listed company will have to maintain a website and as of 2009 also a website in English, containing i.a. Articles of Association and by-laws, and by that the CEM will be obligatory disclosed.

## NON-VOTING SHARES

1) **Is this CEM available?**

The CEM is not available for non-preference shares. According to Art. 353 § 3 of the CCC, non-voting shares may only be issued if they are to be preference share in respect of dividends.

Short form answer:

<input checked="" type="checkbox"/> No
--

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws
--

<input checked="" type="checkbox"/> Binding Rule
--

**Other questions not applicable.**

## NON-VOTING PREFERENCE SHARES

### 1) Is this CEM available?

Privileges of non-voting shares may consist, in particular, in the right to increased dividends. The company may also issue promoter (founder) certificates as remuneration for the services provided upon creation of the company (Art. 355 § 1 of the CCC). The promoter certificates may be issued for a maximum period of ten years following registration of the company. The certificates shall give the right to participate in the division of profits of the company within the limits stipulated in the statutes, after the minimum amount of dividends stipulated in the statutes has been deducted for the benefit of the shareholders.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

As a general rule Polish law sets a maximum level of privileged entitlement to dividend payments applicable to voting shares. This limitation does not extend to non-voting shares as they might incorporate even higher dividend claims as a tradeoff for excluding voting rights.

Art. 353 of the CCC reads as follows: § 1. Shares which are preference shares in respect of dividends may entitle the rightholder to dividends which exceed by not more than half the dividends designated to be paid out to the shareholders entitled under non-preference shares.

§ 2. Shares which are preference shares in respect of dividends shall not enjoy priority of satisfaction over the remaining shares.

§ 3. The voting right may be excluded with respect to shares which are preference shares in respect of dividends (non-voting shares). The provisions of § 1 and § 2 shall not apply to non-voting shares. The non-applicability of § 1 shall not concern advances on dividends.

§ 4. The statutes may provide that the shareholder entitled under a non-voting share who has not been paid the dividends in entirety or in part in a given financial year shall be entitled to a balance out of profits in the following years; not later, however, that during the three following financial years.

§ 5. Paragraph 4 shall not apply to advances on dividends.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
--	--

### 3) If this CEM is available, is it subject to any restrictions?

In principle, non voting preference shares cannot be traded in on the regulated market, unless only such shares of a given company have been admitted to the regulated market, which seems to be a theoretical option.

In addition, for obvious reasons, the CEM cannot apply to all shares, though no explicit statutory percentage limit has been introduced.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Non-voting Preference Shares (however not specified by law, the only limitation seems to be <100%)	50% of dividends paid to holders of Non Preference Shares
<input checked="" type="checkbox"/> No Listing	
<input checked="" type="checkbox"/> Time limit for equalization payments	The Articles of Association may provide that a holder of non voting preference shares, who has not received dividend due to him/her in a given financial year, shall be entitled to an equalization payment paid out of the profit in the following years. Such payment may not be performed later than within three consecutive financial years.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Non-voting preference shares may be adopted by GMS in the AoA or by promoters establishing a new company.

Short form answer:

Who decides: GMS

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: No statutory quorum, but the Articles may provide otherwise. <input checked="" type="checkbox"/> Majority: 3/4 of the votes cast, unless higher majority is required by the articles of the company.
---	--

Specific conditions: None.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Existence of such CEM shall be disclosed in the articles of association.

<input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Filing of articles of association</li> <li>- Publication in a Legal Gazette</li> <li>- Admission documentation</li> <li>- Annual Reports</li> <li>- Periodic Reports</li> <li>- Special Reports</li> <li>- Website – if the company decided to obey the pertinent WSE Corporate Governance Principle.</li> </ul>
--

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Resolutions implementing CEMs may be challenged if they are (i) contrary to law or contravene the articles of association or good business practices and (ii) harm the interests of the company or are aimed at harming a shareholder (Art. 422 and 425 of the CCC).

## PYRAMID STRUCTURES

1) **Is this CEM available?**

Short form answer: In principle, Polish law does not prohibit pyramid structures.

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The “summit” (head) of the pyramid organized in the form of a corporation or commercial company is classified as a “dominant company” within the meaning of the CCC. Thus, Code rules applicable to “dominant companies” apply to such entities. Certain acts of members of a given pyramid (dependent companies), such as acquisition of the company’s own shares, are ascribed to the dominant entity. See, examples listed in comments below.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	<p>Art. 6 § 1</p> <p>The dominant company shall, within two weeks of the date on which such relation arose, notify the dependent capital company that the relation of dominance has arisen, or else the exercise of the right to vote with the shares of the dominant company representing more than 33% of the share capital of the dependent company shall be suspended.</p> <p>Art. 7 § 1</p> <p>Where the dominant and the dependent company enter into an agreement which provides for the managing of the dependent company (management contract) or a transfer of profits by such company, excerpts from the agreement with provisions on the liability of the dominant company for damage caused to the dependent company as a result of non-performance or improper performance of the agreement and on the liability of the dominant company for obligations of the dependent company towards its creditors shall be filed in the registration file of the dependent company</p> <p>According to Art. 4 of the CCC companies participating in a holding shall be treated as dominant or dependent companies: Where two commercial companies mutually control a majority of the votes, calculated in accordance</p>
--	--	--

		<p>with § 1 point 4 letter a, the commercial company which holds a larger percentage of the votes at the general meeting or the general assembly of the other company (the dependent company) shall be deemed to be the dominant company. Where each of the commercial companies holds the same percentage of the votes at the general meeting or the general assembly of the other company, that company which exerts an influence on the dependent company also on the basis of the link provided for in § 1 point 4 letters b-f shall be deemed to be the dominant company. Art. 4 § 4: Where the relationship of dominance and dependence between two commercial companies cannot be established under the criteria provided for in § 3, that commercial company which may exert an influence on another company on the basis of a larger number of links referred to in § 1 point 4 letters b-f shall be deemed to be the dominant company.</p> <p>Art. 362 § 4</p> <p>The provisions of Art. 362-365 shall apply <i>mutatis mutandis</i> to the acquisition of own shares of a dominant company by a dependent company or co-operative. This shall also apply to persons acting on their account.</p>
<input checked="" type="checkbox"/> Freedom of contract		

3) **If this CEM is available, is it subject to any restrictions?**

None.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Management Board	<input checked="" type="checkbox"/> Autonomous Decision
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In standard cases, it is an autonomous decision of the management board, though the articles of association may require consent/opinion of SB or GSM. Such possible constraints are not effective vis-à-vis a third party.

However, if the set-up of the new company (wholly or partially owned subsidiary) entails transfer or lease of an enterprise or an organized part thereof or if it entails transfer of an immovable property to the subsidiary, an approval by General Meeting (SGM) is required by law (Article 393 CCC). Violation of this reservation results in the act being void (Article 17 § 1 CCC). Moreover, establishment of the

pyramidal structure by means of management contract (Article 7 CCC) might only become effective upon GMS approval. If the setting up of a company (subsidiary) occurs in cooperation with related entity (related-party transaction), such an operation should be subject to approval by supervisory board (Section II.3. draft WSE Best Practices Code).

Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

The disclosure obligations are set forth in Art. 6 of the CCC (see answer in item 2) of this section) . In addition, according to Art. 69 of the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies dated July 29th 2005 the following disclosure requirements, apply both to simple holding structures and pyramids:

1. A shareholder who:
  - 1) has achieved or exceeded 5%, 10%, 20%, 25%, 33%, 50% or 75% of the total vote in a public company, or
  - 2) holds at least 5%, 10%, 20%, 25%, 33%, 50% or 75% of the total vote in a public company, and as a result of a reduction of its equity interest, holds 5%, 10%, 20%, 25%, 33%, 50% or 75% or less of the total vote, respectively
    - shall notify the Securities Commission and the company of the fact within four days from the date of a change in such shareholder's share in the total vote, or from the date on which the shareholder becomes, or by exercising due care could have become, aware of such change.
2. The notification requirement referred to in Art. 69.1 shall apply also to a shareholder who:
  - 1) held over 10% of the total vote and this share has changed by at least:
    - a) 2% of the total vote - in the case of a public company whose shares have been admitted to official stock-exchange listing,
    - b) 5% of the total vote – in the case of a public company whose shares have been admitted to trading on a regulated market other than the one specified in a) above;
  - 2) held over 33% of the total vote and this share has changed by at least 1%.
3. The notification requirement referred to in Art. 69.1-2 shall not apply if upon the settlement in the depository of securities of a few transactions executed on the regulated market on a single day, the change of a shareholder's share in the total vote in a public company as at the end of the settlement day does not result in reaching or exceeding any threshold which triggers the notification requirement.
4. The notification referred to in Art. 69.1 shall include the following information:
  - 1) date and type of event which led to a change in the share in the total vote which is the subject of the notification;
  - 2) number of shares held prior to the change and their percentage share in the company's share capital, and the number of votes attached to these shares and their percentage share in the total vote;
  - 3) number of shares currently held and their percentage share in the company's share capital, and the number of votes attached to these shares and their percentage share in the total vote;
  - 4) information on any intention to further increase the shareholder's share in the total vote within 12 months from the notification date, and on the purpose of such increase – in the case of a notification submitted in connection with reaching or exceeding 10% of the total vote.
5. The shareholder shall promptly, but in no event later than within three days, notify the Commission and the company of any change in the intention or the purpose referred to in Art. 69.4.4.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: a) when the pyramid structure arises or when a shareholder or a member of the board of a dependent company enquires whether a given entity remains in a relation of dominance or dependence (Art. 6 § 4). b) when pertinent thresholds are reached/exceeded <input checked="" type="checkbox"/> The following disclosure requirements apply: - Admission documentation - Annual Reports - Periodic Reports
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

It may be challenged under the antitrust rules.

Additionally, if the transaction is subject to approval by the GMS, such an approving resolution might be challenged if it is (i) contrary to law or (ii) contravene the articles of association or good business practices and harm the interests of the company or are aimed at harming a shareholder (Art. 422 and 425 of the CCC).

## PRIORITY SHARES

### 1) Is this CEM available?

No, it is not. No rights like “priority shares” can be granted to shareholder , except for “personal rights” granted in the AoA to a specified shareholder under Art. 354 of the CCC. However, such rights are not transferable.

According to Art. 354 of the Code “the statutes may grant personal rights to an individual shareholder”. In particular, they may include the right to appoint or dismiss members of the management board, the supervisory board or the right to receive specified performances from the company”. The limitations concerning the scope and exercise of rights attached to preference shares shall apply *mutatis mutandis* to the personal rights.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation) <sup>22</sup>
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

In a nutshell, this CEM may not grant the shareholder more rights than the holder of a priority share.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**Other questions not applicable.**

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<sup>22</sup>

But personal rights of an individual shareholder are a potentially powerful device of control.

## DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

Depository Certificates do not exist under Polish law.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
--

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws
--

<input checked="" type="checkbox"/> Binding Rule
--

**Other questions not applicable.**

## VOTING RIGHT CEILINGS

1) **Is this CEM available?**

Short form answer: Yes.

<input checked="" type="checkbox"/> Yes (Clear Situation)	<p>According to Art. 411 § 3 of the CCC, the statute may limit the voting right of a shareholder holding more than one-fifth of the total votes in the company. This limitation may only refer to exercising the voting rights attached to shares in excess of the limit of votes specified in the articles. In addition, according to Art. 411 § 4 of the CCC, the statutes may also provide for cumulating of the votes held by the shareholders among whom there exists the relationship of dominance or dependence in the meaning of the CCC or another act, as well as set out the rules for the reduction of the votes. Please note that the relationship of dominance/dependence is defined not only in Art. 4 of the Code but also in securities law and in antitrust law. The GMS of a company may refer to one of these statutory definitions while adopting cumulation of the votes in a holding or in a pyramid.</p>
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
--	--

3) **If this CEM is available, is it subject to any restrictions?**

The statutes may limit only the voting rights of large shareholders controlling more than 1/5 of the total number of votes in the corporation.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: No statutory quorum, but Articles may provide otherwise <input checked="" type="checkbox"/> Majority: 3/4 of the votes cast, unless higher majority is required by the Articles of the company
---	--

Specific conditions: None

5) **Are there ongoing disclosure requirements regarding such CEM?**

This CEM shall be disclosed in the articles of association.

- The following disclosure requirements apply
- Filing of articles of association
  - Publication in a Legal Gazette
  - Admission documentation
  - Annual Reports
  - Periodic Reports
  - Special Reports
  - Website – if the company decided to obey the pertinent WSE Corporate Governance Principle.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Resolutions implementing CEMs may be challenged if they are (i) contrary to law or contravene the articles of association or good business practices and (ii) harm the interests of the company or are aimed at harming a shareholder (Art. 422 and 425 of the CCC).

## OWNERSHIP CEILINGS

1) **Is this CEM available?**

Such CEM is not regulated by law but; perhaps, may be implemented in the statutes of a company.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Untested Situation
---	--

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

N/A.

3) **If this CEM is available, is it subject to any restrictions?**

None.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Who decides: GM

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: No statutory quorum, but articles (statutes) may provide otherwise <input checked="" type="checkbox"/> Majority: 3/4 of the votes cast, unless higher majority is required by the articles (statutes) of the company
---	--

Specific conditions: None

5) **Are there ongoing disclosure requirements regarding such CEM?**

Such CEM may, perhaps, be implemented in the Articles.

<input checked="" type="checkbox"/> If so, the following disclosure requirements apply: - Filing of articles of association - Publication in a Legal Gazette - Admission documentation - Special Reports - Website – if the company decided to obey the pertinent WSE Corporate Governance Principle.
--

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Resolutions implementing CEMs may be challenged if they are (i) contrary to law or contravene the articles of association or good business practices and (ii) harm the interests of the company or are aimed at harming a shareholder (Art. 422 and 425 of the CCC).

## SUPERMAJORITY PROVISIONS

1) **Is this CEM available?**

Yes, it is. It is unclear, however, what is the maximum majority permitted by company law.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p>Commentators agree that, for instance, a 99% majority of votes, which would make passing resolutions practically impossible, would contravene the legal nature of a joint stock company, and, thus would be null and void. A practical question whether, for instance a supermajority of 96% of the votes is permissible has not been addressed by published court precedents.</p>
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The limits on GMS powers in this field are based on Art. 304 § 4 of the CCC which reads as follows: The statutes may include additional provisions, unless it follows from the law that the law provides a comprehensive regime or such additional provisions of the statutes are contrary to the nature of the joint-stock company or good practices.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	See Art. 304 § 4 of the CCC (above)
--	--	-------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

As discussed above, a CEM of 99% would not be allowed. Arguably, a CEM close to 99% may also be deemed invalid.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Who decides: GMS

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: No statutory quorum, but articles (statutes) may provide otherwise <input checked="" type="checkbox"/> Majority: 3/4 of the votes cast, unless higher majority is required by the Articles of the company.
---	--

Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

Such CEM may be implemented in the articles of association.

The following disclosure requirements apply:

- Filing of articles of association
- Publication in a Legal Gazette
- Admission documentation
- Special Reports
- Website – if the company decided to obey the pertinent WSE Corporate Governance Principle.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Resolutions implementing CEMs may be challenged if they are (i) contrary to law or contravene the articles of association or good business practices and (ii) harm the interests of the company or are aimed at harming a shareholder (Art. 422 and 425 of the CCC).

## GOLDEN SHARES

**1) Is this CEM available?**

The statutory “golden share” is regulated in the Law of June 3rd, 2005 on Special Rights of the State Treasury and Their Exercise in Capital Companies [Corporations] Having Essential Role for Public Order and Public Security (Golden Veto Statute). According to Art. 2 of the Statute, as long as the Treasury remains directly or indirectly a shareholder of such a corporation, it may veto certain decisions of the management board and resolutions of GMS of the company. The law defines the corporate resolutions subject to the golden share rule and the types of corporations which are subject to such rules. The list of such companies is published by the Council of Ministers. The Treasury may veto a resolution of such a company only in case the resolution is significant for public order or public security and there is a justified suspicion that its implementation would violate public order or public security. Apart from the above mentioned statutory golden share, Treasury has implemented, in a limited number of privatized companies, special “priority shares” (though not transferable) which give it a veto right in the GMS. One such type golden share giving the Treasury a veto right against resolutions in the GMS of a corporation regardless of its shareholding, which was to be exercised by Treasury’s non-participation in a GMS of a privatized company, was held null and void by the Supreme Court. The answers below refer mainly to the CEM regulated by Golden Veto Statute.

Short form answer:

<input checked="" type="checkbox"/> Yes
---

**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The principle of equal treatment of shareholders (Art. 20 of the CCC) and the legal nature of corporation (Art. 304 § 4) impose restrictions on golden shares adopted by the GMS. The Golden Veto Statute (together with the pertinent Council of Ministers Decree) implements the CEM in a defined number of companies in which the Treasury holds shares.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
--	--

**3) If this CEM is available, is it subject to any restrictions?**

See answers above. The main restrictions follow from Golden Veto Statute.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Who decides: The Council of Ministers.

Specific conditions: Exhaustive list of conditions provided for by Golden Veto Statute.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Yes, the list of companies where the Treasury may exercise the CEM is published in the Gazette of Laws. Such CEM may be implemented in the articles of association.

The following disclosure requirements apply:

- Filing of articles of association
- Publication in a Legal Gazette
- Admission documentation
- Annual Reports
- Periodic Reports

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The company may request the Treasury Minister to be deleted from the list of companies having essential role for public order and public security, if it lost such a status. The golden share regulations cease to apply to such company upon entry into force of the relevant new Decree of the Council of Ministers.

**PARTNERSHIPS LIMITED BY SHARES****1) Is this CEM available?**

Partnership limited by shares is available under the CCC but not for listed companies.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
--

**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws
--

<input checked="" type="checkbox"/> Binding Rule
--

**Other questions not applicable.**

## CROSS-SHAREHOLDINGS

1) **Is this CEM available?**

Such CEM is available.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
---

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	See answer 1) above
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3) **If this CEM is available, is it subject to any restrictions?**

There are no restrictions to Basic Cross-Shareholdings.

However, the CEM is subject to severe restrictions if one of the companies is dominant vis-à-vis the other one. In such a case, CEM becomes a DCCS or ICCS. Under Polish law, there is no difference between these two types and the pertinent shares are considered “own shares.” Acquisition of such shares is permitted only in specific situations like set forth in Art. 20 of the 77/91/EEC Directive. Votings rights on such shares cannot be exercised, the company cannot keep shares exceeding 10% of the share capital for more than 2 years, while all own shares acquired in breach of the restrictions should be disposed of within 1 year.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Who decides: Boards of directors unless the Articles require approval of the supervisory board or GMS

<input checked="" type="checkbox"/> Decision by the Management Board	<input checked="" type="checkbox"/> Autonomous decision, unless the Articles require a separate consent of the supervisory board or GMS. Such potential constraints are not effective <i>vis-à-vis</i> a third party.
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Specific conditions: None, unless the Articles provide otherwise.

5) **Are there ongoing disclosure requirements regarding such CEM?**

The disclosure obligations are set forth in Art. 6 of the CCC (see answer to the question on pyramidal structures, above) . In addition, according to Art. 69 of the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies dated July 29th 2005 the following disclosure requirements, apply both to simple holding structures and pyramids:

1. A shareholder who:
  - 1) has achieved or exceeded 5%, 10%, 20%, 25%, 33%, 50% or 75% of the total vote in a public company, or
  - 2) held at least 5%, 10%, 20%, 25%, 33%, 50% or 75% of the total vote in a public company, and as a result of a reduction of its equity interest, holds 5%, 10%, 20%, 25%, 33%, 50% or 75% or less of the total vote, respectively
    - shall notify the Securities Commission and the company of the fact within four days from the date of a change in such shareholder's share in the total vote, or from the date on which the shareholder becomes, or by exercising due care could have become, aware of such change.
  
2. The notification requirement referred to in Art. 69.1 shall apply also to a shareholder who:
  - 1) held over 10% of the total vote and this share has changed by at least:
    - a) 2% of the total vote - in the case of a public company whose shares have been admitted to official stock-exchange listing,
    - b) 5% of the total vote – in the case of a public company whose shares have been admitted to trading on a regulated market other than the one specified in a) above;
  
  - 2) held over 33% of the total vote and this share has changed by at least 1%.
  
3. The notification requirement referred to in Art. 69.1-2 shall not apply if upon the settlement in the depository of securities of a few transactions executed on the regulated market on a single day, the change of a shareholder's share in the total vote in a public company as at the end of the settlement day does not result in reaching or exceeding any threshold which triggers the notification requirement.
  
4. The notification referred to in Art. 69.1 shall include the following information:
  - 1) date and type of event which led to a change in the share in the total vote which is the subject of the notification;
  - 2) number of shares held prior to the change and their percentage share in the company's share capital, and the number of votes attached to these shares and their percentage share in the total vote;
  - 3) number of shares currently held and their percentage share in the company's share capital, and the number of votes attached to these shares and their percentage share in the total vote;
  - 4) information on any intention to further increase the shareholder's share in the total vote within 12 months from the notification date, and on the purpose of such increase – in the case of a notification submitted in connection with reaching or exceeding 10% of the total vote.
  
5. The shareholder shall promptly, but in no event later than within three days, notify the Commission and the company of any change in the intention or the purpose referred to in Art. 69.4.4.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: <ol style="list-style-type: none"> <li>a) when the cross-shareholding structure arises or when a shareholder or a member of the board of a dependent company asks whether a given entity remains in a relation of dominance or dependence (Art. 6 § 4).</li> <li>b) when pertinent thresholds are reached/exceeded</li> </ol> <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Admission documentation</li> <li>- Annual Reports</li> </ul>
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	- Periodic Reports
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

In principle there are no substantive grounds for challenge, unless the CEM requires the approval of the GMS under the articles of association of the company.

## SHAREHOLDERS' AGREEMENTS

### 1) Is this CEM available?

Shareholders' Agreements are widely used in Poland. They are subject to rules of Civil Code and Code of Commercial Companies. They may not contravene mandatory rules of the codes, securities regulations, etc.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
---

### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The Law on Public Offering regulates obligations in case of carrying out an action in concert pertaining to the acquisition of shares in the company and/or the exercise of the voting rights in material matters of the company.

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
--	--

### 3) If this CEM is available, is it subject to any restrictions?

The Law on Public Offering requires that if a written or oral action in concert of shareholders pertains to the acquisition of shares in the company and/or the exercise of the voting rights in material matters of the company, such action must be disclosed.

Moreover, as mentioned above (item 1), the shareholders' agreements shall not violate mandatory rules, including the so-called general clauses which limit the freedom of contract. For instance, Art. 353<sup>1</sup> of the Civil Code states that "the parties concluding a contract may arrange the legal relation the way they choose to, provided its content or purpose is not in contradiction with the character (nature) of that relationship, a law or the principles of social co-existence."

Finally, the existence of this CEM may be crucial in determining whether there is a relation of dominancy and dependency between two or more entities, in which case further restrictions may apply (please see answers included in Pyramid Structures section and Cross-Shareholdings section).

Additionally, shareholder agreement may trigger off mandatory takeover bid (Article 87, sec. 1. item 5 and 5 of the Act on public offer, financial instruments and public companies).

### 4) Who decides whether this CEM should be implemented, and under what conditions?

Short form answer:

Who decides: Shareholders autonomously

<input checked="" type="checkbox"/> Individual shareholders	<input checked="" type="checkbox"/> Autonomous decision
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Specific conditions: None.

5) **Are there ongoing disclosure requirements regarding such CEM?**

The following disclosure requirements apply, if CEM pertains to the acquisition of shares in the company and/or the exercise of the voting rights (especially in material matters of the company):

- Information to shareholders and the company
- Admission documentation
- Annual Reports
- Special Reports.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

In principle, shareholders' agreement may be challenged in case of violation of law.

**B – GENERAL BACKGROUND QUESTIONS****1) What are the rules for Board elections? How many corporate votes are required to appoint or remove corporate directors?**

In principle, management board members are elected by the supervisory board, while the supervisory board members are elected by the GMS. The statutes may provide otherwise, for instance, members of the each of the two boards may be appointed by some shareholders.

The directors may enter into an employment agreement with the company.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for management Board election/removal by the supervisory board: more than 50% of votes present and/or represented, unless the statutes provide otherwise. Quorum required for shareholders' meetings proceeding with the election or removal of Board members: no, unless the statutes provide otherwise.</p> <p><input checked="" type="checkbox"/> Specific mechanisms (such as cumulative voting) authorise minority shareholders to be represented at the supervisory board. Also, in companies created based on former State-owned enterprises, under certain conditions, employees/growers enjoy the right to appoint/remove a minority of members of the supervisory board or even management board.</p>	<p><input checked="" type="checkbox"/> Management Board's members may be revoked during any shareholders' meetings (even though in the company it is the competence of the Supervisory Board), but only if revocation was put on the agenda for GMS. Minority shareholders representing 10% of the share capital may add such item on the agenda of the GMS if they so request at least one month prior to the GMS. The statutes may grant this right to shareholders representing less than one tenth of the votes.</p> <p>No cause and no notice are necessary, unless otherwise provided by the statutes. Obligation to pay compensation may follow from an employment or civil law contract.</p>
<p><input checked="" type="checkbox"/> Electronic voting is authorized</p> <p>Electronic voting during GMS meetings is permitted, e.g., by using electronic voting cards. Voting via Internet is impossible without a proxy present at the GMS.</p>	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened. Shareholders representing together at least 1/10 of the share capital may request a GMS to be convened by the MB. The request shall be made at least one month in advance. The statutes may grant this right to shareholders representing less than 1/10 of the votes.</p> <p><input checked="" type="checkbox"/> Proxy solicitation is authorized. Information on shareholders registered for the GMS shall be accessible 3 days before GMS.</p>

Except in case of the SE, Polish listed companies shall adopt a dual structure of the boards.

**2) What shareholders' decisions require a vote from more than a simple majority?**

The decision requiring a vote from more than a simple majority shall be adopted by 75% of all the votes cast (disapplication of pre-emptive rights require 80%). Shareholders who are present and do not vote are not counted as a voting shareholder, but a "blank" or abstaining vote counts as a "no vote."

Short form answer:

<input checked="" type="checkbox"/> All changes in bylaws / articles of association <input checked="" type="checkbox"/> Issuance of shares / bonds with the right of priority in subscription, amendments of statutes, redemption of shares, reduction of share capital, transfer of enterprise, dissolution of the company, mergers, splits, transformation, authorized capital and contingent increase of the share capital.	<input checked="" type="checkbox"/> Change of nationality of the company <input checked="" type="checkbox"/> Change of corporate purpose <input checked="" type="checkbox"/> Sale of all or substantially all the assets
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The standard minimum majority of votes for all other decisions is the “absolute majority of votes cast” (e.g. in case of 5 “yes” votes, three votes “no” and two abstaining votes, the resolution has not achieved the absolute majority – in principle, “enhanced simple majority” according to the defined term).

In such a case, a shareholder who is present and does not vote is not counted as a voting shareholder but a “blank” or abstaining vote counts as a “no-vote”. The statutes may provide that matters which do not require qualified majority of votes, may be adopted by a “simple majority” of votes (same as under your definition).



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:  
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

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**PROPORTIONALITY BETWEEN OWNERSHIP  
AND CONTROL IN EU LISTED COMPANIES:  
COMPARATIVE LEGAL STUDY**

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## MULTIPLE VOTING RIGHTS SHARES

### 1) Is this CEM available?

According to the Companies Act<sup>23</sup> a Finnish company may have different classes of shares. There is considerable freedom for the shareholders to agree on the terms of each class of shares. The shareholders may, *inter alia*, stipulate in the articles of association that shares of different classes carry different numbers of votes (multiple voting shares).

As a difference in voting rights must always be based on a provision of the company's articles of association, a decision to introduce a class of shares with multiple voting rights must always be approved by the general meeting of shareholders of the company.

Shares of different classes with one class carrying multiple voting rights are used by certain companies in Finland; however, the trend has generally been to unify share classes, and in general no significant premium has been paid for multiple voting shares.

It should be mentioned that many of the low-voting shares in listed companies have preferential cash-flow rights ("low-voting preference shares"). This may be due to the fact that shares without voting rights were introduced in Finland as late as 1997.

In practice, there have not been cases where an investor would claim that he was unaware of the fact that there were several classes of shares or of the relevant terms relating to shares of different classes. Furthermore, there are no reported cases where the company would have issued multiple voting shares to existing majority shareholders in order to block a takeover or any other kind of change of control as it is against the law to issue shares to certain shareholders in order to try to block a change of control.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	A company may elect to have shares of different classes with different voting rights. Such difference in voting rights must be provided for in the articles of association of the company. If not otherwise stipulated in the company's articles of association, a company has one class of shares with equal rights attached to all shares.
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The Finnish companies act is based on freedom of contract. The Companies Act allows companies to have different classes of shares with different voting rights attached to the respective shares of each class. Should the company have shares of different classes, such difference shall be based on a provision in the company's articles of association. The articles of association shall be registered with the Finnish Trade Register and is publicly available to anyone. A company must further, according to the securities market legislation, disclose the existence of different classes of shares.

General company law principles such as equal treatment of all shareholders (the Companies Act, Chapter 1, Section 7) restrict the powers of holders of multiple voting shares and powers of blockholders in general. See also Supreme Court case KKO 2005:122, where several changes in the articles of association were declared null and void as they brought some shareholders unjust benefits at the cost of certain other shareholders.

<sup>23</sup> The Finnish Companies Act (1.9.2006/624, as amended).

Short form answer:

<input checked="" type="checkbox"/> Laws The Companies Act, Chapter 1, Section 7; Chapter 3, Section 3; Chapter 5, Section 27; Chapter 8, Section 5 The Trade Register Act, Section 9 <sup>24</sup> The Securities Market Act, Chapter 2, Section 7 <sup>25</sup>	<input checked="" type="checkbox"/> Binding Rule	A company according to the Companies Act may have different classes of shares with different voting rights attached to the respective shares of each class. An amendment of the articles of association of a company requires the approval by 2/3 of the votes cast and shares represented at the general meeting of shareholders. Disclosure requirements (see 5) The distinction between Federal Rules and State Rules is not relevant in Finland.
<input checked="" type="checkbox"/> Stock Exchange Rules The Rules of the Helsinki Stock Exchange, Section 3.2.26; 3.3.9	<input checked="" type="checkbox"/> Binding Rule	Disclosure requirements (see 5)
<input checked="" type="checkbox"/> Corporate Governance Codes The Corporate Governance Recommendation of the Helsinki Stock Exchange, Section 12.2	<input checked="" type="checkbox"/> Non-Binding Rule	Disclosure requirements (see 5) Always Followed.
<input checked="" type="checkbox"/> Court Decisions Supreme Court case KKO 2005:122	<input checked="" type="checkbox"/> Highest Court Case Law	General company law principles such as equal treatment of all shareholders (the Companies Act, Chapter 1, Section 7) restrict the powers of holders of multiple voting shares and powers of block-holders in general. See also Supreme court case KKO 2005:122, where several changes in the articles of association were declared null and void as they brought some shareholders unjust benefits at the cost of certain other shareholders. Principle Ruling.

**3) If this CEM is available, is it subject to any restrictions?**

There are no restrictions in the form mentioned below relating to the use of multiple voting rights.

Various decisions by the general meeting of shareholders shall be valid only if supported by shareholders holding a minimum of 2/3 of the votes cast and the shares represented at the meeting. Consequently, multiple voting shares bring the holders of such shares only limited advantages. This

<sup>24</sup> The Finnish Trade Register Act (2.2.1979/129, as amended).

<sup>25</sup> The Finnish Securities Market Act (26.5.1989/495, as amended).

rule applies e.g. to decisions on directed share issues and repurchase of shares, amendments of the articles of association, mergers, demergers and the liquidation of the company.

Generally if a company has different classes of shares, certain decisions such as e.g. decisions relating to the merger, demerger or liquidation of a company, shall further be approved by a majority of the votes in each class of shares. Further, a decision to amend the company's articles of association, which would negatively affect the rights of a shareholder, shall be consented to by such shareholder.

General company law principles such as equal treatment of all shareholders (the Companies Act, Chapter 1, Section 7) restrict the powers of holders of multiple voting shares and powers of blockholders in general. See also Supreme Court case KKO 2005:122, where several changes in the articles of association were declared null and void as they brought some shareholders unjust benefits at the cost of certain other shareholders.

Short form answer:

<input checked="" type="checkbox"/> Others	<p>Various decisions by the general meeting of shareholders shall be valid only if supported by shareholders holding a minimum of 2/3 of the votes cast and the shares represented at the meeting. Consequently, multiple voting shares bring the holders of such shares only limited advantages. This rule applies e.g. to decisions on directed share issues and repurchase of shares, amendments of the articles of association, mergers, demergers and the liquidation of the company.</p> <p>Generally if a company has different classes of shares, certain decisions such as e.g. decisions relating to the merger, demerger or liquidation of a company, shall further be approved by a majority of the votes in each class of shares.</p> <p>Further, a decision to amend the company's articles of association, which would negatively affect the rights of a shareholder, shall be consented to by such shareholder.</p>
--	---

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Introduction of a different class of shares and multiple voting rights attached thereto shall be approved by the general meeting of shareholders of the company by qualified majority vote (support by 2/3 of the votes cast and shares represented at the meeting). In addition, if the decision to introduce multiple voting rights shares negatively affects the rights of another shareholder, such shareholder must give his/her consent to the decision for the decision to be valid and enforceable. If a shareholder has not consented to such decision, it can be tested in court.

It is not possible to delegate the right to introduce a new class of shares to the board of directors. However, when a class is introduced the board of directors may be authorized to issue shares.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Board of Directors (Authorized Capital)	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one shareholder present <input checked="" type="checkbox"/> Majority: 2/3s of the votes cast and shares represented at the meeting; in addition, if the decision to introduce multiple voting rights shares negatively affects the rights of another shareholder, such shareholder must give his/her consent to the decision.

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): The main content of the amendment to the articles of association must be disclosed in the notice to the general meeting of shareholders, which shall be disclosed to the shareholders as provided for in the company's articles of association no later than 17 days prior to the meeting. The exact proposal for an amendment must be made available to each shareholder at least one week prior to the general meeting of shareholders.</p> <p><input checked="" type="checkbox"/> Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities: The amendments to the company's articles of association enter into force only after they have been registered with the Trade Register. The Trade Register verifies that the legal form requirements have been met, however, can not take a stand as regards material issues in relation to the decision.</p>	<p>Specific rights of minority shareholders when the CEM is implemented:</p> <p><input checked="" type="checkbox"/> Other: According to general principles of law, the introduction of multiple voting shares must be in the interest of all shareholders (Companies Act, Chapter 1, Section 7).</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

A company must, according to the Trade Register Act, register its articles of association with the Trade Register, including the information on any shares with different voting rights attached to them. Such information is publicly available, *inter alia*, via the internet. A company shall, according to the Securities Market Act, disclose any information relating to the company which may significantly affect the value of its shares.

A company must state in its annual report the amount of shares itemized by classes of shares and the main stipulations in the articles of association relating to each class of shares.

A company must submit its articles of association to the Helsinki Stock Exchange, and disclose any amendments thereto. The rule is binding for all companies listed on the Helsinki Stock Exchange.

A company shall further, according to the Finnish Corporate Governance Recommendation, make available to the investors its articles of association and include on its internet site any relevant information relating to its shares.

There are no reported cases where an investor would have claimed that he was unaware of the existence of various clauses of shares or the terms of the shares.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: The company must register any amendments to its articles of association with the Trade Register. The company must also state in its annual report the amount of shares itemized by classes of shares and the main stipulations in the articles of association relating to each class of shares.</p> <p>The information of the Trade Register is publicly available to anyone. A company shall further, according to the rules of the Helsinki Stock Exchange, provide the exchange with a copy of its articles of association and disclose any proposed decision relating to an amendment thereto. Further, the Corporate Governance Recommendation recommends that companies keep available constantly updated information relating to their shares on their internet sites.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association</li> <li>- Publication in a Legal Gazette</li> <li>- Information to shareholders</li> <li>- Annual Reports</li> <li>- Periodic Reports</li> <li>- Specific Filings</li> <li>- Special Reports</li> <li>- Website</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

A decision may be challenged if it is contrary to the principle of equality of shareholders, i.e., if a decision unduly favors a shareholder or a third person to the detriment of the company or another shareholder.

In practice, multiple voting shares are usually created when the company is formed or when the company issues shares to outside investors who are willing to take low-voting shares.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> Such grounds are alternative.

## NON-VOTING SHARES

1) **Is this CEM available?**

A company may, according to the Companies Act, have non-voting shares if such shares are provided for in the company's articles of association. If not provided otherwise in the company's articles of association, non-voting shares carry same rights as ordinary shares except for the right to vote.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	A company may, according to the Companies Act, have non-voting shares if such shares are provided for in the company's articles of association.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The Companies Act allows companies to have non-voting shares. Should the company have non-voting shares, such existence of non-voting shares shall be based on a provision in the company's articles of association. The articles of association shall be registered with the Trade Register and be publicly available to anyone, *inter alia*, via the internet. A company must further, according to the securities market legislation, disclose the existence of non-voting shares.

Short form answer:

<input checked="" type="checkbox"/> Laws Companies Act, Chapter 3, Section 3; Chapter 5, Section 27; Chapter 8, Section 5 The Trade Register Act, Section 9 The Securities Market Act, Chapter 2, Section 7	<input checked="" type="checkbox"/> Binding Rule	A company may, according to the Companies Act, have non-voting shares if such shares are provided for in the company's articles of association. An amendment of the articles of association of a company requires the approval by 2/3 of the votes cast and shares represented at the general meeting of shareholders. Disclosure (see 5)
<input checked="" type="checkbox"/> Stock Exchange Rules The Rules of the Helsinki Stock Exchange, Section 3.2.26; 3.3.9	<input type="checkbox"/> Binding Rule <input type="checkbox"/> Non-Binding Rule	Disclosure requirements (see 5)
<input checked="" type="checkbox"/> Corporate Governance Codes	<input type="checkbox"/> Binding Rule <input type="checkbox"/> Non-Binding Rule	Disclosure requirements (see 5) Always Followed.

3) **If this CEM is available, is it subject to any restrictions?**

The right to vote with certain types of shares can be limited to the minimum as defined above, or determined in further detail by including provisions thereto in the company's articles of association.

It is e.g. possible to limit the right to vote to include only certain decisions or to grant the holders of non-voting rights the right to vote in particular situations.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Introduction of a different class of non-voting shares shall be approved by the general meeting of shareholders of the company by qualified majority vote (support by 2/3s of the votes cast and shares represented at the meeting). In addition, if the decision to introduce non-voting shares negatively affects the rights of another shareholder, such shareholder must give his/her consent to the decision.

It is not possible to delegate the right to introduce a new class of shares to the board of directors. However, when a class is introduced the board of directors may be authorized to issue shares.

The authorization can be valid for a maximum of five years. Article 9 of the Takeover directive is applicable.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one shareholder present  <input checked="" type="checkbox"/> Majority: 2/3s of the votes cast and shares represented at the meeting; in addition, if the decision to introduce non-voting shares negatively affects the rights of another shareholder, such shareholder must give his/her consent to the decision.
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Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): The main content of the amendment to the articles of association must be disclosed in the notice to the general meeting of shareholders, which shall be disclosed to the shareholders as provided for in the company's articles of association no later than 17 days prior to the meeting. The exact proposal for an amendment must be held available to each shareholder at least one week prior to the general meeting of shareholders.</p> <p><input checked="" type="checkbox"/> Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities.</p> <p>The amendments to the articles of association enter into force only after they have been registered with the Trade Register. Only Trade Register notification is needed. The Trade Register would check only formal criteria.</p>	<p>Specific rights of minority shareholders when the CEM is implemented:</p> <p><input checked="" type="checkbox"/> Other</p> <p>According to general principles of law, the introduction of non-voting shares must be in the interest of all shareholders (Companies Act, Chapter 1, Section 7).</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

A company must, according to the Trade Register Act, register its articles of association with the Trade Register, including information on any shares with different voting rights attached to them. Such information is publicly available, *inter alia*, via internet. A company shall, according to the Securities Market Act, disclose any information relating to the company which may significantly affect the value of its shares.

A company must state in its annual report the amount of shares itemized by classes of shares and the main stipulations in the articles of association relating to each class of shares.

A company must submit its articles of association to the Helsinki Stock Exchange and disclose any amendments thereto. The rule is binding for all companies listed on the Helsinki Stock Exchange. A company shall further, according to the Finnish Corporate Governance Recommendation, make available to the investors its articles of association and include on its internet site any relevant information relating to its shares.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: The company must register any amendments to its articles of association with the Trade Register. The company must also state in its annual report the amount of shares itemized by classes of shares and the main stipulations in the articles of association relating to each class of shares.</p> <p>The information of the Trade Register is publicly available to anyone. A company shall further, according to the rules of the Helsinki Stock Exchange provide, the exchange with a copy of its articles of association and disclose any proposed decision relating to an amendment thereto. Further, the Corporate Governance Recommendation recommends that companies keep available constantly updated information relating to their shares on their internet sites.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association</li> <li>- Publication in a Legal Gazette</li> <li>- Information to shareholders</li> <li>- Annual Reports</li> <li>- Periodic Reports</li> <li>- Specific Filings</li> <li>- Special Reports</li> <li>- Website</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

A decision may be challenged if it is contrary to the principle of equality of shareholders, i.e., if a decision unduly favors a shareholder or a third person to the detriment of the company or another shareholder.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> Such grounds are alternative.

## NON-VOTING PREFERENCE SHARES

1) **Is this CEM available?**

A company may have non-voting shares carrying special cash-flow rights if such shares are provided for in the company's articles of association. If not provided otherwise in the Company's articles of association, non-voting shares carry the same rights as ordinary shares except for the right to vote.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	A Company may, according to the Companies Act, have non-voting shares carrying special cash-flow rights if such shares are provided for in the Company's articles of association.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

A company may, according to the Companies Act, have non-voting shares carrying special cash-flow rights if such shares are provided for in the company's articles of association. An amendment of the articles of association of a company requires the by 2/3s of the votes cast and shares represented at the general meeting of shareholders.

Short form answer:

<input checked="" type="checkbox"/> Laws Companies Act, Chapter 3, Section 3; Chapter 5, Section 27; Chapter 8, Section 5 The Trade Register Act, Section 9 The Securities Market Act, Chapter 2, Section 7	<input checked="" type="checkbox"/> Binding Rule	A company may, according to the Companies Act, have non-voting shares carrying special cash-flow rights if such shares are provided for in the company's articles of association. An amendment of the articles of association of a company requires the approval by 2/3s of the votes cast and shares represented at the general meeting of shareholders.  Disclosure requirements (see 5)
<input checked="" type="checkbox"/> Stock Exchange Rules The Rules of the Helsinki Stock Exchange, Section 3.2.26; 3.3.9	<input checked="" type="checkbox"/> Binding Rule	Disclosure requirements (see 5)
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	Disclosure requirements (see 5)  Always Followed.

**3) If this CEM is available, is it subject to any restrictions?**

The right to vote with certain types of shares can be limited to the minimum as defined above, or determined in further detail by including provisions thereto in the company's articles of association. It is possible to limit the right to vote to include only certain decisions or to grant the holders of non-voting rights the right to vote in particular situations not defined in the law.

The equality principle shall be complied with.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Introduction of a different class of shares and multiple voting rights attached thereto shall be approved by the general meeting of shareholders of the company by qualified majority vote (support by 2/3s of the votes cast and shares represented at the meeting). In addition, if the decision to introduce multiple voting rights shares negatively affects the rights of another shareholder, such shareholder must give his/her consent to the decision.

It is not possible to delegate the right to introduce a new class of shares to the board of directors. However, when a class is introduced, the board of directors may be authorized to issue shares. It is not possible for the Board to be authorised to issue NVP shares.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one shareholder present  <input checked="" type="checkbox"/> Majority: 2/3s of the votes cast and shares represented at the meeting; in addition, if the decision to introduce non-voting shares negatively affects the rights of another shareholder, such shareholder must give his/her consent to the decision.
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Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): The main content of the amendment to the articles of association must be disclosed in the notice to the general meeting of shareholders, which shall be disclosed to the shareholders as provided for in the company's articles of association no later than 17 days prior to the meeting. The exact proposal for an amendment must be held available to each shareholder at least one week prior to the general meeting of shareholders.</p> <p><input checked="" type="checkbox"/> Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities</p> <p>The amendments to the company's articles of association enter into force only after they have been registered with the Trade Register.</p>	<p>Specific rights of minority shareholders when the CEM is implemented:</p> <p><input checked="" type="checkbox"/> Other</p> <p>According to general principles of law, the introduction of non-voting preference shares must be in the interest of all shareholders (Companies Act, Chapter 1, Section 2).</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

A company must, according to the Trade Register Act, register its articles of association with the Trade Register, including the information on any shares with different voting rights attached to them. Such information is publicly available. A company shall, according to the Securities Market Act, disclose any information relating to the company, which may significantly affect the value of its shares.

A company must state in its annual report the amount of shares itemized by classes of shares and the main stipulations in the articles of association relating to each class of shares.

A company must submit its articles of association to the Helsinki Stock Exchange and disclose any amendments thereto. The rule is binding for all companies listed on the Helsinki Stock Exchange. A company shall further according to the Finnish Corporate Governance Recommendation make available to the investors its articles of association and include on its internet site any relevant information relating to its shares.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: The company must register any amendments to its articles of association with the Trade Register. The company must also state in its annual report the amount of shares itemized by classes of shares and the main stipulations in the articles of association relating to each class of shares.</p> <p>The information of the Trade Register is publicly available to anyone. A company shall further, according to the rules of the Helsinki Stock Exchange, provide the exchange with a copy of its articles of association and disclose any proposed decision relating to an amendment thereto. Further, the Corporate Governance Recommendation recommends that companies keep available constantly updated information relating to their shares on their internet sites.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association</li> <li>- Publication in a Legal Gazette</li> <li>- Information to shareholders</li> <li>- Annual Reports</li> <li>- Periodic Reports</li> <li>- Specific Filings</li> <li>- Special Reports</li> <li>- Website</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

A decision may be challenged if it is contrary to the principle of equality of shareholders, i.e., if a decision unduly favors a shareholder or a third person to the detriment of the company or another shareholder.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> Such grounds are alternative.

## PYRAMID STRUCTURES

### 1) Is this CEM available?

There are no limitations according to Finnish law relating to the chains of ownership in listed companies. According to the Companies Act all companies shall keep share and shareholder registers, which shall be publicly available to anyone. Such registers would state only immediate shareholders. There are, however, a number of occurrences when underlying shareholders would be considered, such when a mandatory offer obligation according to the Securities Market Act (shareholding exceeding 30% of 50% of the votes in the company) or a redemption obligation (squeeze out/sell out) in the Companies Act (shareholding exceeding 90% of the shares and votes in the company) arises. There are, in addition, a number of other situations when a specific shareholding of an entity held or controlled by a shareholder would be considered when evaluating the ownership of such shareholder.

Ownership through far-reaching pyramid structures is not common on the Finnish market.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	There are no limitations relating to the right to own companies through holding entities or other companies. There may, however, be situations when according to the law, underlying shareholders held by the same parent are deemed to constitute one entity.
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Share and shareholder registers of the company shall, according to the Companies Act, be held publicly available to anyone.

A shareholder acquiring more than 90% of the shares and votes in a company shall, according to the Companies Act, offer to redeem all remaining shareholders. When calculating such threshold shares also held by any entities controlled by such shareholder shall be taken into account.

According to the Securities Market Act, a shareholder or other person exceeding the threshold of 1/20, 1/10, 3/20, 1/5, 1/4, 1/3, 1/2 or 2/3 of the shares or votes of a listed companies shall disclose his/her ownership to the company and the Stock Exchange. For the purpose of counting such threshold, shares also held by an entity controlled by the shareholder shall be taken into account.

A shareholder acquiring more than 30% (or in certain cases 50 %) of the votes of a listed companies shall offer to redeem all remaining shareholders (public tender offer). Shares held by an entity controlled by such shareholder shall also be taken into account when assessing the threshold.

Short form answer:

<input checked="" type="checkbox"/> Laws  The Companies Act, Chapter 3, Section 17  The Securities Market Act, Chapter 2, Section 9; Chapter 6, Section 10	<input checked="" type="checkbox"/> Binding Rule	There is no law prohibiting the existence of pyramid structures as a means of arranging the shareholding of a shareholder. Share and shareholder registers are, according to the Companies Act, always publicly available. There are, further, a number of rules where ownership of entities controlled by a shareholder are relevant for the purpose of exercising the rights of such shareholders or for the purpose of evaluating relevant disclosure obligations.
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<input checked="" type="checkbox"/> Administrative Rules Decision by the Ministry of Finance on the content of annual accounts. <sup>26</sup>	<input checked="" type="checkbox"/> Binding Rule	Disclosure requirements (see 5)
<input checked="" type="checkbox"/> Stock Exchange Rules The rules of the Helsinki Stock Exchange, Section 2.1.2; 2.1.3.7.1 – 2.1.3.7.4; 3.2.55	<input checked="" type="checkbox"/> Binding Rule	Disclosure (see 5)
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	Disclosure (see 5) Always Followed.

**3) If this CEM is available, is it subject to any restrictions?**

There are no limitations, according to Finnish law, relating to the ownership of shares or the chains of ownership in listed companies. There are, however, a number of occurrences when underlying shareholders would be considered, such as when a redemption obligation arises.

A shareholder acquiring more than 90% of the shares and votes in a company shall according to the Companies Act offer to redeem all remaining shareholders. When calculating such threshold shares also held by any entities controlled by such shareholder shall be taken into account.

According to the Securities Market Act, a shareholder or other person exceeding the threshold of 1/20, 1/10, 3/20, 1/5, 1/4, 1/3, 1/2 or 2/3 of the shares or votes of a listed company shall disclose his/her ownership to the company and the Stock Exchange. For the purpose of counting such threshold, shares also held by an entity controlled by the shareholder shall be taken into account.

A shareholder acquiring more than 30% (or in certain cases 50%) of the votes of a listed companies shall offer to redeem all remaining shareholders (public tender offer). Shares held by an entity controlled by such shareholder shall also be taken into account when assessing the threshold.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Ownership is a matter of contractual relationships of shareholders. The company may, however, in addition to the shareholder him/herself, have disclosure obligations as regards a shareholding of the company.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other:	Decision (contractual) by individual shareholder
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Specific conditions: None

<sup>26</sup> Decision by the Ministry of Finance on the content of annual accounts (19.6.2002/538).

**5) Are there ongoing disclosure requirements regarding such CEM?**

A company must disclose to the Stock Exchange its 50 largest owners in connection with an application relating to the listing of its shares on the Stock Exchange. A company must immediately disclose the fact of becoming the parent of another listed company. The listing requirements of the Helsinki Stock Exchange include that a sufficient number of the company's shares be distributed to the public and that the company has a sufficient number of shareholders. Under normal circumstances, companies having at least 500 shareholders holding shares with a value of around EUR 1,000 will be considered to fulfill the requirement regarding the number of shareholders.

A company shall, according to the Decision by the Ministry of Finance, on the content of annual accounts in its annual accounts include information on shareholders who directly or indirectly own 1/20 or more of the shares in the company. Further, the company shall specify the ten largest shareholders.

According to the Corporate Governance Recommendation listed companies shall disclose information on their internet sites on the main owners of the company and all flagging notifications made during the last years.

The share and shareholder registers of the company are public and shall be held up-to-date and include information on all shareholders, except for foreigners holding shares through a nominal account.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: A company must disclose to the Stock Exchange its 50 largest owners in connection with an application relating to the listing of its shares on the Stock Exchange. A company must immediately disclose the fact of becoming the parent of another listed company.</p> <p>A company shall in its annual accounts include information on shareholders who directly or indirectly own 1/20 or more of the shares in the company. Further, the company shall specify the ten largest shareholders.</p> <p>According to the Corporate Governance Recommendation, listed companies shall disclose information on their internet sites on the main owners of the company and all flagging notifications made during the last years.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Information to shareholders</li> <li>- Admission documentation</li> <li>- Specific Filing</li> <li>- Annual Reports</li> <li>- Periodic Reports</li> <li>- Special Reports</li> <li>- Website</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

N/A.

**PRIORITY SHARES****1) Is this CEM available?**

There is no concept of Priority Shares as defined in this study according to Finnish law. The only possible decision-making power that can be delegated to persons other than shareholders is the right to appoint less than half of the members of the board of directors. This appointment right would benefit specific persons and would not be attached to shares. Should such right be granted, this shall be provided for in the company's articles of association and thereby approved by the general meeting of shareholders of the company. This, however, is not Priority Shares as defined for the purpose of this study.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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**Other questions not applicable.**

**DEPOSITORY CERTIFICATES**

**1) Is this CEM available?**

Finnish law does not recognize Depository Certificates as defined for the purpose of this study.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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**Other questions not applicable.**

## VOTING RIGHT CEILINGS

1) **Is this CEM available?**

It is possible for the shareholders to agree on a voting right ceiling by introducing a provision stating such voting right ceiling in the articles of association of the company. The law does not regulate further the introduction of a voting right ceiling, but it would be dependent upon the agreement of the shareholders. Introduction of a voting right ceiling to the company's articles of association would require an amendment of the articles, which in turn requires support by a majority of 2/3s of the votes cast and shares represented at the general meeting of shareholders. If the introduction of a voting right ceiling negatively affects the rights of a shareholder, such shareholder shall give his/her consent to the amendment of the articles of association.

In practice, it would be very difficult/impossible to introduce such ceilings according to the Companies Act, unless all shareholders gave their consent to such measure.

There are some listed companies which have voting rights ceilings in their articles of association. Generally the provision would state that no shareholder with more than 1/5 of the votes can vote at the general meeting of shareholders. These are provisions that were included in the company's articles of association prior to its listing.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	<p>The law does not regulate voting rights ceilings as such. The shareholders may agree to introduce a voting rights ceiling by including in the company's articles of association a provision limiting the right to vote with more than a certain percentage of the votes at the general meeting of shareholder.</p>
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Although it is possible to provide for a voting rights ceiling in the company's articles of association, it would, in practice, be very difficult/impossible to introduce such ceilings according to the Companies Act, unless all shareholders gave their consent to such measure. If the introduction of a voting right ceiling negatively affects the rights of a shareholder, such shareholder shall need to give his/her consent to the amendment of the articles of association. Further, the principle of equality of shareholders as defined in the Companies Act, would in practice most likely hinder the introduction of such provision.

Short form answer:

<input checked="" type="checkbox"/> Laws <p>The Companies Act, Chapter 1, Section 7; Chapter 5, Sections 27 and 29</p>	<input checked="" type="checkbox"/> Binding Rule	<p>An amendment of the articles of association of a company requires the approval by 2/3s of the votes cast and shares represented at the general meeting of shareholders. If the introduction of a voting right ceiling negatively affects the right of a shareholder, such shareholder shall give his/her consent to the amendment of the articles of association.</p> <p>The board of directors or the general meeting of shareholders may not make a decision, which would unduly favor a shareholder or a</p>
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		third person to the detriment of another shareholder or the company.
<input checked="" type="checkbox"/> Stock Exchange Rules The Rules of the Helsinki Stock Exchange, Section 3.2.26; 3.3.9	<input checked="" type="checkbox"/> Binding Rule	Disclosure (see 5)
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	Disclosure (see 5) Always Followed.

**3) If this CEM is available, is it subject to any restrictions?**

The mechanisms and definition of the voting rights ceiling would have to be specified in the articles of association of the company in order for it to be effective vis-à-vis third persons and new shareholders of the company.

Some principles shall be complied with: equality of shareholders and large shareholder condition (it means that should a voting right ceiling be included in the articles of association of a company, such condition must apply to any shareholder, i.e., applying only to shareholdings exceeding a certain percentage of the votes in the company. In practice, such percentage is generally a limitation to vote with more than 1/5 of the votes). The consent of shareholder whose voting rights are affected by the CEM implementation shall be given.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

A voting rights ceiling can be introduced by including a provision relating thereto to the company's articles of association. An amendment of the articles of association always requires the approval by 2/3s of the votes cast and shares represented at the general meeting of shareholders. In addition, if the decision would negatively affect the rights of a certain shareholder, such shareholder shall always consent to the decision. Further, the board of directors or the general meeting of shareholders may not make a decision which would unduly favor a shareholder or a third person to the detriment of another shareholder or the company, which in practice may make it impossible to introduce a voting rights ceiling.

The decision would always be considered to negatively affect the rights of shareholder if his/her rights could/would be limited. Due to this it is hard to see how a voting rights ceiling could be implemented without the consent of all shareholders.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one shareholder present <input checked="" type="checkbox"/> Majority: 2/3s of the votes cast and shares represented at the meeting; in addition, if the decision to introduce a voting rights ceiling negatively affects the rights of another shareholder, such shareholder must give his/her consent to the decision (Unanimous Consent)
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Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): The main content of the amendment to the articles of association must be disclosed in the notice to the general meeting of shareholders, which shall be disclosed to the shareholders as provided for in the company's articles of association and held available to each shareholder at least one week prior to the general meeting of shareholders.</p> <p><input checked="" type="checkbox"/> Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities</p> <p>The amendments to the company's articles of association enter into force only after they have been registered with the Trade Register.</p>	<p>Specific rights of minority shareholders when the CEM is implemented:</p> <p><input checked="" type="checkbox"/> Other</p> <p>According to the general principles of the law, the introduction of a voting rights ceiling would have to be in the interest of all shareholders (Companies Act, Chapter 1, Section 7).</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

A company must, according to the Trade Register Act, register its articles of association with the Trade Register, including the information on any voting rights ceiling. Such information is publicly available to anyone. A company shall, according to the Securities Market Act, disclose any information relating to the company, which may significantly affect the value of its shares.

A company must submit its articles of association to the Helsinki Stock Exchange and disclose any amendments thereto. The rule is binding for all companies listed on the Helsinki Stock Exchange. A company shall, further according to the Finnish Corporate Governance Recommendation, make available to the investors its articles of association and include on its internet site any relevant information relating to its shares.

Short form answer:

<p><input checked="" type="checkbox"/> Yes</p>	<p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: The company must register any amendments to its articles of association with the Trade Register. The information of the Trade Register is publicly available to anyone. A company shall further, according to the rules of the Helsinki Stock Exchange, provide the exchange with a copy of its articles of association and disclose any proposed decision relating to an amendment thereto. Further, the Corporate Governance Recommendation recommends that companies keep available constantly updated information relating to their shares on their internet sites.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of Articles of Association</li> <li>- Publication in a Legal Gazette</li> <li>- Information to Shareholders</li> <li>- Annual Reports</li> <li>- Periodic Reports</li> <li>- Specific Filings</li> </ul>
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	<ul style="list-style-type: none"> <li>- Special Reports</li> <li>- Website</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

A decision may be challenged if it is contrary to the principle of equality of shareholders, i.e., if a decision unduly favors a shareholder or a third person to the detriment of the company or another shareholder.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> Such grounds are alternative.

**OWNERSHIP CEILINGS****1) Is this CEM available?**

It is not possible, according to Finnish law, to agree on ownership ceilings that would be binding on third parties; neither does the law define any ownership ceiling.

Short form answer:

No (Clear Situation)

**Other questions not applicable.**

## SUPERMAJORITY PROVISIONS

### 1) Is this CEM available?

According to the main rule, the shareholders make decisions at the general meeting of shareholders by majority vote. Certain decisions shall always be approved by a qualified majority of the shareholders, *i.e.*, by 2/3s of the votes cast and shares represented at the meeting. Such decisions are for example the amendment of the company's articles of association, directed share issues (in deviation of the shareholders pre-emptive subscription rights), issuance of option rights or other special rights entitling to shares in the company, repurchase of the company's own shares, merger, demerger and the placing of the company into liquidation. Further, any decision relating to an amendment of the company's articles of association, which would negatively affect the rights of a shareholder, must be consented to by such shareholder.

All the above rules are mandatory, and the company cannot decide to reduce a shareholder's rights that follow from the above. It is, however, possible to decide to ameliorate the rights of a shareholder and provide for more stringent majority requirements for certain decisions in the company by including a provision as to this fact in the company's articles of association. The introduction of such clause would have to be approved by the shareholders in accordance with the above rules.

In practice, provisions of the articles of association stipulating more stringent majority requirements for shareholder resolutions than those following from the law, could normally be used in private companies, but are, however, uncommon in the articles of association of listed companies.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	The shareholders can agree on more stringent requirements on supermajority provisions than those following from the law, by introducing a provision stating such decisions and the required majority in the company's articles of association.
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The Companies Act sets the minimum majority requirements (see question 1 above), which are mandatory, *i.e.*, which cannot be deviated from to the detriment of the shareholders. It is, however, possible to agree on more stringent majority requirements by introducing a provision stating such requirement in the company's articles of association.

Short form answer:

<input checked="" type="checkbox"/> Laws The Companies Act, Chapter 5, Sections 26 – 29 The Trade Register Act, Section 9	<input checked="" type="checkbox"/> Binding Rule	An amendment of the articles of association of a company requires the approval by 2/3s of the votes cast and shares represented at the general meeting of shareholders.
<input checked="" type="checkbox"/> Stock Exchange Rules The rules of the Helsinki Stock Exchange, Section 3.2.26; 3.3.9	<input checked="" type="checkbox"/> Binding Rule	Disclosure (see 5)

<input checked="" type="checkbox"/> Corporate Governance Codes The Finnish Corporate Governance Recommendation	<input checked="" type="checkbox"/> Non-Binding Rule	Disclosure (see 5) Always Followed.
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**3) If this CEM is available, is it subject to any restrictions?**

In order for a supermajority provision to be effective vis-à-vis third persons and new shareholders, it must be specifically included in the company's articles of association.

Short form answer:

<input checked="" type="checkbox"/> Others	In order for a supermajority provision to be effective vis-à-vis third persons and new shareholders, it must be specifically included in the company's articles of association.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

A supermajority provision would have to be included in the company's articles of association, and would therefore have to be approved by the general meeting of shareholders. An amendment of the articles of association always requires the approval by 2/3s of the votes cast and shares represented at the general meeting of shareholders.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one shareholder present <input checked="" type="checkbox"/> Majority: 2/3s of the votes cast and shares represented at the meeting; in addition, if the decision to introduce a supermajority provision in the company's articles of association negatively affects the rights of a shareholder, such shareholder must give his/her consent to the decision.
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Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): The main content of the amendment to the articles of association must be disclosed in the notice to the general meeting of shareholders, which shall be disclosed to the shareholders as provided for in the company's articles of association no later than 17 days prior to the meeting. The exact proposal for an amendment must be held available to each shareholder at least one week prior to the general meeting of shareholders.	Specific rights of minority shareholders when the CEM is implemented: <input checked="" type="checkbox"/> Other According to the general principles of the law, the introduction of supermajority provisions must be in the interest of all shareholders (Companies Act, Chapter 1, Section 7).
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<input checked="" type="checkbox"/> Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities  The amendments to the company's articles of association enter into force only after they have been registered with the Trade Register.	
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**5) Are there ongoing disclosure requirements regarding such CEM?**

A company must, according to the Trade Register Act, register its articles of association with the Trade Register, including the information on any supermajority provisions. Such information is publicly available to anyone. A company shall, according to the Securities Market Act, disclose any information relating to the company, which may significantly affect the value of its shares.

A company must submit its articles of association to the Helsinki Stock Exchange and disclose any amendments thereto. The rule is binding for all companies listed on the Helsinki Stock Exchange. A company shall, further, according to the Finnish Corporate Governance Recommendation, make available to the investors its articles of association and include on its internet site any relevant information relating to its shares.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: The company must register any amendments to its articles of association with the Trade Register. The information of the Trade Register is publicly available to anyone. A company shall, further according to the rules of the Helsinki Stock Exchange, provide the exchange with a copy of its articles of association and disclose any proposed decision relating to an amendment thereto. Further, the Corporate Governance Recommendation recommends that companies keep available constantly updated information relating to their articles of association and their shares on their internet sites.  <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Filing of articles of association</li> <li>- Publication in a Legal Gazette</li> <li>- Information to shareholders</li> <li>- Annual Reports</li> <li>- Periodic Reports</li> <li>- Special Reports</li> <li>- Website</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

A decision can be challenged if it is contrary to the principle of equality between shareholders, i.e., if a decision unduly favors a shareholder or a third person to the detriment of the company or another shareholder.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> Such grounds are alternative.

## GOLDEN SHARES

**1) Is this CEM available?**

Finnish law does not provide or allow for the use of Golden Shares as defined for the purpose of this study.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

**Other questions not applicable.**

## PARTNERSHIPS LIMITED BY SHARES

1) **Is this CEM available?**

Finnish law does not recognize a Partnership Limited by Shares as defined for the purpose of this study. However, the law does recognize a so-called limited partnership company, which can have general partners (unlimited liability partners) and limited sleeping partners (limited liability partners). Such company would not be regulated by the Companies Act, as it would not be defined as a limited liability company, but by an act called the Act on Partnerships and Limited Partnerships<sup>27</sup>. The company would therefore not have shares, although certain partners could invest in the company by limiting their liability to the invested amount of funds. Further, listed companies must always be limited liability companies, and specifically public companies with a share capital requirement of a minimum of EUR 80,000. The above mentioned limited partnerships would thereby not be relevant for the purpose of this study.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Finnish law does not recognize a Partnership Limited by Shares as defined for the purpose of this study. Listed companies must always be limited liability companies, and specifically public companies with a share capital requirement of a minimum of EUR 80,000.
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**Other questions not applicable.**

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<sup>27</sup> The Act on Partnerships and Limited Partnerships (29.4.1988/389).

## CROSS-SHAREHOLDINGS

1) **Is this CEM available?**

The right of shareholders to own shares in companies is not limited by law or regulated to exclude cross-shareholdings. Cross-shareholdings would be governed by contractual law insofar as the shareholder can freely agree on the transfer of shares, which can not be limited by actions of the company.

There are, however, according to Finnish law, a number of disclosure requirements as regards the shareholdings of companies.

According to the Companies Act, all companies shall keep share and shareholder registers, which shall be publicly available to anyone.

According to the Companies Act, a company cannot subscribe for its own shares or for the shares of its parent company against the payment of a subscription price. A listed company cannot possess more than 10% of its own shares.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	<p>The right of shareholders to own shares in companies is not limited by law or regulated to exclude cross-shareholdings. Cross-shareholdings would be governed by contractual law insofar as the shareholder can freely agree on the transfer of shares, which can not be limited by actions of the company.</p> <p>There are, however, according to Finnish law, a number of disclosure requirements as regards the shareholdings of companies.</p>
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

According to the Companies Act, all companies shall keep share and shareholder registers, which shall be publicly available to anyone.

According to the Companies Act, a company cannot subscribe for its own shares or for the shares of its parent company against the payment of a subscription price. A listed company cannot possess more than 10 % of its own shares.

Short form answer:

<input checked="" type="checkbox"/> Laws  The Companies Act, Chapter 3, Sections 15 and 17; Chapter 15, Sections 11 and 14	<input checked="" type="checkbox"/> Binding Rule	<p>According to the Companies Act, all companies shall keep share and shareholder registers, which shall be publicly available to anyone.</p> <p>According to the Companies Act, a company cannot subscribe for its own shares or for the shares of its parent company against the payment of a subscription price. A listed company cannot possess more than 10% of its own shares.</p>
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<input checked="" type="checkbox"/> Administrative Rules The decision by the Ministry of Finance on the content of annual accounts	<input checked="" type="checkbox"/> Binding Rule	Disclosure (see 5)
<input checked="" type="checkbox"/> Stock Exchange Rules The rules of the Helsinki Stock Exchange, Section 2.1.2; 2.1.3.7.1 – 2.1.3.7.4; 3.2.55	<input checked="" type="checkbox"/> Binding Rule	Disclosure (see 5)
<input checked="" type="checkbox"/> Corporate Governance Codes The Corporate Governance Recommendation, Section 12.2.	<input checked="" type="checkbox"/> Non-Binding Rule	Disclosure (see 5) Always Followed.

**3) If this CEM is available, is it subject to any restrictions?**

The right of shareholders to own shares in companies is not limited by law nor regulated to exclude cross-shareholdings. Cross-shareholdings would be governed by contractual law insofar as the shareholder can freely agree on the transfer of shares, which cannot be limited by actions of the company.

Concerning Direct Control Cross Shareholdings, Indirect Control Cross Shareholdings and Basic Cross Shareholdings, the limit amounts to 10% of the shares and the concerned shares shall not enjoy their voting right.

There are, however, according to Finnish law, a number of disclosure requirements as regards the shareholdings of companies.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The right of shareholders to own shares in companies is not limited by law and would be governed by contractual law insofar as the shareholder can freely agree on the transfer of shares, which cannot be limited by actions of the company.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other:	Decision (contractual) by the individual shareholder; by its board of directors.
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Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): See Section 5 below.

**5) Are there ongoing disclosure requirements regarding such CEM?**

A company must disclose to the Stock Exchange its 50 largest owners in connection with an application relating to the listing of its shares on the Stock Exchange. A company must immediately disclose the fact of becoming the parent of another listed company. The listing requirements of the Helsinki Stock Exchange include that a sufficient number of the company's shares be distributed to the public and that the company have a sufficient number of shareholders. Under normal circumstances, companies having at least 500 shareholder holding shares with a value of around EUR 1,000 will be considered to fulfill the requirement regarding the number of shareholders.

A company shall according to the Decision by the Ministry of Finance on the content of annual accounts in its annual accounts include information on shareholder who directly or indirectly own 1/20 or more of the shares in the company. Further, the company shall specify the ten largest shareholders.

According to the Corporate Governance Recommendation, listed companies shall disclose information on their internet sites on the main owners of the company and all flagging notifications made during the last years.

The share and shareholder registers of the company are public and shall be kept up-to-date and include information on all shareholders except for foreigners holding shares through a nominee account.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: A company must disclose to the Stock Exchange its 50 largest owners in connection with an application relating to the listing of its shares on the Stock Exchange. A company must immediately disclose the fact of becoming the parent of another listed company.</p> <p>A company shall in its annual accounts include information on shareholder who directly or indirectly own 1/20 or more of the shares in the company. Further, the company shall specify the ten largest shareholders.</p> <p>According to the Corporate Governance Recommendation, listed companies shall disclose information on their internet sites on the main owners of the company and all flagging notifications made during the last years.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Information to shareholders</li> <li>- Admission documentation</li> <li>- Specific Filings: share and shareholder register are public and up-to-date</li> <li>- Annual Reports</li> <li>- Periodic Reports</li> <li>- Special Reports</li> <li>- Website</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

N/A

## SHAREHOLDERS' AGREEMENTS

### 1) Is this CEM available?

Shareholders can enter into shareholders' agreements, which are binding *inter partes* between the shareholders entering into such agreement but which, however, have no formal status according to the law, nor are binding towards third parties. Shareholders' agreements would be interpreted according to the principles of contractual law.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Shareholders can enter into shareholders' agreements, which are binding <i>inter partes</i> between the shareholders entering into such agreement but which, however, have no formal status according to the law, nor are binding towards third parties. Shareholders' agreements would be interpreted according to the principles of contractual law.
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Shareholders can enter into shareholders' agreements, which are binding *inter partes* between the shareholders entering into such agreement but which, however, have no formal status according to the law, nor can such agreements be binding towards third parties. Shareholders' agreements would be interpreted according to the principles of contractual law.

Short form answer:

<input checked="" type="checkbox"/> Stock Exchange Rules The rules of the Helsinki Stock Exchange, Section 3.2.63	<input checked="" type="checkbox"/> Binding Rule	Listed companies must disclose any shareholders' agreements known to them that pertain to the use of voting power within the company or restrict the transferability of the company's shares.
<input checked="" type="checkbox"/> Corporate Governance Codes The Corporate Governance Recommendation, Section 12.2.	<input checked="" type="checkbox"/> Non-Binding Rule	The company shall, according to the Corporate Governance Recommendation, disclose the existence of any shareholders' agreement known to it.

### 3) If this CEM is available, is it subject to any restrictions?

As shareholder agreement can only be binding as between the parties to the agreement, any mandatory provisions of the law or any provisions of the company's articles of association would supersede the provision of a shareholders' agreement. If the parties would have agreed on an arrangement that is contrary to the provisions of the company's articles of association or the mandatory provisions of the law, such agreement would be valid *inter partes* and could depending on the content of the agreement leading to contractual sanctions towards the other party to the agreement (breach of contract interpreted according to general principles of contract law); however, such provisions would not be relevant when determining an issue from a companies act (or other legal) point of view or from the point of view of a third party not party to the agreement.

The principle of Directors' independence shall be complied with.

Short form answer:

<input checked="" type="checkbox"/> Others	<p>Shareholder agreement can only be binding as between the parties to the agreement.</p> <p>Such agreement can, <i>inter partes</i>, supersede any provisions of the law, including mandatory provisions. However, there are no consequences as to third parties.</p>
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

Shareholders can enter into shareholders' agreements, which are binding inter partes between the shareholders entering into such agreement but which, however, have no formal status according to the law, nor can such agreements be binding towards third parties. Shareholders' agreements would be interpreted according to the principles of contractual law.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: the shareholder party to the agreement would decide to enter into the agreement		<p>Shareholders can enter into shareholders' agreements, which are binding inter partes between the shareholders entering into such agreement but which, however, have no formal status according to the law, nor can such agreements be binding towards third parties. Shareholders' agreements would be interpreted according to the principles of contractual law.</p>
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Specific conditions: Mandatory Takeover.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Listed companies must, according to the rules of the Helsinki Stock Exchange, disclose any shareholders' agreements known to them that pertain to the use of voting power within the company or restrict the transferability of the company's shares.

The company shall further, according to the Corporate Governance Recommendation, disclose the existence of any shareholders' agreement known to it.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Listed companies must, according to the rules of the Helsinki Stock Exchange disclose any shareholders' agreements known to them that pertain to the use of voting power within the company or restrict the transferability of the company's shares. The company shall further according to the Corporate Governance Recommendation disclose to the market on their website and in their annual reports the existence of any shareholders' agreement known to it.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association</li> <li>- Publication in a Legal Gazette</li> <li>- Information to shareholders</li> <li>- Specific Filings: Listed companies must disclose any Shareholders' Agreements that pertain to the use of voting power within the company or restrict the transferability of the company's shares. The company shall further, according to the Corporate Governance Recommendation, disclose the existence of any Shareholders' Agreement known to it.</li> <li>- Annual Reports</li> <li>- Periodic Reports</li> <li>- Special Reports</li> <li>- Website</li> </ul>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

N/A.

**B – GENERAL BACKGROUND QUESTIONS****1) What are the rules for Board elections? How many corporate votes are required to appoint or remove corporate directors?**

The members of the board of directors shall be elected by the general meeting of shareholders. It is possible according to the law to stipulate that less than half of the members of the board of directors shall be elected by some other entity than the general meeting of shareholders by including a provision in this respect to the company's articles of association; however, such provisions do not exist in the articles of association of listed companies.

The members of the board of directors can at any time be removed by the entity electing them, i.e., by the general meeting of shareholders. The directors can enter into an Employment agreement with the company.

The election of the members of the board of directors is made by majority vote of the shares represented at the general meeting of shareholders.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for Board election: simple majority vote. For Board removal: simple majority vote. Quorum required for general meeting of shareholders proceeding with the election or removal of Board members: one shareholder present.</p>	<p><input checked="" type="checkbox"/> Board members may be revoked during any general meeting of shareholders or only during certain general meeting of shareholders or only if revocation is on the agenda.</p> <p>Board members may be removed by shareholders decision if the matter is included in the notice to the general meeting of shareholders. Any shareholder can require the board of directors to include such matter on the agenda to the general meeting of shareholders (no holding minimum requirements as to the right to include this on the agenda).</p> <p><input checked="" type="checkbox"/> Board members may always be removed without cause and/or without notice and/or without indemnity. The conditions are cumulative.</p> <p>Board members may always be removed without cause. Any indemnity to be paid would be dependent on the fact whether the company would have entered into an agreement with the board member including a provision in this respect. Agreements entered into with board members are not common in practice. Further, if the board of directors would have agreed upon a directors' agreement with a board member stipulating an indemnity upon the Board member being removed from the board of directors, such agreement may well be the basis for a liability claim towards the board of directors if not being in the best interest of the company.</p> <p>There are no staggered boards in Finland.</p>
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	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened. Shareholders holding at least 10 % or any lesser amount of shares as specified in the company's articles of association may require the company to convene a general meeting of shareholders to handle a certain matter.</p> <p><input checked="" type="checkbox"/> Proxy solicitation is authorized.</p> <p>A shareholder may always authorise another person to represent him/her at the general meeting of shareholders. Share and shareholder registers shall be made available to anyone; however, foreign shareholders would in general be registered under the name of their account operator. Proxy solicitation is not common in Finland in practice.</p> <p>However, foreigners may hold shares through nominee accounts.</p>
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2) **What shareholders' decisions require a vote from more than a simple majority?**

According to the main rule, the shareholders make decisions at the general meeting of shareholders by majority vote (majority of the votes cast). Certain decisions shall always be approved by a qualified majority of the shareholders, *i.e.*, by 2/3 of the votes cast and shares represented at the meeting. Such decisions are, for example, the amendment of the company's articles of association, directed share issues (in deviation of the shareholders pre-emptive subscription rights), issuance of option rights or other special rights entitling to shares in the company, repurchase of the company's own shares, merger, demerger and the placing of the company into liquidation. Further, any decision relating to an amendment of the company's articles of association, which would negatively affect the rights of a shareholder must be consented to by such shareholder.

Short form answer:

<p><input checked="" type="checkbox"/> All changes in bylaws / articles of association</p> <p><input checked="" type="checkbox"/> Issuance of shares / bonds / other financial instruments: The issuance of a directed share issue (in deviation of the shareholders pre-emptive subscription right) and an issue of option rights or any other rights entitling to shares in the company</p> <p><input checked="" type="checkbox"/> Mergers / acquisitions of the company by a third party</p>	<p><input checked="" type="checkbox"/> Change of nationality of the company</p> <p><input checked="" type="checkbox"/> Change of corporate purpose</p>
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PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:  
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

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**PROPORTIONALITY BETWEEN OWNERSHIP  
AND CONTROL IN EU LISTED COMPANIES:  
COMPARATIVE LEGAL STUDY**

**SWEDEN**

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Reviewed by:

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## MULTIPLE VOTING RIGHTS SHARES

### 1) Is this CEM available?

According to Chapter 4, Section 2, 3 and 5 of the Swedish Companies Act (the “SCA”), the articles of association may prescribe that there shall be different classes of shares or the company shall have the right to issue such shares; that the shares of different classes may carry different voting rights; but that no share may carry voting rights more than ten times greater than the voting rights of any other share.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	While there are several listed companies with differentiated voting rights attached to different classes of shares, this CEM is fairly unusual nowadays with respect to companies seeking a listing.
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

This CEM is authorized under Chapter 4, Section 2 and 3 of the SCA.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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### 3) If this CEM is available, is it subject to any restrictions?

According to Chapter 4, Section 5 of the SCA, no share may carry voting rights more than ten times greater than the voting rights of any other share.

Short form answer:

<input checked="" type="checkbox"/> Maximum number of votes per share	No share may carry voting rights more than ten times greater than the voting rights of any other share.
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### 4) Who decides whether this CEM should be implemented, and under what conditions?

The introduction of different classes of shares or a differentiation of the voting rights attached to shares of existing classes requires an amendment of the articles of association, which in turn is subject to a shareholders’ resolution being passed. Such resolution may require different special majorities depending on the circumstances, but requires a two-third majority of the votes cast at the meeting and two-thirds of the shares represented at the meeting at the least. New issue of shares of different classes with differentiated voting rights requires that the articles of association provides for this option in accordance with the above. Such new issue of shares is not treated differently than any other issue of new shares of different classes. From a structural legal perspective, the issue of new shares of different classes with differentiated voting rights is therefore secondary to amending the articles of association to provide for this option. While the shareholders may resolve to authorise the board of directors to resolve on a new issue of shares, a resolution to amend the articles of association can not be delegated to the board of directors.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: As a general matter there is no special quorum requirement.  <input checked="" type="checkbox"/> Majority: Two-thirds at the least of the votes cast at the meeting and two-thirds of the shares represented at the meeting at least.
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Specific conditions: This CEM is generally not subject to any specific conditions.

**5) Are there ongoing disclosure requirements regarding such CEM?**

This CEM is not subject to any special disclosure requirements but would be disclosed under several different types of rules which generally aim at ensuring transparency with regard to corporation generally or listed companies specifically. For example, (i) listed companies must – under the Stockholm Stock Exchange listing agreement – maintain a website (the “Website”) and must publish its current articles of association and various information relating to the share capital and share structure on such site, (ii) the articles of association of a limited liability company, including any amendment thereto, must be filed and registered with the Swedish Companies Registration Office (the “CRO”), where the articles of association are publicly available, (iii) the annual report of a listed company must contain information corresponding to an Article 10 Report, and the annual report must be filed with the CRO, where it is publicly available – in addition the annual report must be published on the Website where it must remain for a period of at least three years. These are ongoing requirements.

Short form answer:

<input checked="" type="checkbox"/> No	No special disclosure requirements apply but full ongoing disclosure and transparency is ensured in different ways under a variety of rules.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Substantive grounds would be limited to potential non-compliance with applicable formal requirements such as requirements regarding notice of shareholders’ meeting and special majority requirements.

## NON-VOTING SHARES

1) **Is this CEM available?**

No share may carry voting rights more than ten times greater than the voting rights of any other share, entailing that non-voting shares cannot be issued.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	No share may carry voting rights more than ten times greater than the voting rights of any other share, entailing that non-voting shares cannot be issued.
--	--

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Under Chapter 4, Section 5 of the SCA, no share may carry voting rights more than ten times greater than the voting rights of any other share.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**Other questions not applicable.**

## NON-VOTING PREFERENCE SHARES

1) **Is this CEM available?**

No share may carry voting rights more than ten times greater than the voting rights of any other share, entailing that non-voting preference shares can not be issued.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	No share may carry voting rights more than ten times greater than the voting rights of any other share, entailing that non-voting preference shares can not be issued.
--	--

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Under Chapter 4, Section 5 of the SCA, no share may carry voting rights more than ten times greater than the voting rights of any other share.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
--	--

**Other questions not applicable.**

## PYRAMID STRUCTURES

**1) Is this CEM available?**

This CEM is allowed since it is not as such prohibited or otherwise restricted.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	This CEM is allowed since it is not as such prohibited or otherwise restricted.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

This CEM is allowed since it is not as such prohibited or otherwise restricted.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	General principle – allowed since not prohibited.
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**3) If this CEM is available, is it subject to any restrictions?**

No.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

As regards implementation, this is a matter of acquiring a sufficient controlling stake. The decision-making process in this regard would be subject to the rules, if any, generally applying to the legal entity or physical person to make such acquisition. Where a limited liability company is considered, the authority to make such a decision normally rests with the board of directors or potentially, depending on the circumstances, with the CEO.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
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Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities. The acquisition of a controlling stake in a company may, depending the nature of the operations of such company, be subject to approval from, for example, a governmental agency. Such approval is, however, not generally required in connection with the acquisition of a controlling stake.

**5) Are there ongoing disclosure requirements regarding such CEM?**

No direct or indirect shareholdings representing 10% or more of the voting power must be disclosed in the Article 10 Report, which is included in the annual report, which in turn must be filed with the CRO (and is publicly available at the CRO) and published on the listed company's website. Otherwise no special ongoing disclosure requirement applies to this CEM. A controlling stake may result in the company under control being accounted for as an affiliated company or a subsidiary in the annual report of the shareholder. The acquisition of a significant stake in a listed company would, assuming that stake represents at least 5% of the voting power, be subject to the general shareholder disclosure obligations with respect to the acquisition of shares in listed companies. In addition, the share registers of companies with dematerialized shares, including all listed companies, is publicly available (save for information concerning minor shareholders) at the Swedish CSD, which maintains these share registers.

Short form answer:

<input checked="" type="checkbox"/> No	No special ongoing disclosure requirement applies to this CEM but the acquisition of a significant stake in a listed company would be subject to various disclosure requirements.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

This CEM is generally allowed.

## PRIORITY SHARES

### 1) Is this CEM available?

To some extent, yes. The articles of association may provide that one or more directors of the board may be appointed in a different way than in general shareholders' elections. For example, the right to appoint directors may be attributed to holders of shares of a specified class. However, this is very unusual in listed companies, presumably due to the general rules for appointing directors of the board under the SCA, under which at least 50% of the directors must be appointed in general shareholders' elections (where a relative voting majority is sufficient to appoint a director) as well as the Stockholm Stock Exchange's requirements with regard to the composition of the board (under which at least two of the directors must be independent of larger shareholders of the company).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	To some extent, yes. This CEM is very unusual in listed companies.
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Under Chapter 8, Section 8 of the SCA, the articles of association may provide that directors of the board may be appointed in another way than through general shareholders' elections. According to Chapter 8, Section 47 of the SCA, at least 50% of the directors in a public company (all listed companies must be public) must be appointed in general shareholders' elections.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	The articles of association may provide that directors of the board may be appointed in another way than through general shareholders' elections but at least 50% of the directors in a public company (all listed companies must be public) must be appointed in general shareholders' elections.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	At least two of the directors must be independent of larger shareholders of the company.

### 3) If this CEM is available, is it subject to any restrictions?

In a public (Sw. publik) company, more than 50% of the directors of the board must be appointed in general shareholders' elections. All listed companies must be public companies.

Short form answer:

<input checked="" type="checkbox"/> Others: At least 50% of the directors in a listed company must be appointed in general shareholders' elections and at least two of the directors must be independent of larger shareholders of the company.
---

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The shareholders by a resolution to amend the articles of association to provide for the appointment of directors of the board in another way than through general shareholders' elections.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: No quorum requirement. <input checked="" type="checkbox"/> Majority: Two-thirds at the least of the votes cast at the meeting and two-thirds of the shares represented at the meeting at least.
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Specific conditions: This CEM is generally not subject to any specific conditions.

**5) Are there ongoing disclosure requirements regarding such CEM?**

This CEM is not subject to any special disclosure requirements but would be disclosed under several different types of rules which generally aim at ensuring transparency with regard to corporation generally or listed companies specifically. For example, (i) listed companies must – under the Stockholm Stock Exchange listing agreement – maintain a website (the “Website”) and must publish its current articles of association and various information relating to the composition of the board of directors on such site, (ii) the articles of association of a limited liability company, including any amendment thereto, must be filed and registered with the Swedish Companies Registration Office (the “CRO”), where the articles of association are publicly available, (iii) the annual report of a listed company must contain information corresponding to an Article 10 Report, and the annual report must be filed with the CRO, where it is publicly available – in addition the annual report must be published on the Website where it must remain for a period of at least three years. These are ongoing requirements.

Short form answer:

<input checked="" type="checkbox"/> No	No special disclosure requirements apply but full ongoing disclosure and transparency is ensured in different ways under a variety of rules.
--	--

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Substantive grounds would be limited to potential non-compliance with applicable formal requirements such as requirements regarding notice of shareholders' meeting and special majority requirements.

## DEPOSITARY CERTIFICATES

**1) Is this CEM available?**

This CEM is currently not utilized in Sweden and has to our knowledge never been. However, we can not see that it would as such be prohibited, at least not for as long as the foundation is not controlled by the company that has issued the shares that the foundation controls. But since this CEM is not utilized it is difficult to label the situation as clear, which we however choose to do, since it appears to be the least wrongful answer available.

Short form answer:

Unclear (Untested Situation)

**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

This CEM is currently not utilized in Sweden and has to our knowledge never been. However, we can not see that it would as such be prohibited, at least not for as long as the foundation is not controlled by the company that has issued the shares that the foundation controls.

Short form answer:

Laws

**3) If this CEM is available, is it subject to any restrictions?**

This CEM is currently not utilized in Sweden and has to our knowledge never been. However, we can not see that it would as such be restricted, at least not for as long as the foundation is not controlled by the company that has issued the shares that the foundation controls.

The independent trust restriction shall apply.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

This CEM is currently not utilized in Sweden and has to our knowledge never been. The decision making process would most likely be subject to the statutes or other deed of incorporation of the foundation.

Short form answer: A Short form answer can not be given with respect to this CEM; see above.

**5) Are there ongoing disclosure requirements regarding such CEM?**

This CEM is currently not utilized in Sweden and has to our knowledge never been. The shareholding of the foundation would be subject to general shareholder disclosure obligations.

Short form answer: No short form answer will be given; see above.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

This CEM is currently not utilized in Sweden and has to our knowledge never been. However, we can not see that it would as such be prohibited, at least not for as long as the foundation is not controlled by the company that has issued the shares that the foundation controls. The latter may be regarded as a circumvention of the rules restricting the acquisition of its own shares by a limited liability company.

## VOTING RIGHT CEILINGS

**1) Is this CEM available?**

The articles of association may provide for this CEM, for example by providing that only votes representing a specified percentage of the outstanding shares/a maximum number of shares/a specified percentage of the shares represented at the shareholders' meeting may be cast. However, this is extremely unusual in listed companies.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Extremely unusual in listed companies.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

This CEM is authorized under Chapter 7, Section 8 of the SCA, according to which a shareholder may vote all the shares owned or represented by him, unless otherwise prescribed in the articles of association.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
--	--

**3) If this CEM is available, is it subject to any restrictions?**

No, not other than the ceiling cannot be equal to zero and that all share of the same class must have equal voting rights.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The shareholders by a resolution at the shareholders' meeting to amend the articles of association to include a provision providing that only votes representing a specified percentage of the outstanding shares/a maximum number of shares/a specified percentage of the shares represented at the shareholders' meeting may be cast.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: As a general matter there is no special quorum requirement. <input checked="" type="checkbox"/> Majority: Two-thirds at the least of the shares cast at the meeting and two-thirds of the shares represented at the meeting at least.
---	--

Specific conditions: This CEM is generally not subject to any specific conditions.

**5) Are there ongoing disclosure requirements regarding such CEM?**

This CEM is not subject to any special disclosure requirements but would be disclosed under several different types of rules which generally aim at ensuring transparency with regard to corporation

generally or listed companies specifically. For example, (i) listed companies must – under the Stockholm Stock Exchange listing agreement – maintain a website (the “Website”) and must publish its current articles of association and various information relating to the share capital and share structure on such site, (ii) the articles of association of a limited liability company, including any amendment thereto, must be filed and registered with the Swedish Companies Registration Office (the “CRO”), where the articles of association are publicly available, (iii) the annual report of a listed company must contain information corresponding to an Article 10 Report, and the annual report must be filed with the CRO, where it is publicly available – in addition the annual report must be published on the Website where it must remain for a period of at least three years. These are ongoing requirements.

Short form answer:

<input checked="" type="checkbox"/> No	No special disclosure requirements apply but full ongoing disclosure and transparency is ensured in different ways under a variety of rules.
--	--

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Substantive grounds would be limited to potential non-compliance with applicable formal requirements such as requirements regarding notice of shareholders’ meeting and special majority requirements.

## OWNERSHIP CEILINGS

1) **Is this CEM available?**

Short form answer:

 No (Clear Situation)2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Restrictions in line with this CEM have previously been debated as potentially in compliance with the SCA, specifically the possibility of including such poison pill-like CEM(s) in the articles of association. However, Chapter 4, Section 7 of the SCA, under which the rule of free transferability of shares and the available exemptions therefrom are established, does not allow for this CEM.

Short form answer:

 Laws Binding Rule**Other questions not applicable.**

## SUPERMAJORITY PROVISIONS

### 1) Is this CEM available?

Yes. The articles of association may as a general matter prescribe more far reaching voting majority requirements as compared to the applicable majority requirements under the Swedish Companies Act.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
---

### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The availability of this CEM is based on the various majority requirements laid down in the SCA generally being features of shareholder protection. In light of this, the shareholders are as a general matter free to resolve to amend the articles of association to include more far reaching majority requirements compared to the majority requirements laid down in the SCA.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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### 3) If this CEM is available, is it subject to any restrictions?

With respect to certain matters, there is arguably a ceiling for how more far reaching the voting requirements under the articles of association may be compared to the voting requirements under the SCA. With respect to a limited number of other matters, the articles of association arguably may not prescribe a more far reaching majority requirement. For instance, the articles of association may not prescribe that a valid election requires more votes than a simple majority. However, there is uncertainty as to which matters would be subject to this type of limitation.

### 4) Who decides whether this CEM should be implemented, and under what conditions?

The shareholders by a resolution at the shareholders' meeting to amend the articles of association to include this CEM.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: No quorum requirement applies. <input checked="" type="checkbox"/> Majority: Two-thirds of the votes at the least.
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### 5) Are there ongoing disclosure requirements regarding such CEM?

This CEM is not subject to any special disclosure requirements but would be disclosed under several different types of rules which generally aim at ensuring transparency with regard to corporation generally or listed companies specifically. For example, (i) listed companies must – under the Stockholm Stock Exchange listing agreement – maintain a website (the “Website”) and must publish its current articles of association on such site, (ii) the articles of association of a limited liability company, including any amendment thereto, must be filed and registered with the Swedish Companies Registration Office (the “CRO”), where the articles of association are publicly available,

(iii) the annual report of a listed company must contain information corresponding to an Article 10 Report, and the annual report must be filed with the CRO, where it is publicly available – in addition the annual report must be published on the Website where it must remain for a period of at least three years. These are ongoing requirements.

Short form answer:

<input checked="" type="checkbox"/> No	No special disclosure requirements apply but full ongoing disclosure and transparency is ensured in different ways under a variety of rules.
--	--

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Substantive grounds would be mainly limited to potential non-compliance with applicable formal requirements such as requirements regarding notice of shareholders' meeting and special majority requirements.

## GOLDEN SHARES

1) **Is this CEM available?**

No.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
--

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The Golden Share as a CEM is not recognized under the SCA. While there is no specific provision explicitly prohibiting this CEM, Chapter 4, Section 1 of the SCA provides that all shares carry equal rights unless otherwise provided for in Section 2-5 of Chapter 4, which provisions do not allow for the Golden Share.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**Other questions not applicable.**

**PARTNERSHIPS LIMITED BY SHARES****1) Is this CEM available?**

There are no such or similar Swedish entities listed in Sweden and this is currently not a recognized corporate form under Swedish law. In addition, it is highly doubtful that such entity could be incorporated in Sweden.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
--

**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

There are no such or similar Swedish entities listed in Sweden and this is currently not a recognized corporate form under Swedish law. In addition, it is highly doubtful that such an entity could be incorporated in Sweden.

**Other questions not applicable.**

## CROSS-SHAREHOLDINGS

**1) Is this CEM available?**

This CEM is allowed since it is not as such prohibited or otherwise restricted, except that subsidiaries may not, with certain limited exceptions, acquire shares in its direct or indirect parent company. However, this CEM is nowadays highly unusual among listed companies.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Highly unusual among listed companies
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

This CEM is allowed since it is not as such prohibited or otherwise restricted.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	General principle.
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**3) If this CEM is available, is it subject to any restrictions?**

Subsidiaries may not, with certain limited exceptions, acquire shares in its direct or indirect parent company. Such limited exceptions include the fact that a subsidiary may acquire shares in its parent company for which payment shall not be made and the fact that a subsidiary may acquire shares in its parent company which are included in business operations, when such operations are acquired by the subsidiary and where such shares represent a small portion of the share capital of the subsidiary (post acquisition).

**4) Who decides whether this CEM should be implemented, and under what conditions?**

As regards implementation, this is a matter of one company acquiring a stake in the other and vice versa. The decision-making process in this regard would be subject to the rules, if any, generally applying to the company to make such acquisition. The authority to make such a decision normally rests with the board of directors or potentially, depending on the circumstances, with the CEO, in each company.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
--	---

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities. The acquisition of a controlling stake in a company may, depending the nature of the operations of such company, be subject to approval from, for example, a governmental agency. Such approval is, however, not generally required in connection with the acquisition of a controlling stake.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Direct or indirect shareholdings representing 10% or more of the voting power must be disclosed in the Article 10 Report, which is included in the annual report which in turn must be filed with the CRO (and is publicly available at the CRO) and published on the listed company's website. Otherwise, no special ongoing disclosure requirement applies to this CEM. A controlling stake may result in the company under control being accounted for as an affiliated company or a subsidiary in the annual report of the shareholder. The acquisition of a significant stake in a listed company would, assuming that stake represents at least 5% of the voting power, be subject to the general shareholder disclosure obligations with respect the acquisition of shares in listed companies. In addition, the share registers of companies with dematerialized shares, including all listed companies, is publicly available (except for information concerning minor shareholders) at the Swedish CSD, which maintains these share registers.

Short form answer:

<input checked="" type="checkbox"/> No	No special ongoing disclosure requirement applies to this CEM but the acquisition of a significant stake in a listed company would be subject to various disclosure requirements.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

This CEM is generally allowed unless prohibited as an acquisition of a stake in the parent company. In such a case, the agreement is null and void.

## SHAREHOLDERS' AGREEMENTS

**1) Is this CEM available?**

Yes, under general principles of freedom of contract.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	General principles
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**3) If this CEM is available, is it subject to any restrictions?**

General limitations of the principle of freedom of contract applies. Further, the contracting parties are not bound by transfer restrictions contained in a shareholders' agreement where a public offer for the shares in the company has been made subject to the articles of association containing a breakthrough rule. In such case, a provision under the articles of association or a shareholders' agreement which restricts the number of votes which the shareholders may cast at a general shareholders meeting does not apply.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	Transfer and voting restrictions are lifted in the event of a tender offer subject to the articles containing a break through rule.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

The shareholders to enter/having entered into the agreement. A mandatory takeover has to be launched where it has been agreed between the parties to act in concert as regards the exercise of voting rights, with the aim of obtaining a determining influence over the company, where the parties so acting in concert hold shares representing more than 30% of the votes.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: Shareholders.
--

Specific conditions:

Specific requirements when deciding to implement the CEM:

<input checked="" type="checkbox"/> Mandatory takeover.
---

**5) Are there ongoing disclosure requirements regarding such CEM?**

Short form answer:

<input checked="" type="checkbox"/> No	Shareholders are generally not subject to requirements to disclose shareholders' agreements.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Not applicable.

**B – GENERAL BACKGROUND QUESTIONS**

**1) What are the rules for Board elections? How many corporate votes are required to appoint or remove corporate directors?**

In an election, including election of directors of the board, the person who receives the most votes shall be deemed elected. In the event of a tied vote, the election shall be determined by the drawing of lots, unless the shareholders’ meeting decides prior to the election that a new vote shall be held in the event of a tied vote. This shall not apply where otherwise prescribed in the articles of association which, however, may not prescribe that a valid election requires more votes than stated above.

A resolution to remove a director is passed with a simple majority unless the removal is structured as a new election, in which case the rules related above applies.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for Board election: Simple majority.</p> <p>For Board removal: Simple majority.</p> <p>Quorum required for shareholders’ meetings proceeding with the election or removal of Board members: No quorum requirement applies.</p>	<p><input checked="" type="checkbox"/> Board members may be revoked if revocation or new election is on the agenda.</p> <p><input checked="" type="checkbox"/> Board members may always be removed without cause and/or without notice and/or without indemnity.</p>
	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened (please specify the required conditions) where owners of no less than 10% of all shares in the company demand in writing that such a meeting be convened to address a specified matter.</p> <p><input checked="" type="checkbox"/> Proxy solicitation is authorized (the names and addresses of shareholders can be by ordered by anyone from the Swedish CSD).</p>

**2) What shareholders’ decisions require a vote from more than a simple majority?**

A vote from more than a simple majority is required in numerous cases, including, but not limited to, the following: amendment of the articles of association; issuance, or ratification or authorization of board-resolved issuance, for cash of new shares or convertible debt instruments or debt instruments with warrants to subscribe for new shares on a non-pre-emptive basis; repurchase, or authorization of board-resolved repurchase, of shares; sale, or authorization of board-resolved sale, of repurchased shares on a Stock Exchange or other regulated marketplace; reduction of share capital (subject to confirmation by the court); and merger. In addition, certain provisions under the Swedish Companies Act allow for a minority to veto or block resolutions as specified in the Swedish Companies Act.

Short form answer:

<p><input checked="" type="checkbox"/> All changes in bylaws / articles of association.</p> <p><input checked="" type="checkbox"/> Issuance of shares/bonds/other financial instruments (please specify): Shares and securities convertible into or exercisable for shares, but only where the shareholders do not have preferential rights.</p> <p><input checked="" type="checkbox"/> Mergers / acquisitions of the company by a third party.</p>	<p><input checked="" type="checkbox"/> Change of corporate purpose.</p> <p><input checked="" type="checkbox"/> Sale of all or substantially all the assets.</p>
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PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES: EXTERNAL  
STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

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**PROPORTIONALITY BETWEEN OWNERSHIP AND  
CONTROL IN EU LISTED COMPANIES:  
COMPARATIVE LEGAL STUDY**

**THE UNITED KINGDOM**

**SHEARMAN & STERLING<sup>LLP</sup>**

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Reviewed by:  
**Niamh Moloney**  
Professor of capital markets law, University of Nottingham.

**MULTIPLE VOTING RIGHTS SHARES**

**1) Is this CEM available?**

The default position is contained in section 370(6) of the Companies Act 1985 which provides that each member has one vote in respect of each share. Voting rights are, however, typically contained in a company’s Articles. UK company law grants companies very considerable discretion in adopting the internal rules, including voting rights, under which the company is governed. This reflects a core principle of UK company law - that fundamental shareholders’ rights are, in effect, the subject of contract and are set out in the Articles rather than in legislation. Article 2 of Table A (the default Memorandum and Articles which can be used as guidance by companies), which gives the company power to issue new shares, provides, for example, that any share may be issued with such rights and restrictions as the company by ordinary resolution may determine.

Nonetheless, this CEM is unusual and, to our best knowledge, only two UK plcs have this CEM: Daily Mail and General Trust plc and Schroders plc. CEMs were enforced by the House of Lords in *Bushell v. Faith* [1970] 1 All ER 53.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Seldom used.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

It is not necessary that equal rights and privileges are attached to all shares; some may be preferential either as to capital or as to dividend, or as to both, or may have special privileges with respect to voting, or in other respects. If there are no provisions in the Memorandum as to preferential rights being attached to any shares, the company may by its Articles attach to certain of its shares such preferential rights as it pleases; there is no implied condition in the Memorandum that equal rights must be attached to all the shares. *Andrew v. Gas Meter Co* [1897] 1 Ch 361 held that the Memorandum does not prohibit shares with different voting rights. This was upheld in *British and American Trustee and Finance Corp v. Cooper* [1894] AC 399 (HL), where Lord MacNaghton held that the equality of shareholders is not an implied condition of the Memorandum.

As outlined above in 1), companies are therefore broadly free to create shares with whatever voting rights they wish. Therefore it is feasible that, for example, time-phased multiple voting rights shares providing for the acquisition of multiple voting rights for shareholders who have held shares for a certain time may be created by a company. Article 54 of Table A states that “subject to any rights or restrictions, attaching to any shares ... every member ... shall have one vote for every share of which he is the holder.” Companies are, however, entitled to amend Table A when creating their Memorandum and Articles. Table A is not binding in law, it merely provides guidance.

Multiple voting rights were enforced by the House of Lords in *Bushell v. Faith* [1970] 1 All ER 53.

However, it is generally accepted that all classes of shares must attach the same voting/ dividend rights to all shares within that class. Listing Rule 9.3.1 states that a listed company must ensure equality of treatment for all holders of listed equity securities or listed preference shares who are in the same position i.e. all shares of the same class must have the same voting rights.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Non-Binding Rule	Companies Act 1985, Table A: operates as guidance and is generally followed by small companies, but large companies will often vary Table A and sometimes quite significantly. In practice, Table A is not generally followed by listed companies.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Listing Rules: are binding in the sense that a company cannot be listed on the LSE if these rules are not complied with. Therefore they are Always Followed.
<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> Highest Court Case Law <input checked="" type="checkbox"/> High Court Case Law	<u>Andrew v. Gas Meter Co</u> [1897] 1 Ch 361 <u>British &amp; American Trustee &amp; Finance Corp v Couper</u> [1894] AC 399 <u>Bushell v. Faith</u> [1970] 1 All ER 53

**3) If this CEM is available, is it subject to any restrictions?**

Under UK company law, a presumption of equality (including with respect to voting rights) between shareholders applies. This can be displaced where a company’s share capital is divided into classes with different rights. Different classes may only be created where the power to create classes is conferred by the Articles (which may be revised by special resolution to so provide if they do not provide this power at the outset). The Articles also typically set out the rights which attach to different classes of shares (and will also be created through a shareholders’ agreement).

Listing Rule 9.3.1 states that a listed company must ensure equality of treatment for all holders of listed equity securities or listed preference shares who are in the same position: *i.e.*, all shares of the same class must have the same voting rights. However, the Listing Rules generally allow considerable discretion as to what a company can provide for in its Articles.

Where multiple voting rights are conferred on a class, particular rules apply to the variation or the abrogation of those class rights under the Companies Act 1985 ss.125-129 (and will also apply under the 2006 Act ss. 630-640).

Short form answer:

<input checked="" type="checkbox"/> Others	Listing Rule 9.3.1
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

There are three strands of implementation: 1. Creation of a class of shares; 2. allotment of that class of shares; and if applicable, 3. variation to the rights of a class of shares.

1. A new class of shares can be created only if there is power to create a class, and this may require an alteration of the articles of association, which requires the adoption of a special resolution (i.e. approval by a majority of at least 75% of the shareholders of the company).

2. An allotment of shares in the class may be authorized by the board of directors under Companies Act 1985 s.80:

“(1) The directors of a company shall not exercise any power of the company to allot relevant securities, unless they are, in accordance with this section [or section 80A], authorized to do so by—

- (a) the company in general meeting; or
- (b) the company’s articles.....”

3. Class rights can only be varied with either the written consent of the holders of three-quarters in nominal value of the issued shares of the relevant class, or the passing of an extraordinary resolution at a meeting of the relevant class. Companies Act 1985 s.125, set out below, covers variation of class rights.

“(1) This section is concerned with the variation of the rights attached to any class of shares in a company whose share capital is divided into shares of different classes.

(2) Where the rights are attached to a class of shares otherwise than by the company’s memorandum, and the company’s articles do not contain provision with respect to the variation of the rights, those rights may be varied if, but only if—

- (a) the holders of three-quarters in nominal value of the issued shares of that class [(excluding any shares of that class held as treasury shares)] consent in writing to the variation; or (b) an extraordinary resolution passed at a separate general meeting of the holders of that class sanctions the variation;

and any requirement (howsoever imposed) in relation to the variation of those rights is complied with to the extent that it is not comprised in paragraphs (a) and (b) above.

(3) Where—

- (a) the rights are attached to a class of shares by the memorandum or otherwise; (b) the memorandum or articles contain provision for the variation of those rights; and (c) the variation of those rights is connected with the giving, variation, revocation or renewal of an authority for allotment under section 80 or with a reduction of the company’s share capital under section 135;

those rights shall not be varied unless—

(i) the condition mentioned in subsection (2)(a) or (b) above is satisfied; and (ii) any requirement of the memorandum or articles in relation to the variation of rights of that class is complied with to the extent that it is not comprised in that condition.

(4) If the rights are attached to a class of shares in the company by the memorandum or otherwise and— (a) where they are so attached by the memorandum, the articles contain provision with respect to their variation which had been included in the articles at the time of the company’s original incorporation;

or (b) where they are so attached otherwise, the articles contain such provision (whenever first so included),

and in either case the variation is not connected as mentioned in subsection (3)(c), those rights may only be varied in accordance with that provision of the articles.

(5) If the rights are attached to a class of shares by the memorandum, and the memorandum and articles do not contain provision with respect to the variation of those rights, those rights may be varied if all the members of the company [(excluding any member holding shares as treasury shares)] agree to the variation.

(6) The provisions of section 369 (length of notice for calling company meetings), section 370 (general provisions as to meetings and votes), and sections 376 and 377 (circulation of members' resolutions) and the provisions of the articles relating to general meetings shall, so far as applicable, apply in relation to any meeting of shareholders required by this section or otherwise to take place in connection with the variation of the rights attached to a class of shares, and shall so apply with the necessary modifications and subject to the following provisions, namely— (a) the necessary quorum at any such meeting other than an adjourned meeting shall be two persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question [(excluding any shares of that class held as treasury shares)] and at an adjourned meeting one person holding shares of the class in question or his proxy; (b) any holder of shares of the class in question present in person or by proxy may demand a poll.

(7) Any alteration of a provision contained in a company's articles for the variation of the rights attached to a class of shares, or the insertion of any such provision into the articles, is itself to be treated as a variation of those rights.

(8) In this section and (except where the context otherwise requires) in any provision for the variation of the rights attached to a class of shares contained in a company's memorandum or articles, references to the variation of those rights are to be read as including references to their abrogation.”

In practice there is some ambiguity surrounding what actually constitutes a variation.

Section 127 covers the situation where the Articles (or the Memorandum) contain a power to vary class rights. It provides that holders of not less than 15% of the class who did not consent to or vote for the variation can apply to court to have the variation cancelled. This right to apply to court also applies to variations under s.125(2) (see above).

The board of directors must decide on particular allotments within the limits of the authorized capital and subject to a five-year limit on the authorizing resolution from the shareholders.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 2 or whatever other number as specified in articles <input checked="" type="checkbox"/> Majority: 3/4 members present- (Qualified Majority) A one head one vote rule applies, unless otherwise specified in the articles, or unless conducted by a poll vote which is one share one vote. It is common for the articles of association to specify who has the right to demand a poll. The Companies Act 1985 provides that the articles of association must at least provide that the following persons may demand a poll: <ul style="list-style-type: none"> <li>• Five members present in person or by proxy and entitled to vote; or</li> <li>• Any member or members present in person or by proxy with either not less than one-tenth of the total voting rights or not less than one-tenth of the total sum paid up on all shares giving rights to attend and vote (<i>section 373</i>).</li> </ul>
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Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following disclosure requirements apply: -Filing of articles of association: s.380C.4 Companies Act 1985 sets out the company's resolutions that must be filed with the Registrar of Companies. Amongst others, special resolutions and extraordinary resolutions must be filed within 15 days of being passed. Therefore any amendment of the Articles by such resolution must be filed. The amended Articles are often filed at the same time.  - Specific Filings: shareholders must be notified of shareholder meetings (general and extraordinary). The notification must include a description of the business of the meeting.
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6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders</p> <p>When shareholders in a particular class vote on a resolution to vary the rights of the class, they must consider what is best for the shareholders as a class, not what is in their individual best interest (Re Holders Investment Trust [1971] WLR 582).</p> <p>The possibility may arise that an action could be brought by the minority shareholders on the grounds that, because of the creation of the CEM, the affairs of the company were being carried on in an unfairly prejudicial manner (Companies Act s.459). These actions are unusual in large companies.</p> <p>Specifically shareholders representing not less than 15% of the class in question can also apply to court under a specific procedure in the Companies Act 1985 (s.127) to have the variation cancelled if the variation is unfairly prejudicial to the shareholders in that class.</p>	<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).</p> <p><input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of other shareholders.</p>
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Derivative actions can also be brought by minority shareholders on behalf of the company in limited circumstances which currently include fraud against the minority, etc. In such cases the grounds are not cumulative.

NON-VOTING SHARES

1) **Is this CEM available?**

While companies, including publicly listed companies, may issue non-voting ordinary shares (usually designated as “A” shares), this is regarded as an unusual and controversial practice. Despite this, non-voting ordinary shares can be admitted to trading, subject to Stock Exchange rules concerning the clear designation of these shares as non-voting shares. The rights attaching to each class of share issued by the company should be set out in the articles of association or the Memorandum of Association of the company. The articles of association can also restrict voting rights by, for example, providing for shares to be disenfranchised while any calls remain unpaid.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

A company’s articles of association provide that a company may issue its shares with such rights or restrictions as its shareholders determine by ordinary resolution (see, for example, the default Articles “Table A”, Article 2).

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Companies Act 1985.
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	articles of association and Memorandum of Association of the company.

3) **If this CEM is available, is it subject to any restrictions?**

The shareholders, by simple majority, can alter the articles of association of the company in this respect.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Upon authorization of the shareholders	
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<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 2 <input checked="" type="checkbox"/> Majority: Simple Majority of 50%+1% of members present (i.e in order to issue shares)  A one head one vote rule applies, unless otherwise specified in the articles, or unless conducted by a poll vote which is one share one vote. It is common for the articles of association to specify who has the right to demand a poll. The Companies Act 1985 provides that the articles of association must at least provide that the following persons may demand a poll: <ul style="list-style-type: none"> <li>• Five members present in person or by proxy and entitled to vote; or</li> <li>• Any member or members present in person or by proxy with either not less than one-tenth of the total voting rights or not less than one-tenth of the total sum paid up on all shares giving rights to attend and vote (<i>section 373</i>).</li> </ul>	If the shareholders may authorise the board or the Chairman or GM to implement the CEM:  <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): Not subject to a maximum.
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Specific conditions: None

5) **Are there ongoing disclosure requirements regarding such CEM?**

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Filing of articles of association and any relevant special resolutions.
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6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.</p> <p>When shareholders in a particular class vote on a resolution to vary the rights of the class, they must consider what is best for the shareholders as a class, not what is in their individual best interest (Re Holders Investment Trust [1971] WLR 582).</p> <p>The possibility may arise that an action could be brought by the minority shareholders on the grounds that, because of the creation of the CEM, the affairs of the company were being carried on in an unfairly prejudicial manner (Companies Act s.459). These actions are unusual in large companies.</p> <p>Specifically shareholders representing not less than 15% of the class in question can also apply to court under a specific procedure in the Companies Act 1985 (s.127) to have the variation cancelled if the variation is unfairly prejudicial to the shareholders in that class.</p>	<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).</p> <p><input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of other shareholders.</p>
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Derivative actions can also be brought by minority shareholders on behalf of the company in limited circumstances which currently include fraud against the minority, etc. In such cases the grounds are not cumulative.

NON-VOTING PREFERENCE SHARES

1) **Is this CEM available?**

Preference Shares carry the same voting rights as other shares unless the Articles or terms of issue provide otherwise. In practice, however, Preference Shares and some Deferred Shares<sup>28</sup> generally do not carry voting rights. Preference shareholders may be given the right to vote at the general meeting in certain circumstances, typically identified in the articles of association (such as, for example, where dividends are in arrears for a particular specified time, *Re Bradford Investments Plc* [1991] 1 BCLC 224). The issue of Preference Shares is a commonly accepted and often used practice. By contrast, Multiple Voting Rights Shares and Priority Shares are not commonly found in the United Kingdom.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The articles of association or Shareholders’ agreements define what rights different classes of shares can have.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> High Court Case Law

3) **If this CEM is available, is it subject to any restrictions?**

It is possible to obtain a listing for non-voting shares on the Official List but the shares must be clearly designated as non-voting.

Short form answer:

<input checked="" type="checkbox"/> Quasi-Reinstatement of voting rights in certain circumstances	Companies Act 1985 s459 (right of shareholders to petition for unfair prejudice) and Companies Act 1985 ss. 125 -129 CA 1985 provide that such class rights can only be varied with consent of the class of non-voting shareholders).
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<sup>28</sup> Deferred Shares are shares with no right to dividends either for a set period or until certain conditions are met such as, for example, that a certain level of profitability is achieved. They are used in conjunction with convertible shares to ensure that there is no reduction of capital on a share conversion or in executive plans to provide that the proportion of a deferred annual bonus plan that is paid in shares that is deferred over a period of time.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

It is possible to include a provision authorizing the issuance of NVP Shares without any time limit (authorized capital) in the articles of association, but the Directors must have authority to allot (last for a maximum of 5 years) and there must be sufficient authorized shares to cover the issue.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 2 <input checked="" type="checkbox"/> Majority: 50%+1 of shareholders present (Simple majority) A one head one vote rule applies, unless otherwise specified in the articles, or unless conducted by a poll vote which is one share one vote. It is common for the articles of association to specify who has the right to demand a poll. The Companies Act 1985 provides that the articles of association must at least provide that the following persons may demand a poll: <ul style="list-style-type: none"> <li>• Five members present in person or by proxy and entitled to vote; or</li> <li>• Any member or members present in person or by proxy with either not less than one-tenth of the total voting rights or not less than one-tenth of the total sum paid up on all shares giving rights to attend and vote (<i>section 373</i>).</li> </ul>
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Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

No.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following disclosure requirements apply: - Filing of articles of association and any relevant special resolution.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The grounds could include that the decision to implement the CEM is in the sole interest of the majority shareholders (leading to a minority protection action under section 459 of the Companies Act 1985) or the decision to implement the CEM is against the corporate interest (defined as being distinct from the sole

interest of shareholders). In practice, however, both are unlikely to apply as non-voting shares do not dilute control of company.

Therefore it is unlikely that there would be any substantive grounds on which the implementation might be challenged once in place.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders</p> <p>When shareholders in a particular class vote on a resolution to vary the rights of the class, they must consider what is best for the shareholders as a class, not what is in their individual best interest (Re Holders Investment Trust [1971] WLR 582).</p> <p>The possibility may arise that an action could be brought by the minority shareholders on the grounds that, because of the creation of the CEM, the affairs of the company were being carried on in an unfairly prejudicial manner (Companies Act s.459). These actions are unusual in large companies.</p> <p>Specifically shareholders representing not less than 15% of the class in question can also apply to court under a specific procedure in the Companies Act 1985 (s.127) to have the variation cancelled if the variation is unfairly prejudicial to the shareholders in that class.</p>	<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders)</p>
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Derivative actions can also be brought by minority shareholders on behalf of the company in limited circumstances which currently include fraud against the minority, etc. In such cases the grounds are not cumulative.

PYRAMID STRUCTURES

1) **Is this CEM available?**

The term “pyramid structure” is not commonly attributed to publicly listed companies’ groups in the United Kingdom, although it is a common structure to adopt. An example of this kind of structure would involve a publicly-listed company at the top of the ownership chain, wholly-owning several holding companies, which in turn wholly-own subsidiaries, which own controlling stakes in further subsidiaries, thus making the publicly, listed parent the indirect owner of these final subsidiaries, and allowing the listed parent to exercise control over these subsidiaries. There is no limit to the owning capacity of a public listed company. It can therefore wholly-own or have a controlling stake in numerous other companies. However, the Listing Rules and the Takeover Code, in effect, prevent the use of publicly pyramid structures in practice in the United Kingdom. For example, a pyramid structure will tend to have a publicly-listed company (plc) at the top of the chain with a certain number of wholly-owned private subsidiaries below it – this allows the plc to retain control over the business. The problems with a plc having public subsidiaries are highlighted in the Takeover Code Rule 9: This rule requires that a mandatory offer may be required to be made if “(a) any person acquires, whether by a series of transactions over a period of time or not, an interest in shares which (taken together with shares in which persons acting in concert with him are interested) carry 30% or more of the voting rights of a company.” This means that it is increasingly difficult and impractical for a publicly-listed pyramid structure to exist.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Not feasible in practice to retain effective control over a publicly-listed pyramid structure.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

There is no specific rule authorizing nor prohibiting this type of structure. However, it is the general premise of UK company law that any prohibitions or restrictions relating to the running or structure of a company will be laid out in the Companies Act 1985. Rules such as the Listing Rules and the Takeover Code mean that in practice this structure for publicly listed companies is very uncommon.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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3) **If this CEM is available, is it subject to any restrictions?**

Although there is no prohibition, there are certain Rules and processes which might in practice restrict a company’s owning capabilities.

The Listing Rules apply to companies which have had their securities admitted to listing on the Official List maintained by the United Kingdom Listing Authority (which is part of the Financial Services Authority). Any acquisition or disposal of shares or assets by a UK listed public company (or one of its subsidiary undertakings) will be affected in various ways by the application of the Listing Rules regarding: classification of the transaction and the consequences for the listed company of that

classification; disclosure of the transaction to the FSA (and possibly to shareholders); restrictions on persons discharging managerial responsibilities (PDMRs) dealing in the shares of the listed company; and regulation of any connected share issue by the listed company as buyer.

In major acquisitions or disposals, according to the particular classification of the transaction, the Listing Rules require the listed company to obtain shareholder approval and publish an FSA-approved circular. Listing Rule 10.2.1 sets out the method for classifying transactions: “A transaction is classified by assessing its size relative to that of the listed company proposing to make it. The comparison of size is made by using the percentage ratios resulting from applying the class test calculations to a transaction. The class tests are set out in Listing Rule 10 Annex 1 (and modified or added to for specialist companies under Listing Rule 10.7). Listing Rule 10.2.2 except as otherwise provided in this chapter, transactions are classified as follows:

- (1) Class 3 transaction: a transaction where all percentage ratios are less than 5%;
- (2) Class 2 transaction: a transaction where any percentage ratio is 5% or more but each is less than 25%;
- (3) Class 1 transaction: a transaction where any percentage ratio is 25% or more; and
- (4) Reverse takeover: a transaction consisting of an acquisition by a listed company of a business, an unlisted company or assets where any percentage ratio is 100% or more or which would result in a fundamental change in the business or in a change in Board or voting control of the listed company.”

Therefore, depending on the particular classification into which the transaction falls, in addition to the added time burden of arranging an extraordinary general meeting and obtaining shareholder approval, a circular must be prepared, approved by the FSA and published. If a share issue is required either to fund the acquisition or as consideration, there will be delays inherent in obtaining a listing for those securities.

There are also domestic and EU competition considerations that may prevent some types of takeover.

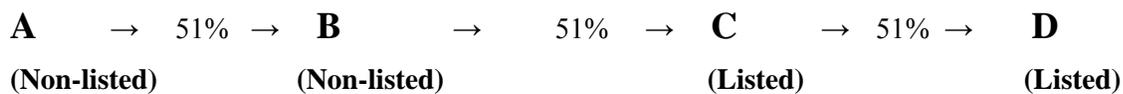
A company can wholly-own, or own controlling stakes in, as many limited companies as it chooses, but it may not wholly-own a publicly-listed company. Under the Listing Rules, at the time of admission to listing, at least 25% of each class of shares being listed must be in the hands of the public in one or more EEA States. Shares are not regarded as being held in public hands where they are held directly or indirectly by, for example, the directors of the company or any of its subsidiaries or by a person connected with such a director or by a person holding 5% or more of the shares. A percentage lower than 25% may be acceptable if the market will operate properly with a lower percentage given in view of the large number of shares of the same class and the extent of their distribution to the public (Listing Rule 6.1.19R and Listing R 6.1.20G).

In addition to the 25% rule, it is important to consider the practical limitations which are imposed by the requirements of the Takeover Code (such as when a company will be required to make an offer).

Therefore, in practice, the following type of structure is permitted:



But this structure (below) is restricted in practice:



Short form answer:

<input checked="" type="checkbox"/> Limits on the use of “pure holdings” (i.e. holdings whose only purpose is to hold an interest in one subsidiary)	Listing Rule 6.1.19R and Listing Rule 6.1.20G
<input type="checkbox"/> Application of a Breakthrough Rule	There is no such Breakthrough Rule that can force a “pyramid structure” out. If a company is careful to maintain a stable controlling interest, there is no question of it being made to relinquish this control.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The board of directors of the parent company can decide how to organise its group structure, although the Articles of a company may allow shareholders to regulate acquisitions or disposals for material acquisitions, for example, beyond a certain percentage of share capital. A “pyramid structure” can be set up from the outset, or can evolve over time. If the group arises through acquisitions of new companies, subject to the Listing Rules, shareholder approval must be sought (in accordance with the Listing Rules).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Unless a company’s articles state otherwise the quorum will be 2.  <input checked="" type="checkbox"/> Majority: This depends on the Articles: an ordinary resolution would require 50%+1 and a special resolution would require at least 75%.
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Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

Apart from in consolidated group accounts, a publicly-listed company does not have to disclose its entire group structure.

Short form answer:

<input checked="" type="checkbox"/> No
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Once implemented, there is no form of challenge to this structure. It is a matter for the board.

Once 90% of a company is in one investor’s hands that investor can compulsorily squeeze out the remaining minority shareholders under the Companies Act 1985.

**PRIORITY SHARES**

**1) Is this CEM available?**

“Priority Shares” are not used in the United Kingdom. Special rights can be given through the issue of Preference Shares, which are addressed in the Non-voting Preference Shares questionnaire. Although Chairmen of Companies are afforded a casting vote by the Companies Act 1985, this is not a right attached to shares per se. It can only be used in deadlock situations, and not as a general power of veto. Traditional priority share-type benefits such as the right to appoint directors directly to the board or to veto decisions taken at a general meeting are extremely rare. Although there is no prohibition on attaching such rights to any class of share by including this in the articles of association of a company (revision of rights contained in the Articles would require a special resolution), or in a shareholders’ agreement, there are certain corporate governance rules on appointing directors (contained in the Combined Code on Corporate Governance which applies on a “comply or explain” basis) provide that certain matters should be delegated to board committees consisting principally or exclusively of non-executive directors. One of the principal board committees is the nomination committee. The nomination committee is responsible for appointments and re-appointments to the board and to senior executive office.

There are currently two versions of the Combined Code that may be applicable to listed companies: the July 2003 version of the Combined Code, applicable for reporting periods beginning before 1 November 2006, and the June 2006 version of the Combined Code, applicable for reporting periods beginning on or after 1 November 2006.

The relevant Main Principle of the Code states that there should be a formal, rigorous and transparent procedure for the appointment of new directors to the board (Main Principle A.4).

The Code together with current market practices therefore makes the notion of Priority Shares, as it was defined at the beginning of the questionnaire, impractical. Therefore, due to generally accepted practice, this type of CEM is not available in the United Kingdom.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Theoretically possible, but market practice prevents the application of this CEM in the United Kingdom.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

N/A

Short form answer:

<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Binding Rule	Main Principle A.4 of The Combined Code. The Code's Main Principles, Supporting Principles and Code Provisions on directors, remuneration, accountability and audit and relations with shareholders are applicable to all United Kingdom listed companies. These are contained in section 1 of the Code and (so long as the company is incorporated in the United Kingdom) should all be covered in the company's disclosure statement as required by LR 9.8.6R(5) and 9.8.6R(6).
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3) **If this CEM is available, is it subject to any restrictions?**

Market restrictions – other classes of shares would be far less attractive to investors. Institutional Investor pressure would make the issues of these shares practically impossible.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Shareholder special resolution – at least 75% of shareholders present (Qualified Majority)

A one head one vote rule applies, unless otherwise specified in the articles, or unless conducted by a poll vote which is one share one vote. It is common for the articles of association to specify who has the right to demand a poll. The Companies Act 1985 provides that the articles of association must at least provide that the following persons may demand a poll:

- Five members present in person or by proxy and entitled to vote; or
- Any member or members present in person or by proxy with either not less than one-tenth of the total voting rights or not less than one-tenth of the total sum paid up on all shares giving rights to attend and vote (*section 373*).

5) **Are there ongoing disclosure requirements regarding such CEM?**

The filing of shareholders' resolution relating to the class with the Registrar of Companies.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

In practice, Priority Shares are not issued.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders</p> <p>When shareholders in a particular class vote on a resolution to vary the rights of the class, they must consider what is best for the shareholders as a class, not what is in their individual best interest (Re Holders Investment Trust [1971] WLR 582).</p> <p>The possibility may arise that an action could be brought by the minority shareholders on the grounds that, because of the creation of the CEM, the affairs of the company were being carried on in an unfairly prejudicial manner (Companies Act s.459). These actions are unusual in large companies.</p> <p>Specifically shareholders representing not less than 15% of the class in question can also apply to court under a specific procedure in the Companies Act 1985 (s.127) to have the variation cancelled if the variation is unfairly prejudicial to the shareholders in that class.</p>	<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).</p> <p><input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of other shareholders.</p>
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Derivative actions can also be brought by minority shareholders on behalf of the company in limited circumstances which currently include fraud against the minority, etc. In such cases the grounds are not cumulative.

DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

There is no concept of “depository certificates” in the United Kingdom. However, there is a concept of depository receipts. This is a negotiable certificate issued by a trust company or security depository, which evidences the deposit of publicly-traded securities and facilitates the trading of such securities on Stock Exchanges. We don’t think depository receipts equate to your concept of depository certificates, and therefore cannot answer the question.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	There is no concept of this in the United Kingdom.
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**Other questions not applicable.**

## VOTING RIGHT CEILINGS

1) **Is this CEM available?**

Although in theory there is nothing to stop a company from attaching this kind of restriction on voting rights to any class of share by setting it out in its articles of association or in a shareholders' agreement, there is no set concept of a "Voting Right Ceiling" in the United Kingdom. As with "Priority Shares", generally accepted UK practice and market expectations concerning shareholder governance would not make this a viable option for a company.

Under the disclosure rules set out in the Takeover Code (Rule 8) and in ss 198-220 of the Companies Act 1985, shareholders who have a material interest in 3% of the nominal share capital must disclose their interest as a substantial shareholder. If a shareholder has an interest but the interest is not material as defined in the legislation, for example, its interest is managed by another (for example, in the form of a trust, UCITS<sup>29</sup> or OEIC<sup>30</sup>), the relevant percentage triggering the disclosure obligations is 10% of the nominal capital. There is also no limit on how many shares an individual can own in a publicly-listed company save for the rule that at least 25% of the shares must be in the hands of the public. "The public" is deemed to include anyone who is not a director of the company or any of its subsidiaries, or anyone not connected with a director of the company or any of its subsidiaries, who holds more than 5% of the voting rights.

From December 31, 2006, a new disclosure regime will be in force for traded public companies which essentially follows the current regime, but "notifiable interests" are replaced by shareholdings to reflect the Transparency Directive 2004/109/EC which came into force on January 20, 2005 and deals with financial reporting requirements, disclosure of interests in securities and communications with holders of shares and debt securities and the market.

Although "one share one vote" prevails for the most part in UK public companies, in practice a strict "one share one vote" voting system does not apply in the United Kingdom. In theory, on a show of hands, which is the most commonly used voting system in a general meeting under the UK common law, and unless the articles specify otherwise, each ordinary share has one vote. In practice, on a show of hands, each ordinary shareholder present in person has one vote regardless of the number of ordinary shares held. Only on a poll are votes counted according to the number of shares held by that shareholder. Votes are only counted with reference to the number of shares held when a poll is taken. The articles will normally provide for this. Table A, the standard blueprint articles of association for UK companies, provides for one vote for every share on a poll (Table A, Article 54). It will be necessary to check the precise voting rights of holders of other classes of shares.

In practice, all resolutions are normally voted on by a show of hands. However, it is common for the articles to specify who has the right to demand a poll. Section 373 of the Companies Act provides that the articles must at least provide that the following persons may demand a poll (note: the section is cast slightly differently in terms of making any provision in the articles void which requires a poll to be made by more than five members or members representing one-tenth of the total voting rights): five members present in person or by proxy and entitled to vote; or any member or members present in person or by proxy with either not less than one-tenth of the total voting rights or not less than one-tenth of the total

<sup>29</sup> Undertakings for Collective Investments in Transferable Securities. UCITS are designed to allow cross-border fund sales to investors of different nationalities. To obtain UCITS status a fund must invest within defined but wide parameters.

<sup>30</sup> Open Ended Investment Company. A collective fund similar to a unit trust but which has a single price and issues shares rather than units.

sum paid up on all shares giving rights to attend and vote. Article 46 of Table A is more generous than this provision and also permits a poll to be demanded by the chairman and by two members rather than five. There is, therefore, a degree of statutory protection to uphold members’ voting power relative to their holding. Also, as there is no limit to the size of an individual’s holding, it would not be feasible to attach any restrictions to voting rights, such as not being able to vote more than 3% of the company’s share capital, as this may effectively prevent resolutions from being passed, as an ordinary resolution requires a majority of 50% plus one.

To summarise, although in theory there is nothing to stop a company from attaching this kind of restriction on voting rights to any class of share by setting it out in their articles of association, there is no set concept of a “Voting Right Ceiling” in the United Kingdom. As with “Priority Shares”, generally accepted UK practice and market behaviour prevents this from being a viable option for a company.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Not generally accepted in practice
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

N/A

3) **If this CEM is available, is it subject to any restrictions?**

N/A

4) **Who decides whether this CEM should be implemented, and under what conditions?**

As outlined in question 1) it is possible to attach this kind of restriction on voting rights to any class of share by setting it out in the company’s articles of association or in a shareholders’ agreement (although new shareholders will not automatically be bound by the shareholders’ agreement this can be addressed by the inclusion of the provisions which bind shareholders in the articles of association of the company as the articles of association of a company do automatically bind new shareholders).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: as set out in the Articles, but a minimum of 2 <input checked="" type="checkbox"/> Majority: at least 75% of shareholders (Qualified Majority) entitled to vote (a special resolution is required to alter the articles of association) A one head one vote rule applies, unless otherwise specified in the articles, or unless conducted by a poll vote which is one share one vote. It is common for the articles of association to specify who has the right to demand a poll. The Companies Act 1985 provides that the articles of association must at least provide that the following persons may demand a poll: <ul style="list-style-type: none"> <li>• Five members present in person or by proxy and entitled to vote; or</li> <li>• Any member or members present in person or by proxy with either not less than one-tenth of the total voting rights or not less than one-tenth of the total sum paid up on all shares giving rights to attend and vote (<i>section 373</i>).</li> </ul>
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Specific conditions: N/A – No disclosure requirements apply in practice, as this is not an accepted practice.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Disclosure rules set out in the Takeover Code and in ss 198 and 199 of the Companies Act 1985, require shareholders which have a material interest in 3% of the nominal share capital need to disclose their interest as a substantial shareholder.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Shareholders' agreements do not have to be disclosed. Articles of Association are disclosed by filing with Companies House on amendment only. <input checked="" type="checkbox"/> Disclosure must be made under Rule 8 of the Takeover Code (requiring public disclosure of relevant dealings, during an offer period, in relevant securities by an offeror or the offeree company or associates) and ss. 198 and 199 CA 1985. [ <i>Disclosure is made by the shareholder to the Company</i> ]
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

N/A.

OWNERSHIP CEILINGS

1) **Is this CEM available?**

As previously discussed there is no such restriction in the United Kingdom on the size of stake an individual or entity can hold in a listed company, save the requirement that 25% must be in the public ownership<sup>31</sup>. Although it is possible to write a restriction into the articles of association of the company, it would be rare.

It is worth noting that the “squeeze out” rule applied under UK company legislation in the Companies Act 1985 ss. 428-430 (carried into the Companies Act 2006 ss 979-982) dictates that if a shareholder acquires 90% of the voting rights, that shareholder can elect to squeeze out the remaining 10% minority shareholders by acquiring the minority shares.

It is also worth noting that once a shareholder acquires over 3% of the shareholding that shareholder must under UK law (Companies Act 1985 ss. 198-220) make the relevant disclosures required in respect of a notifiable interest. Substantial shareholders holding notifiable interests are not prevented from holding stakes in excess of 3% but are subject to disclosure requirements.

From December 31, 2006 a new disclosure regime will be in force for traded public companies which essentially follows the current regime, but “notifiable interests” are replaced by shareholdings to reflect the Transparency Directive 2004/109/EC which came into force on 20 January 2005 and deals with financial reporting requirements, disclosure of interests in securities and communications with holders of shares and debt securities and the market. The Directive must be implemented in EU member states by 20 January 2007.

For the above stated reasons, this CEM is generally not available in the United Kingdom.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Market practice prevents the application of this CEM in the United Kingdom.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The general principle of contractual freedom which governs UK Company law provides, in theory, for such a CEM.

3) **If this CEM is available, is it subject to any restrictions?**

Although there are no formal restrictions as such, it is an important consideration in practice that Rule 9 of the Takeover Code dictates that an offer must be made for the whole of the company if a shareholder owns 30% or more. This can effectively restrict the stake a shareholder chooses to have in a company.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

N/A

<sup>31</sup> See question 3 of *Pyramid Structures* Questionnaire.

5) **Are there ongoing disclosure requirements regarding such CEM?**

Disclosure must be made under Rule 8 of the Takeover Code (which requires public disclosure of relevant dealings during an offer period, in relevant securities by an offeror or the offeree company or its associates, and is issued by the Panel on Takeovers and Mergers) and in ss 198 and 199 of the Companies Act 1985, where shareholders have a material interest in 3% of the nominal share capital need to disclose their interest as a substantial shareholder (if a shareholder has an interest but it is not material, *i.e.*, their interest is managed by another; this may be in the form of a trust, UCIT or OEIC, for example, then the relevant percentage that triggers disclosure obligations is 10% of the nominal capital).

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

N/A.

**SUPERMAJORITY PROVISIONS**

**1) Is this CEM available?**

There are three types of shareholder resolution available for decision-making in public companies under UK company law: (i) ordinary (a simple majority or over 50% or more of the votes cast at the relevant general meeting is needed), (ii) extraordinary (75% or more of the votes cast at the relevant general meeting is needed) and (iii) special (a majority of 75% or more of the votes cast at the relevant general meeting is needed and, in addition, 21 days’ notice of the meeting at which the resolution is to be voted on is required). The articles of association of a company can always provide for a higher majority being required for any decision than the majority required under the Companies Acts, but in practice this happens very rarely in public companies.

The Companies Act 1985 impacts upon the nature of supermajority provisions and decision-making requirements under UK law, although UK company law generally follows the principle that shareholder rights are determined, in effect, by choice and contract under the articles of association of the company.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	An ordinary resolution is sufficient to transact any business at a general meeting, save in those cases where the Companies Acts (generally the Companies Act 1985) require extraordinary or special resolutions, or where the articles of association of the company require special or extraordinary resolutions.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Legislation (the Companies Act 1985) is the primary authorization for supermajority provisions. It outlines the circumstances in which supermajority voting is required, and further authorises the company to alter its provisions in the articles of association.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Generally, the Companies Act 1985.
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	Table A, default articles of association

**3) If this CEM is available, is it subject to any restrictions?**

The Companies Act 1985 lays down the circumstances where a special or extraordinary resolution is required<sup>32</sup>. Special resolutions, in particular, are prescribed under UK company law where the company

<sup>32</sup> As an example, a special resolution is required to alter the articles of association or the objects of the company. It is also required to exclude pre-emption rights on the issue of shares. An extraordinary resolution is required, for example, to commence a voluntary winding-up.

is empowered to take significant corporate decisions under the legislative framework and are designed to ensure that a clear majority of the shareholders consent to the decision in question. In addition, extraordinary and special resolutions are generally required in circumstances where minority shareholders are deemed to need protection. Special or extraordinary resolutions may also be required by the company's articles of association in circumstances where the Companies Act 1985 allows for an ordinary resolution. However, it is very uncommon for a company to elect to be subject to this more onerous obligation, where not required by the Companies Act 1985.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Generally, special and extraordinary resolutions are required by virtue of the Companies Act 1985, rather than by any decision of the company's directors or shareholders.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 2 <input checked="" type="checkbox"/> Majority: 50%+1 of members present. (Simple Majority) An ordinary resolution would be applicable where the company chose to alter its articles of association in order to require a special or extraordinary resolution in circumstances where the Companies Act 1985 requires only an ordinary resolution. A one head one vot rule applies, unless otherwise specified in the articles, or unless conducted by a poll vote which is one share one vote. It is common for the articles of association to specify who has the right to demand a poll. The Companies Act 1985 provides that the articles of association must at least provide that the following persons may demand a poll: <ul style="list-style-type: none"> <li>• Five members present in person or by proxy and entitled to vote; or</li> <li>• Any member or members present in person or by proxy with either not less than one-tenth of the total voting rights or not less than one-tenth of the total sum paid up on all shares giving rights to attend and vote (<i>section 373</i>)</li> </ul>
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Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): If the articles of association of the company have been amended, the amended articles of association must be filed with the Registrar of Companies, along with all special and extraordinary resolution must also be filed.
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5) **Are there ongoing disclosure requirements regarding such CEM?**

The articles of association of the company must be filed with the Registrar of Companies. They must be re-filed each time they are amended. Any special and extraordinary resolutions must also be filed.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: - Amending the articles of association
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Implementation of this CEM is generally not by virtue of a corporate decision – it is imposed on the company by the Companies Act 1985.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders. The minority shareholders could bring a derivative action if the CEM amounted to a fraud on the minority (substantial reform will be made to the grounds for the derivative action (including the fraud on the minority ground) when the Companies Act 2006 comes into force).</p> <p>An unfair prejudice action under s. 459 of the Companies Act 1985 may be taken by the minority shareholders where the majority shareholders revise the Articles to introduce supermajority requirements, and, in so doing, use legitimate powers in an inequitable manner (Re Kenyon Swansea [1987] BCLC 514), although absent special circumstances, courts usually find an alteration of the Articles an ordinary incident of corporate decision-making and membership.</p>	<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).</p> <p><input checked="" type="checkbox"/> Such grounds are alternative.</p>
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GOLDEN SHARES

1) **Is this CEM available?**

The use of golden shares has been successfully challenged before the ECJ in recent years<sup>33</sup>. The European Commission believes that golden shares constitute a breach of the EC Treaty provisions which guarantee the free movement of capital and freedom of establishment throughout the EU. The United Kingdom government no longer holds golden shares. There are, however, a few UK companies which hold golden shares in non-privatization situations (e.g. Reuters).

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Whilst golden shares are still held by companies in order to retain control in other companies, the UK government no longer holds golden shares.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

At the height of privatizations in the 1980s and early 1990s the UK government took golden shares in recently privatized companies where it felt it needed to protect a business from takeover, generally on national security grounds. The authorization of the creation of the golden share was done by resolution prior to the privatization of the company in question.

The European Commission has been increasingly concerned that golden shares contravene EC Treaty provisions that guarantee freedom of establishment (Article 52) and free movement of capital (Article 73b).

In the most recent UK case on this subject (Commission v UK (C-98/01)) the ECJ specifically objected to the Secretary of State for Transport's rights enshrined in BAA's articles of association to have prior approval in relation to certain key decisions, such as the winding-up or disposal of an airport and to prevent the acquisition of more than 15% of the voting shares in the company. The ECJ rejected the government's arguments that access to the market was not affected by its share, and that the Articles were governed by private company law rather than by public law.

Short form answer:

<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> Highest Court Case Law	ECJ decisions in various cases decided against the governments of member states.
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**Other questions not applicable.**

<sup>33</sup> We express no opinion on the impact of the ECJ decisions in relation to the availability of golden shares.

**PARTNERSHIPS LIMITED BY SHARES**

**1) Is this CEM available?**

In the United Kingdom there is no concept of a “partnership limited by shares” in the United Kingdom.

However, there is a limited partnership can be established under the Limited Partnership Act 1907. This partnership consists of one or more general partners who have responsibility for managing the business of the partnership and who have unlimited liability, and one or more limited partners who play no role in the management of the business and whose liability is limited to their financial contribution to the partnership.

Limited partnerships cannot be used in the context of a public marketing of participations.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Limited partnerships exist under UK law, but cannot be used in the context of a public marketing of participations.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

<input checked="" type="checkbox"/> Laws
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**Other questions not applicable.**

CROSS-SHAREHOLDINGS

1) **Is this CEM available?**

Cross-shareholdings can be used amongst competing companies to align their commercial policies. There is no prohibition against cross-shareholdings under UK Company law, although it should be noted that there has been recent debate by the ECJ as to whether such practices should be illegal under Article 81 of the EC Treaty as non-competitive behavior.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Insufficiently Tested Situation
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

As indicated in question 1) above there is no absolute prohibition on cross-shareholdings- neither is there a rule explicitly allowing cross-shareholdings. The absence of a prohibition in the Companies Act 1985 implies that that they are allowed, subject as usual to the Listing Rules and Takeover code, and in particular in this case- EC Competition law. Article 81 of the EC Treaty, however outlaws non-competitive behaviour in the form of stake building.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	There is nothing to stop this practice in the United Kingdom, subject to Takeover code, Listing Rules and EC Competition law.
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3) **If this CEM is available, is it subject to any restrictions?**

Yes, see above. In particular, Rule 9 of the Takeover Code may require a company to offer to make a full bid for a company if its shareholding exceeds 30% of the mandatory bid rules. In addition, 25% of a publicly-listed company must be in the public's hands (see question 3 in relation to Pyramid Structures).

With respect to Direct Control Cross-Shareholdings, the shares are subjected to the regime of treasury shares. As to Basic Cross-Shareholdings and Indirect Control Cross-Shareholdings, there is no specific limitation.

Short form answer:

<input checked="" type="checkbox"/> Others	The Takeover Code and Listing Rules operate in the same way as with any other shareholding to limit and control the extent to which companies can invest in other companies.
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4) **Who decides whether this CEM should be implemented, and under what conditions?**

The boards of the respective companies can decide on corporate structure, although the articles may allow shareholders to regulate acquisitions or disposals beyond a certain percentage of the share capital.

Short form answer:

Who decides:

Decision by the general meeting of shareholders. The majority required depends on what is set out in the articles of association (ordinary resolutions require a majority of 50%+1 or more, extraordinary resolution need at least 75% and special resolutions require a majority of at least 75%).

Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

Disclosure under Rule 8 of Takeover code and ss. 198 and 199 of the CA 1985, shareholders have to disclose interests over 3%.

Subject to the requirement to disclose consolidated group accounts, a company does not have to disclose its entire group structure.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Once implemented, there is no direct form of challenge, subject only to evolvment of composition of shareholdings. It is worth remembering that once 90% of a company is in one investor's hands that investor can compulsorily squeeze out the remaining minority shareholders under the Companies Act 1985.

SHAREHOLDERS' AGREEMENTS

1) **Is this CEM available?**

Given the dispersal of ownership in large public companies, shareholders' agreements are unusual in these companies in the United Kingdom.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Very unusual.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

A shareholders' agreement is a simple contract between all or some of the shareholders of a company. Shareholders' agreements are therefore governed by UK contract law, rather than the provisions of any particular statute. Very briefly, in order to be valid, a contract must be sufficiently certain in its form and content, there must be an offer and an acceptance of that offer, and there must be consideration.

A shareholders' agreement can generally only be amended by the agreement of all the parties to it, regardless of the size of their shareholding. New shareholders will not automatically be bound by the shareholders' agreement, but this can be addressed by the inclusion of the provisions which bind shareholders in the articles of association of the company. The articles of association of a company do automatically bind new shareholders.

Shareholders' agreements are not required to be filed with the Registrar of Companies and therefore generally remain private. Breach of a shareholders' agreement gives rise to ordinary contractual remedies, notably damages.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	As above, shareholders' agreements are governed by UK contract law.
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3) **If this CEM is available, is it subject to any restrictions?**

As shareholders' agreements are governed only by contract law, there is much flexibility in their content and form. Issues typically addressed include voting rights, share transfer rights and the appointment of directors. However, there are a few issues to be aware of, as set out below.

In order to enhance the agreement's effectiveness, the company is sometimes joined as a party to the shareholders' agreement, along with its shareholders. The company cannot, however, override its statutory powers by entering into a shareholders' agreement. However, the agreement can provide that members are personally in breach of contract if, for example, they vote in favour of an alteration of the articles of association which is contrary to the terms of the shareholders' agreement.

The directors of a company have a fiduciary duty to the company. A shareholders' agreement could not lawfully permit the directors to breach this fiduciary duty. Further, a shareholders' agreement could not authorise or direct the directors as to how they are to perform their functions.

Shareholders' agreements are likely to be most effective in the case of companies with a small number of shareholders. If an agreement about how members will vote is to be effective it must be made by

sufficient members of the company such that a majority of the votes at any meeting will be cast in accordance with the agreement – if there are many members it may be difficult to get a large number of them to enter into the shareholders’ agreement.

A shareholders’ agreement is simply a contract and therefore is enforceable only against those who are a party to it – therefore the effectiveness of a shareholders’ agreement is much reduced if a large number of members are not party to it.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

A shareholders’ agreement can be entered into between all or some of the shareholders of a company. Therefore only those shareholders who will be party to the agreement must agree to it. It is not a matter that requires formal approval by the company or its directors.

A mandatory takeover has to be launched if shareholders entering into certain types of shareholders agreements are deemed to be acting in concert and represent together more than a certain percentage of capital and/or voting rights of the company. Under Rule 9 of the Takeover Code where 30-50% of issued shares are held by a company and its consorts, or third parties, this triggers those parties to make a mandatory offer to acquire all the issued equity share capital.

Short form answer:

Who decides:

Other: The shareholders who are party to the shareholders’ agreement.

Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

There is no requirement to disclose shareholders’ agreements. They are private documents between the parties.

Short form answer:

No

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Generally, only actions in breach of company law that are taken on the basis of a shareholders’ agreement may be challenged. For example, a director who breaches the directors’ duties to which he is subject on the basis of a shareholders’ agreement will still be liable for breach of such fiduciary duty.

**B – General background questions**

**1) What are the rules for Board elections? How many corporate votes are required to appoint or remove corporate directors?**

Reflecting the contractual principles which underpin shareholder decision-making in the United Kingdom, the articles of association of a company will set out the mechanisms for appointing and removing directors, although the legislative framework (Companies Act 1985) also contains certain mandatory rules on the appointment and removal process. It is usual for the articles of association to provide that an ordinary resolution of the shareholders (51% or more of votes) is required, but they may provide otherwise. For public companies, proposed directors must be voted on individually (Companies Act 1985, section 292), allowing shareholders to reject particular directors without rejecting the entire board. Failure to comply results in the resolution in question being void. The board will usually have power under the articles of association to fill casual vacancies (until the next annual general meeting when the director is re-elected).

Section 303 of the Companies Act 1985, regarded as a core shareholder protection mechanism, allows a director to be removed by ordinary resolution of the shareholders at any time, but this is without prejudice to the director’s employment rights. Particular cause is not required, although notice requirements apply and the director must have the opportunity to make a representation at the relevant meeting. An action for unfairly prejudicial conduct under section 459 of the Companies Act 1985 may follow where the director is a shareholder, although this possibility typically arises in private companies. Public companies generally require directors to retire and submit themselves for re-election every three years.

The Combined Code on Corporate Governance, which applies to listed companies on a “comply or explain” basis, provides that all directors should be submitted for re-election at regular intervals. Directors should be subject to re-election at the first annual general meeting after their appointment, and to re-election thereafter at intervals of no more than three years.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for Board election: 50%+1. For Board removal: 50%+1. Quorum required for shareholders’ meetings proceeding with the election or removal of Board members: 2.</p>	<p><input checked="" type="checkbox"/> Board members may be revoked only if revocation is on the agenda.</p> <p><input checked="" type="checkbox"/> Board members may always be removed without cause.</p> <p>Concerning the dismissal of directors, the conditions are non-cumulative.</p> <p>However, see reference to section 303 of the Companies Act 1985 above regarding notice etc.</p> <p>The decision to implement the CEM is against the interest of other constituencies.</p> <p>These statements of fact may be amended by the company’s articles of association.</p>
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**THE UNITED KINGDOM**

<p><input checked="" type="checkbox"/> Electronic voting is authorized.</p> <p>Electronic voting in advance of a meeting, while not prohibited (it could be provided for in the articles of association), would be difficult as resolutions, particularly special resolutions, are put to the general meeting and voted on in person or by proxy.</p>	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened. Under section 368 of the Companies Act 1985, members of a company holding not less than one-tenth of the company's paid-up capital with a right to vote at general meetings of the company, can requisition an extraordinary general meeting of the company.</p> <p><input checked="" type="checkbox"/> Proxy solicitation is authorized. Under section 372 of the Companies Act 1985, in every notice calling a meeting of the company, a statement must be included to the effect that any member entitled to attend and vote is entitled to appoint a proxy. Such communications are sent to shareholders by the company.</p>
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**2) What shareholders' decisions require a vote from more than a simple majority?**

Generally, where it is perceived that minority shareholders require protection, UK company law requires that a special or extraordinary resolution is required. For further information please refer to the questionnaire on Supermajority Provisions.

Short form answer:

<p><input checked="" type="checkbox"/> All changes in bylaws / articles of association</p> <p><input checked="" type="checkbox"/> Issuance of shares / bonds / other financial instruments (shares – 50%+1 if on a pre-emptive basis; at least 75% if on a non-pre-emptive basis)</p> <p><input checked="" type="checkbox"/> Mergers / acquisitions of the company by a third party</p>	<p><input checked="" type="checkbox"/> Change of corporate purpose</p>
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Shareholders present or represented at a shareholders' meeting who do not participate in the vote, or who cast a blank vote, are not counted at all.



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES: EXTERNAL  
STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

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**PROPORTIONALITY BETWEEN OWNERSHIP AND  
CONTROL IN EU LISTED COMPANIES:  
COMPARATIVE LEGAL STUDY**

**THE UNITED STATES**

**SHEARMAN & STERLING<sup>LLP</sup>**

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Reviewed by:

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**MULTIPLE VOTING RIGHTS SHARES**

**1) Is this CEM available?**

Delaware law permits the issuance of Multiple Voting Rights Shares. An issuance of Multiple Voting Rights Shares by a public company is generally prohibited in the U.S., because the national Stock Exchanges are concerned about the disenfranchisement of holders of publicly-traded common stock and the entrenchment of management or current shareholders. However, if the issuance of Multiple Voting Rights Shares is driven by valid business or economic reasons, and does not disparately reduce or restrict the voting rights of existing stockholders, it may be approved by the applicable Stock Exchange.<sup>34</sup> In addition, public issuers with pre-existing dual class capital structure would generally be permitted to issue additional shares of the existing Multiple Voting Rights Shares.<sup>35</sup>

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Rule 19c-4 under the Securities Exchange Act of 1934, as amended (“Rule 19c-4”), required national securities exchanges and national securities associations to adopt rules providing that no new listing or continued listing of any equity security of a U.S. issuer would be permitted if the issuer of such security issues any class of security, or takes any other corporate action, with the effect of nullifying, restricting or disparately reducing the per share voting rights of existing publicly traded common stock of such issuer. Although Rule 19c-4 was vacated by *Business Roundtable v. SEC*, 905 F.2d 406 (D.C. Cir. 1990) in 1990 on the ground that the SEC lacked the authority to promulgate Rule 19c-4, NASDAQ, NYSE and AMEX all voluntarily agreed to a listing standard quite similar to Rule 19c-4, albeit with some greater flexibility.

Thus, NASDAQ, NYSE and AMEX prohibit the issuance of a new class of Multiple Voting Rights Shares, but not the issuance of additional shares of an existing Multiple Voting Rights Shares under an issuer’s pre-existing dual-class capital structure, provided there is no primary intent to disenfranchise stockholders.

Short form answer:

<input checked="" type="checkbox"/> Laws (State)	
<input checked="" type="checkbox"/> Stock Exchange Rules (Stock Exchange rules are always federal rules)	<input checked="" type="checkbox"/> Binding Rule

<sup>34</sup> Voting Rights Interpretation Under New York Stock Exchange (“NYSE”) Listed Company Manual Section 313.

<sup>35</sup> Rule 4351 (including IM-4351) of The Nasdaq Stock Market, Inc. (“NASDAQ”) Marketplace Rules; Rule 313 of NYSE Listed Company Manual and Section 122 of American Stock Exchange (“AMEX”) Company Guide.

3) **If this CEM is available, is it subject to any restrictions?**

Yes. Please see answers 1 and 2 above.

Moreover, the fiduciary duties are considered as restrictions to the implementation of this CEM.

Short form answer:

<input checked="" type="checkbox"/> Others	An issuance of a new class of Multiple Voting Rights Shares is prohibited unless it has valid business or economic reasons. U.S. public issuers with existing dual class capital structure would generally be permitted to issue additional shares of the existing Multiple Voting Rights Shares unless such issuance has a primary intent to disenfranchise stockholders.
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4) **Who decides whether this CEM should be implemented, and under what conditions?**

Under Delaware law, the issuance of Multiple Voting Rights Shares must be authorized in the certificate of incorporation or any amendment thereto, or in a board resolution(s) providing for the issuance of such Multiple Voting Rights Shares pursuant to authority expressly vested in the board by the certificate of incorporation or any amendment thereto.<sup>36</sup> Once such shares are authorized in the certificate of incorporation or an amendment thereto, there is no time limit as to when they may be issued. Therefore, if the authority to issue Multiple Voting Rights Shares is provided in the original certificate of incorporation or in any amendment thereto, the board of directors can decide whether Multiple Voting Rights Shares can be issued and the terms thereof. Absent such authority granted to the board, the issuance of Multiple Voting Rights Shares will require shareholder approval.

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<sup>36</sup> Section 151 of Delaware General Corporation Law (the “DGCL”).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision: If the certificate of incorporation or any amendment thereto expressly authorizes the Board of Directors to issue Multiple Voting Rights Shares without shareholder approval, the Board can pass a resolution to issue Multiple Voting Rights Shares.  <input checked="" type="checkbox"/> Upon authorization of the shareholders (see below) and based on authorized capital.
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: In the absence of a specific provision in the certificate of incorporation or any amendment thereto, a majority of the shares entitled to vote present in person or represented by proxy (and if a separate vote by any separate class or series is required, such as would be required for an amendment to the certificate of incorporation, a majority of the outstanding shares of such class or series as well). <sup>37</sup>  <input checked="" type="checkbox"/> Majority: In the absence of a specific provision in the certificate of incorporation or any amendment thereto, the affirmative vote of the majority of all shares issued and outstanding and entitled to vote on the subject matter (and if a separate vote by a class or series is required, such as would be required for an amendment to the certificate of incorporation, the affirmative vote of a majority of the shares of such class or series as well). <sup>38</sup>
<input checked="" type="checkbox"/> Other: Incorporator can provide the board with authority to issue Multiple Voting Rights Shares in the original certificate of incorporation.	

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of the certificate of incorporation and any amendment thereto must be filed with the Delaware Secretary of State and with the SEC as an exhibit to a current report on Form 8-K. In addition, as the issuance of new shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K.  <input checked="" type="checkbox"/> Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities: If the issuance of Multiple Voting Rights Shares could be viewed as inconsistent with the voting rules of the applicable Stock Exchange, the issuer should discuss its intention with the Stock Exchange before taking any action.
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<sup>37</sup> Section 216 of the DGCL.  
<sup>38</sup> Section 242(b) of the DGCL.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Where the authority to issue Multiple Voting Rights Shares is vested in the board of directors in the certificate of incorporation, Delaware law requires a certificate of designation, which must set forth a copy of the board resolution(s) authorizing the issuance of and the number of Multiple Voting Rights Shares, be filed with the Delaware Secretary of State, at which time such certificate of designation becomes effective.<sup>39</sup>

If the issuance of Multiple Voting Rights Shares requires an amendment to the certificate of incorporation, such amendment must be filed with the Delaware Secretary of State to become effective<sup>40</sup> and filed as an exhibit to a current report on Form 8-K.<sup>41</sup>

In addition, as the issuance of Multiple Voting Rights Shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K within four business days after they become effective.<sup>42</sup>

Periodic disclosure statements, such as quarterly reports on Form 10-Q and annual reports on Form 10-K, will also require disclosure of the existence of such shares.<sup>43</sup>

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Yes, in quarterly reports on Form 10-Q and annual reports on Form 10-K.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: If an amendment to the certificate of incorporation is required, it must be filed with the Delaware Secretary of State and with the SEC as an exhibit to a current report on Form 8-K. In addition, as the issuance of new shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association, if an amendment to the certificate of incorporation is required, it must be filed with the Delaware Secretary of State.</li> <li>- Specific Filing: a current report on Form 8-K will need to be publicly filed with the Securities Exchange Commission for (a) any required amendment to the certificate of incorporation and (b) any modification of the rights of security holders.</li> <li>- Specific Notification – N/A, except see “Specific Filing” and “Information to shareholders”</li> <li>- Information to shareholders, if a shareholder vote is required in order to adopt an amendment to the certificate of incorporation, a proxy statement will need to be circulated to shareholders in advance of the shareholder meeting at which such vote will be held.</li> <li>- Annual Report – Form 10-K, see above.</li> <li>- Periodic Report – Form 10-Q, see above.</li> <li>- Special Report – Form 8-K, see “Specific Filing.”</li> </ul>
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<sup>39</sup> Section 151(g) of the DGCL.

<sup>40</sup> Section 241 of the DGCL.

<sup>41</sup> Item 5.03 of Form 8-K.

<sup>42</sup> Item 3.03 of Form 8-K.

<sup>43</sup> Item 1 of Form 10-Q; Items 5 and 8 of Form 10-K; Item 201 of Regulation S-K.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The issuance of Multiple Voting Rights Shares can be challenged on the ground that its implementation constitutes a breach of the directors' fiduciary duties.

In such decisions, directors are generally protected by the business judgment rule under Delaware law, which rule presupposes that "in making a business decision the directors of a corporation act on an informed basis, in good faith and in the honest belief that the action taken is in the best interests of the corporation."<sup>44</sup> However, if Multiple Voting Rights Shares are adopted as a defensive mechanism in response to an alleged threat to corporate control or policy, such a decision will be subject to an "enhanced scrutiny" standard of review, under which standard the board of directors will have the burden to prove that (i) it had reasonable grounds for believing that a danger to the corporation existed and (ii) the adoption of the Multiple Voting Rights Shares was reasonable in relation to the threat posed.<sup>45</sup>

If the issuance of Multiple Voting Rights Shares is not driven by valid business or economic reasons or has the effect of disparately reducing or restricting the voting rights of existing stockholders, the applicable Stock Exchange may restrict the company's listing or even threaten delisting.

Short form answer:

The decision to implement the CEM is in the sole interest of the management or current ownership without valid business or economic reasons. In the United States, most challenges to Board action would be formulated as breach of fiduciary duty claims. Allegations that a decision is in the sole interest of management or without valid business reason are examples of possible arguments in a breach of fiduciary duty claim.

<sup>44</sup> *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. Supr. 1984).

<sup>45</sup> *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. Supr. 1985).

NON-VOTING SHARES

1) **Is this CEM available?**

Delaware law permits the issuance of Non-voting Shares. In addition, Rule 313 of the NYSE Listed Company Manual expressly permits the listing of Non-voting Shares as well as the listing of voting common stock of a company which also has outstanding Non-voting Shares. Both NASDAQ and AMEX are silent on the listing or issuance of Non-voting Shares.

Short form answer:

Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Please see answer 1 above.

Short form answer:

<input checked="" type="checkbox"/> Laws (State Law)	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule

3) **If this CEM is available, is it subject to any restrictions?**

Neither NASDAQ nor AMEX provides for any specific restriction with respect to the issuance or listing of Non-voting Shares other than the general listing requirements. Similarly, NYSE does not provide for any restriction with respect to the issuance of Non-voting Shares. However, Rule 313 of the NYSE Listed Company Manual provides that any class of Non-voting Shares that is listed on the NYSE must meet all original listing standards and that the rights of holders of Non-voting Shares should, except for voting rights, be substantially the same as those of holders of the company's voting common stock. In particular, holders of listed Non-voting Shares must receive all communications, including proxy materials, sent generally to holders of the company's voting securities as required by Rule 313.

Moreover, the fiduciary duties are considered as restrictions to the implementation of this CEM.

Short form answer:

Others: Rule 313 of NYSE Listed Company Manual provides that any class of Non-voting Shares that is listed on the NYSE must meet all original listing standards and that the rights of holders of Non-voting Shares should, except for voting rights, be substantially the same as those of holders of the company's voting common stock. In particular, holders of listed Non-voting Shares must receive all communications, including proxy material, sent generally to holders of the company's voting securities.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Under Delaware law, similar to Multiple Voting Rights Shares, the issuance of Non-voting Shares must be authorized in the certificate of incorporation or any amendment thereto, or in a board resolution(s)

providing for the issuance of such Non-voting Shares pursuant to authority expressly vested in the board by the certificate of incorporation or any amendment thereto.<sup>46</sup> Once such shares are authorized in the certificate of incorporation or an amendment thereto, there is no time limit as to when they may be issued. Therefore, if the authority to issue Non-voting Shares is provided in the original certificate of incorporation or in any amendment thereto, the board of directors can decide whether Non-voting Shares can be issued and the terms thereof. Absent such authority granted to the board, the issuance of Non-voting Shares will require shareholder approval.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, if the certificate of incorporation or any amendment thereto expressly authorizes the board of directors to issue Non-voting Shares without shareholder approval, the board can pass a resolution to issue Non-voting Shares.  <input checked="" type="checkbox"/> Upon authorization of the shareholders (see below) based on authorized capital.
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<p>Quorum: In the absence of a specific provision in the certificate of incorporation or any amendment thereto, a majority of the shares entitled to vote present in person or represented by proxy (and if a separate vote by any separate class or series is required, such as would be required for an amendment to the certificate of incorporation, a majority of the outstanding shares of such class or series as well).<sup>47</sup></p> <p><input checked="" type="checkbox"/> Majority: In the absence of a specific provision in the certificate of incorporation or any amendment thereto, the affirmative vote of the majority of all shares issued and outstanding and entitled to vote on the subject matter (and if a separate vote by a class or series is required, such as would be required for an amendment to the certificate of incorporation, the affirmative vote of a majority of the shares of such class or series as well).<sup>48</sup></p>
<input checked="" type="checkbox"/> Other: Incorporator can provide the Board with authority to issue Non-voting Shares in the original certificate of incorporation.	

<sup>46</sup> Section 151 of Delaware General Corporation Law (the “DGCL”).

<sup>47</sup> Section 216 of the DGCL.

<sup>48</sup> Section 242(b) of the DGCL.

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of the certificate of incorporation and any amendment thereto must be filed with the Delaware Secretary of State and with the SEC as an exhibit to a current report on Form 8-K. In addition, as the issuance of new shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Where the authority to issue Non-voting Shares is vested in the board of directors in the certificate of incorporation, Delaware law requires a certificate of designation, which must set forth a copy of the board resolution(s) authorizing the issuance of and the number of Non-voting Shares, be filed with the Delaware Secretary of State, at which time such certificate of designation becomes effective.<sup>49</sup>

If the issuance of Non-voting Shares requires an amendment to the certificate of incorporation, such amendment must be filed with the Delaware Secretary of State to become effective<sup>50</sup> and filed as an exhibit to a current report on Form 8-K.<sup>51</sup>

In addition, as the issuance of Non-voting Shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K within four business days after they become effective.<sup>52</sup>

Periodic disclosure statements, such as quarterly reports on Form 10-Q and annual reports on Form 10-K, will also require disclosure of the existence of such shares.<sup>53</sup>

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Yes, in quarterly reports on Form 10-Q and annual reports on Form 10-K.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: If an amendment to the certificate of incorporation is required, it must be filed with the Delaware Secretary of State and with the SEC as an exhibit to a current report on Form 8-K. In addition, as the issuance of new shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association, if an amendment to the certificate of incorporation is required, it must be filed with the Delaware Secretary of State.</li> <li>- Specific Filing: a current report on Form 8-K will need to be publicly filed with the Securities Exchange Commission for (a) any required amendment to the certificate of incorporation and (b) any modification of the rights of security holders.</li> <li>- Specific Notification – N/A, except see “Specific Filing” and “Information to shareholders”</li> </ul>
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<sup>49</sup> Section 151(g) of the DGCL.

<sup>50</sup> Section 241 of the DGCL; Item 5.03 of Form 8-K.

<sup>51</sup> Item 5.03 of Form 8-K.

<sup>52</sup> Item 3.03 of Form 8-K.

<sup>53</sup> Item 1 of Form 10-Q; Items 5 and 8 of Form 10-K; Item 201 of Regulation S-K.

	<ul style="list-style-type: none"> <li>- Information to shareholders – Yes, if a shareholder vote is required in order to adopt an amendment to the certificate of incorporation, a proxy statement will need to be circulated to shareholders in advance of the shareholder meeting at which such vote will be held.</li> <li>- Annual Report – Form 10-K, see above.</li> <li>- Periodic Report – Form 10-Q, see above.</li> <li>- Special Report – N/A, except see “Specific Filing.”</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The issuance of Non-voting Shares can be challenged on the ground that its implementation constitutes a breach of the directors’ fiduciary duties.

In such decisions, directors are generally protected by the business judgment rule under Delaware law, which rule presupposes that “in making a business decision the directors of a corporation act on an informed basis, in good faith and in the honest belief that the action taken is in the best interests of the corporation.”<sup>54</sup> However, if Non-voting Shares are adopted as a defensive mechanism in response to an alleged threat to corporate control or policy, such a decision will be subject to an “enhanced scrutiny” standard of review, under which standard the board of directors will have the burden to prove that (i) it had reasonable grounds for believing that a danger to the corporation existed and (ii) the adoption of the Non-voting Shares was reasonable in relation to the threat posed.<sup>55</sup>

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management or current ownership without valid business or economic reasons. In the United States, most challenges to board action would be formulated as breach of fiduciary duty claims. Allegations that a decision is in the sole interest of management or without valid business reason are examples of possible arguments in a breach of fiduciary duty claim.</p>
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<sup>54</sup> *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. Supr. 1984).

<sup>55</sup> *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. Supr. 1985).

## NON-VOTING PREFERENCE SHARES

**1) Is this CEM available?**

Delaware law permits the issuance of Non-voting Preference Shares.

NASDAQ does not restrict the issuance of Non-voting Preference Shares.

NYSE does not restrict the issuance of Non-voting Preference Shares that are not listed. However, if Non-voting Preference Shares are to be listed on the NYSE, holders of those shares should have the right to elect at least two directors upon default of six quarterly dividends, which do not have to be consecutive, and the quorum for Non-voting Preference Shares should be low enough to ensure that the right to elect directors can be exercised as soon as it accrues, which should in no event exceed the percentage required for a quorum of common stock required for the election of directors.<sup>56</sup> In addition, the NYSE recommends that Non-voting Preference Shares should have minimum voting rights on three matters even if they are not publicly listed: (i) an increase in the authorized amount of Non-voting Preference Shares or creation of a *pari passu* security, (ii) a creation of a senior equity security and (iii) amendments materially affecting the terms of Non-voting Preference Shares.<sup>57</sup>

AMEX does not restrict the issuance of Non-voting Preference Shares that are not listed. However, to be eligible for listing, holders of Non-voting Preference Shares must have the right, voting as a class, to elect at least two directors no later than two years after an incurred default in the payment of fixed dividends.<sup>58</sup> In addition, AMEX may decline to list Non-voting Preference Shares if holders do not have the right, voting as a class, to vote on: (i) a creation of a *pari passu* security, (ii) a creation of a senior equity security and (iii) any amendment to the terms of Non-voting Preference Shares.<sup>59</sup>

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Please see answer 1 above.

Short form answer:

<input checked="" type="checkbox"/> Laws (State Law)	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule

**3) If this CEM is available, is it subject to any restrictions?**

Please see answer 1 above.

<sup>56</sup> Rule 313 of NYSE Listed Company Manual.

<sup>57</sup> *Id.*

<sup>58</sup> Section 124 of AMEX Company Guide.

<sup>59</sup> *Id.*

Short form answer:

<input checked="" type="checkbox"/> Reinstatement of voting rights in certain circumstances	Comments: Both NYSE and AMEX provide that holders of publicly-listed Non-voting Preference Shares must have the right, voting as a class, to elect at least two directors if the issuer defaults on dividend payment obligations, for example where a given share confers a fixed dividend right to holders of such shares and a corresponding obligation of the company.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

Under Delaware law, similar to Multiple Voting Rights Shares and Non-voting Shares, the issuance of Non-voting Preference Shares must be authorized in the certificate of incorporation or any amendment thereto, or in a board resolution(s) providing for the issuance of such Non-voting Preference Shares pursuant to authority expressly vested in the board by the certificate of incorporation or any amendment thereto.<sup>60</sup> Once such shares are authorized in the certificate of incorporation or an amendment thereto, there is no time limit as to when they may be issued. Therefore, if the authority to issue Non-voting Preference Shares is provided in the original certificate of incorporation or in any amendment thereto, the board of directors can decide whether Non-voting Preference Shares can be issued and the terms thereof. Absent such authority granted to the board, the issuance of Non-voting Preference Shares will require shareholder approval.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, if the certificate of incorporation or any amendment thereto expressly authorizes the board of directors to issue Non-voting Preference Shares without shareholders approval, the board can pass a resolution to issue Non-voting Preference Shares.  <input checked="" type="checkbox"/> Upon authorization of the shareholders (see below) based on authorized capital.
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	Quorum: In the absence of a specific provision in the certificate of incorporation or any amendment thereto, a majority of the shares entitled to vote present in person or represented by proxy (and if a separate vote by any separate class or series is required, such as would be required for an amendment to the certificate of incorporation, a majority of the outstanding shares of such class or series as well). <sup>61</sup>  <input checked="" type="checkbox"/> Majority: In the absence of a specific provision in the certificate of incorporation or any amendment thereto, the affirmative vote of the majority of all shares issued and outstanding and entitled to vote on the subject matter (and if a separate vote by a class or series is required, such as would be

<sup>60</sup> Section 151 of the DGCL.

<sup>61</sup> Section 216 of the DGCL.

	required for an amendment to the certificate of incorporation, the affirmative vote of a majority of the shares of such class or series as well). <sup>62</sup>
<input checked="" type="checkbox"/> Other: Incorporator can provide the board with authority to issue Non-voting Preference Shares in the original certificate of incorporation.	

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of the certificate of incorporation and any amendment thereto must be filed with the Delaware Secretary of State and with the SEC as an exhibit to a current report on Form 8-K. In addition, as the issuance of new shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K within four business days after they become effective.</p> <p><input checked="" type="checkbox"/> Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities (Generally, no specific authorization is required. However, if the issuer wants to list Non-voting Preference Shares on NYSE or AMEX, such Non-voting Preference Shares must meet certain minimum voting rights requirements). In effect, the exchanges can object by exercising their authority to restrict the listing or even delist the shares of the company in question if they object to the CEM.</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

Where the authority to issue Non-voting Preference Shares is vested in the board of directors in the certificate of incorporation, Delaware law requires a certificate of designation, which must set forth a copy of the board resolution(s) authorizing the issuance of and the number of Non-voting Preference Shares, be filed with the Delaware Secretary of State, at which time such certificate of designation becomes effective.<sup>63</sup>

If the issuance of Non-voting Preference Shares requires an amendment to the certificate of incorporation, such amendment must be filed with the Delaware Secretary of State to become effective<sup>64</sup> and filed as an exhibit to a current report on Form 8-K.<sup>65</sup>

In addition, as the issuance of Non-voting Preferences Shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K within four business days after they become effective.<sup>66</sup>

Periodic disclosure statements, such as quarterly reports on Form 10-Q and annual reports on Form 10-K, will also require disclosure of the existence of such shares.<sup>67</sup>

<sup>62</sup> Section 242(b) of the DGCL.

<sup>63</sup> Section 151(g) of the DGCL.

<sup>64</sup> Section 241 of the DGCL; Item 5.03 of Form 8-K.

<sup>65</sup> Item 5.03 of Form 8-K.

<sup>66</sup> Item 3.03 of Form 8-K.

<sup>67</sup> Item 1 of Form 10-Q; Items 5 and 8 of Form 10-K; Item 201 of Regulation S-K.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Yes, in quarterly reports on Form 10-Q and annual reports on Form 10-K.  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: If an amendment to the certificate of incorporation is required, it must be filed with the Delaware Secretary of State and with the SEC as an exhibit to a current report on Form 8-K. In addition, as the issuance of new shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K.  <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Filing of articles of association, if an amendment to the certificate of incorporation is required, it must be filed with the Delaware Secretary of State.</li> <li>- Specific Filing: a current report on Form 8-K will need to be publicly filed with the Securities Exchange Commission for (a) any required amendment to the certificate of incorporation and (b) any modification of the rights of security holders.</li> <li>- Specific Notification – N/A, except see “Specific Filing” and “Information to shareholders”</li> <li>- Information to shareholders, if a shareholder vote is required in order to adopt an amendment to the certificate of incorporation, a proxy statement will need to be circulated to shareholders in advance of the shareholder meeting at which such vote will be held.</li> <li>- Annual Report – Form 10-K, see above.</li> <li>- Periodic Report – Form 10-Q, see above.</li> <li>- Special Report – N/A, except see “Specific Filing.”</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The issuance of Multiple Voting Rights Shares can be challenged on the ground that its implementation constitutes a breach of the directors’ fiduciary duties.

In such decisions, directors are generally protected by the business judgment rule under Delaware law, which rule presupposes that “in making a business decision the directors of a corporation act on an informed basis, in good faith and in the honest belief that the action taken is in the best interests of the corporation.”<sup>68</sup> However, if Multiple Voting Rights Shares are adopted as a defensive mechanism in response to an alleged threat to corporate control or policy, such a decision will be subject to an “enhanced scrutiny” standard of review, under which standard the board of directors will have the burden to prove that (i) it had reasonable grounds for believing that a danger to the corporation existed and (ii) the adoption of the Multiple Voting Rights Shares was reasonable in relation to the threat posed.<sup>69</sup>

<sup>68</sup> *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. Supr. 1984).

<sup>69</sup> *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. Supr. 1985).

Short form answer:

The decision to implement the CEM is in the sole interest of the management or current ownership without valid business or economic reasons. In the United States, most challenges to Board action would be formulated as breach of fiduciary duty claims. Allegations that a decision is in the sole interest of management or without valid business reason are examples of possible arguments in a breach of fiduciary duty claim.

**PYRAMID STRUCTURES**

**1) Is this CEM available?**

Delaware law does not impose any restriction on Pyramid Structures. However, NYSE expresses concerns over the concentration of a substantial proportion of voting power in one entity or several affiliated entities. Although such concentration is not necessarily an obstacle to the listing of the company’s securities, NYSE notes that in considering whether to list or continue to list or impose listing restrictions it will take into account the proportion of the total voting power represented by such concentrated holdings and, in particular, the expectancy of such holdings ultimately being distributed to public stockholders.<sup>70</sup>

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Please see answer 1 above.

Short form answer:

<input checked="" type="checkbox"/> Laws (State Law)	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule

**3) If this CEM is available, is it subject to any restrictions?**

Please see answer 1 above. Although such concentration is not necessarily an obstacle to the listing of the company’s securities, NYSE notes that in considering whether to list or continue to list or impose listing restrictions it will take into account the proportion of the total voting power represented by such concentrated holdings and, in particular, the expectancy of such holdings ultimately being distributed to public stockholders.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The board of directors.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision <input type="checkbox"/> Upon authorization of the shareholders	<input type="checkbox"/> A specific committee needs to be involved. <input type="checkbox"/> Approval of independent directors is required.
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<sup>70</sup> Rule 305 of NYSE Listed Company Manual. Our research did not reveal any interpretations of this rule nor any precedent to indicate the manner in which it might be applied by the NYSE.

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): (The controlling entity must file Schedule 13D disclosing its ownership if it controls the controlled entity and beneficially owns more than 5% of any class of registered voting securities of the controlled entity.<sup>71</sup> In addition, the controlled entity needs to disclose the ownership of the controlling entity in its annual proxy statement or annual report on Form 10-K.<sup>72</sup>)

**5) Are there ongoing disclosure requirements regarding such CEM?**

The ownership of the controlling entity needs to be disclosed in an annual proxy statement or annual report on Form 10-K of the controlled entity. In addition, if there is any change in the controlling entity's ownership of the controlled entity by more than 1%, the controlling entity must promptly file an amendment to Schedule 13D to disclose such change.<sup>73</sup>

Short form answer:

<p><input checked="" type="checkbox"/> Yes</p>	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: annual report or annual proxy statement.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: if there is a change in the controlling entity's ownership of the controlled entity by more than 1%, the controlling entity must promptly file an amendment to Schedule 13D to disclose such change.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Specific Filing – The controlling entity must file Schedule 13D disclosing its ownership if it controls the controlled entity and beneficially owns more than 5% of any class of registered voting securities of the controlled entity. In addition, if there is any change to the controlling entity's ownership of the controlled entity by more than 1%, the controlling entity must promptly file an amendment to Schedule 13D. In addition, the controlled entity needs to disclose the ownership of the controlling entity in its annual proxy statement or annual report on Form 10-K.</li> <li>- Information to shareholders – The controlled entity needs to disclose the ownership of the controlling entity in its annual proxy statement or annual report on Form 10-K.</li> <li>- Annual Report – The controlled entity needs to disclose the ownership of the controlling entity in its annual proxy statement or annual report on Form 10-K.</li> <li>- Special Report – The controlling entity must file Schedule 13D disclosing its ownership if it controls the controlled entity and beneficially owns more than 5% of any class of registered voting securities of the controlled entity. In addition, if there is any change to the controlling entity's ownership of the controlled entity by more than 1%, the controlling entity must promptly file an amendment to Schedule 13D.</li> </ul>
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<sup>71</sup> Rule 13d-1 of the Exchange Act.

<sup>72</sup> Items 401 and 403 of Regulation S-K.

<sup>73</sup> Rule 13d-2 of the Exchange Act.

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

The Pyramid Structure is generally not challenged if it is properly disclosed.

**PRIORITY SHARES**

**1) Is this CEM available?**

Section 151(f) of the DGCL provides that the rights and obligations of the holders of stock of the same class and series must be identical, unless otherwise expressly provided by law. Therefore, if a Delaware corporation with publicly listed shares wants to grant a shareholder special powers of decision or veto rights not shared by other shareholders, it has to issue to such shareholders a new class or series of stock different from any outstanding stock. The powers, designations, preferences and other rights of such newly issued stock are provided in the certificate of incorporation (including any amendment thereto) and any required certificate of designation, as the case may be, all of which must be filed with the Delaware Secretary of State in order to become effective.

Although so-called Priority Shares are not common to U.S. public companies, separate classes of common and preference shares are not unusual, subject to the requirements explained below. A board of directors' decision to issue preference or other shares will be governed by the laws regarding fiduciary duties, also briefly explained below.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

See answer 1 above.

Short form answer:

<input checked="" type="checkbox"/> Laws (State Law)	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Stock Exchange Rules	

**3) If this CEM is available, is it subject to any restrictions?**

See answer 1 above and answer 6 below.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Shareholders or the board of directors (if the board of directors is expressly authorized by the certificate of incorporation or any amendment thereto to issue Priority Shares without shareholder approval).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision: If the certificate of incorporation or any amendment thereto expressly authorizes the board of directors to issue different classes of shares without shareholder approval, the board can pass a resolution to issue additional classes of shares.  <input checked="" type="checkbox"/> Upon authorization of the shareholders (see below) based on authorized capital.
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<p><input checked="" type="checkbox"/> Decision by the general meeting of shareholders</p>	<p><input checked="" type="checkbox"/> Quorum: In the absence of a specific provision in the certificate of incorporation or any amendment thereto, a majority of the shares entitled to vote present in person or represented by proxy (and if a separate vote by any separate class or series is required, such as would be required for an amendment to the certificate of incorporation, a majority of the outstanding shares of such class or series as well).<sup>74</sup></p> <p><input checked="" type="checkbox"/> Majority: In the absence of a specific provision in the certificate of incorporation or any amendment thereto, the affirmative vote of the majority of all shares issued and outstanding and entitled to vote on the subject matter (and if a separate vote by a class or series is required, such as would be required for an amendment to the certificate of incorporation, the affirmative vote of a majority of the shares of such class or series as well).<sup>75</sup></p>
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Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of the certificate of incorporation and any amendment thereto must be filed with the Delaware Secretary of State and with the SEC as an exhibit to a current report on Form 8-K. In addition, as the issuance of new shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K.</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

Where the authority to issue separate classes of shares is vested in the board of directors in the certificate of incorporation, Delaware law requires a certificate of designation, which must set forth a copy of the board resolution(s) authorizing the issuance of and the number of such separate class(es) of shares, be filed with the Delaware Secretary of State, at which time such certificate of designation becomes effective.<sup>76</sup>

If the issuance of separate classes of shares requires an amendment to the certificate of incorporation, such amendment must be filed with the Delaware Secretary of State to become effective<sup>77</sup> and filed as an exhibit to a current report on Form 8-K.<sup>78</sup>

In addition, as the issuance of separate classes of shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K within four business days after they become effective.<sup>79</sup>

Periodic disclosure statements, such as quarterly reports on Form 10-Q and annual reports on Form 10-K, will also require disclosure of the existence of such shares.<sup>80</sup>

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<sup>74</sup> Section 216 of the DGCL.  
<sup>75</sup> Section 242(b) of the DGCL.  
<sup>76</sup> Section 151(g) of the DGCL.  
<sup>77</sup> Section 241 of the DGCL; Item 5.03 of Form 8-K.  
<sup>78</sup> Item 5.03 of Form 8-K.  
<sup>79</sup> Item 3.03 of Form 8-K.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Yes, in quarterly reports on Form 10-Q and annual reports on Form 10-K.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: If an amendment to the certificate of incorporation is required, it must be filed with the Delaware Secretary of State and with the SEC as an exhibit to a current report on Form 8-K. In addition, as the issuance of new shares will modify the rights of existing shareholders, such modifications must be described and disclosed in a current report on Form 8-K.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association, if an amendment to the certificate of incorporation is required, it must be filed with the Delaware Secretary of State.</li> <li>- Specific Filing: a current report on Form 8-K will need to be publicly filed with the Securities Exchange Commission for (a) any required amendment to the certificate of incorporation and (b) any modification of the rights of security holders.</li> <li>- Specific Notification – N/A, except see “Specific Filing” and “Information to shareholders”</li> <li>- Information to shareholders – Yes, if a shareholder vote is required in order to adopt an amendment to the certificate of incorporation, a proxy statement will need to be sent to shareholders in advance of the shareholder meeting at which such vote will be held.</li> <li>- Annual Report – Form 10-K, see above.</li> <li>- Periodic Report – Form 10-Q, see above.</li> <li>- Special Report – Form 8-K, see “Specific Filing.”</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The issuance of a separate class of shares can be challenged on the ground that its implementation constitutes a breach of the directors’ fiduciary duties to the corporation and its stockholders.

In such decisions, directors are generally protected by the business judgment rule under Delaware law, which rule presupposes that “in making a business decision the directors of a corporation act on an informed basis, in good faith and in the honest belief that the action taken is in the best interests of the corporation.”<sup>81</sup> However, if the separate class of shares is adopted as a defensive mechanism in response to an alleged threat to corporate control or policy, such a decision will be subject to an “enhanced scrutiny” standard of review, under which standard the board of directors will have the burden to prove that (i) it had reasonable grounds for believing that a danger to the corporation existed and (ii) the adoption of the separate class of shares was reasonable in relation to the threat posed.<sup>82</sup>

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<sup>80</sup> Item 1 of Form 10-Q; Items 5 and 8 of Form 10-K; Item 201 of Regulation S-K.

<sup>81</sup> *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. Supr. 1984).

<sup>82</sup> *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. Supr. 1985).

Short form answer:

The decision to implement the CEM is in the sole interest of the management or current ownership without valid business or economic reasons. In the United States, most challenges to board action would be formulated as breach of fiduciary duty claims. Allegations that a decision is in the sole interest of management or without valid business reason are examples of possible arguments in a breach of fiduciary duty claim.

DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

No, publicly listed Depository Certificates (other than ADRs) are not typically used in the U.S.

Short form answer:

No (Clear Situation)

**Other questions: not applicable.**

VOTING RIGHT CEILINGS

1) **Is this CEM available?**

The adoption by a publicly listed company of Voting Right Ceilings is prohibited pursuant to the applicable regulations of Stock Exchanges.<sup>83</sup>

However, similar to the restrictions on issuance of Multiple Voting Rights Shares under the listing standards of the U.S. Stock Exchanges, U.S. public issuers with pre-existing Voting Rights Ceilings (i.e., such voting rights ceilings had pre-existed and been permitted under the then-existing listing requirements prior to the promulgation of the relevant Rule 4351 of NASDAQ Marketplace Rules, Rule 313 of NYSE Listed Company Manual and Section 122 of AMEX Company Guide, as the case may be) would generally be permitted to retain those ceilings.

Short form answer:

No<sup>84</sup> (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Please see answer 1 above.

Short form answer:

<input checked="" type="checkbox"/> Laws (federal law)	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule

**Other questions not applicable.**

<sup>83</sup> Rule 4351 (including IM-4351) of NASDAQ Marketplace Rules; Rule 313 of NYSE Listed Company Manual and Section 122 of AMEX Company Guide.

<sup>84</sup> However, a number of states other than Delaware impose freeze-out restrictions, which force an investor who surpasses a certain ownership threshold in a company (usually between 10-20%) to wait a specified period of time before gaining control of the company. Such laws are not addressed in this analysis.

**OWNERSHIP CEILINGS**

**1) Is this CEM available?**

Ownership Ceilings of various levels are provided in state takeover statutes in approximately 27 of 50 states. As a matter of general corporate law, pursuant to Section 203 of DGCL, a stockholder owning 15% or more of the outstanding voting stock of a Delaware corporation (an “Interested Stockholder”) is prohibited from engaging in any business combination with the corporation for three years after the date such stockholder becomes an Interested Stockholder unless certain conditions are satisfied (i.e., prior board approval, stockholder approval at a stockholder meeting or such Interested Stockholding holding at least 85% of the voting stock upon consummation of the transaction that resulted in the stockholder becoming an Interested Stockholder).

In addition, the board of directors of a public corporation typically can implement a shareholders’ rights plan (“poison pill”) in order to issue rights to existing stockholders (other than the acquirer), which rights can be exercised or exchanged by all stockholders other than the acquirer for a large number of common or preferred shares in the event the acquirer acquires more than a set amount of the target’s stock (typically 10-20%).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

See answer 1 above.

Short form answer:

<input checked="" type="checkbox"/> Laws (State law)	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> High Court Case Law (upheld the adoption of a shareholders rights plan in response to a hostile offer) <input type="checkbox"/> Lower Court Case Law

**3) If this CEM is available, is it subject to any restrictions?**

Under Delaware law, if the board of directors adopts a shareholders rights plan when faced with an unsolicited offer, it has the burden to prove that (i) it had reasonable grounds for believing that a danger to the corporation existed and (ii) the adoption of the Ownership Ceiling was reasonable in relation to the threat posed.<sup>85</sup>

<sup>85</sup> Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946 (Del. 1985) and Hollinger International, Inc. v. Conrad Black, 844 A.2d 1022 (Del. Ch. 2004).

Short form answer:

Others: The adoption of an Ownership Ceiling needs to be a proportionate response to the threat to the corporation identified by the Board of Directors.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The board of directors can adopt an Ownership Ceiling in the form of a shareholder rights plan in the event of an unsolicited offer if the board of directors determines such offer constitutes a threat to the corporation and its stockholders and the Ownership Ceiling is reasonable and proportional to the threat posed.<sup>86</sup>

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
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Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): (Adoption of a shareholders' rights plan requires a filing of a registration statement on Form 8-A and needs to be disclosed in a current report on Form 8-K.)

**5) Are there ongoing disclosure requirements regarding such CEM?**

If the Ownership Ceiling adopted by the board of directors is to be modified or repealed, such change must be disclosed in a current report on Form 8-K.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: if the Ownership Ceiling is to be modified or repealed by the board of directors, such change must be disclosed in a current report on Form 8-K.  <input checked="" type="checkbox"/> The following disclosure requirements apply: - Specific Filing – The adoption of a shareholders rights plan requires a filing of a registration statement on Form 8-A and needs to be disclosed in a current report on Form 8-K.
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<sup>86</sup> *Id.*

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The creation of a shareholder rights plan can be challenged on the ground that its implementation constitutes a breach of the directors' fiduciary duties to the corporation and its stockholders.

If the shareholders' rights plan is adopted as a defensive mechanism in response to an alleged threat to corporate control or policy, such a decision will be subject to an "enhanced scrutiny" standard of review, under which standard the board of directors will have the burden to prove that (i) it had reasonable grounds for believing that a danger to the corporation existed and (ii) the adoption of the CEM was reasonable in relation to the threat posed.<sup>87</sup>

Short form answer:

The decision to implement the CEM is in the sole interest of the management or current ownership without valid business or economic reasons. In the United States, most challenges to board action would be formulated as breach of fiduciary duty claims. Allegations that a decision is in the sole interest of management or without valid business reason are examples of possible arguments in a breach of fiduciary duty claim.

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<sup>87</sup> *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. Supr. 1985).

**SUPERMAJORITY PROVISIONS**

**1) Is this CEM available?**

Yes, Delaware law allows a Delaware corporation to provide for a supermajority vote for important corporate actions in the certificate of incorporation and bylaws.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

DGCL expressly permits Delaware corporations to have Supermajority Provisions in the certificate of incorporation or the bylaws.<sup>88</sup>

Short form answer:

<input checked="" type="checkbox"/> Laws (State law)	<input checked="" type="checkbox"/> Binding Rule
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**3) If this CEM is available, is it subject to any restrictions?**

As a practical matter, there are almost no restrictions on Supermajority Provisions, the only restrictions being that any Supermajority Provisions provided in the bylaws cannot conflict with the provisions of the certificate of incorporation and any amendment thereto or be inconsistent with law or public policy and Supermajority Provisions in the certificate of incorporation or any amendment thereto similarly cannot be inconsistent with law or public policy (the determination of which is within the court’s discretion).<sup>89</sup>

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The incorporators or initial directors can adopt Supermajority Provisions in the original certificate of incorporation or the bylaws of a Delaware corporation. After a corporation is incorporated, shareholders and, if the certificate of incorporation confers the power to adopt, amend and repeal the bylaws upon directors, the board of directors have the power to adopt, amend or repeal the bylaws, including Supermajority Provisions.<sup>90</sup> If Supermajority Provisions are provided in the certificate of incorporation, only shareholders can amend or repeal Supermajority Provisions.

<sup>88</sup> Section 102(b)(4) of the DGCL.

<sup>89</sup> *Frankel v. Donovan*, 35 Del. Ch. 433, 120 A.2d 311 (1956) and *Ellingwood v. Wolf’s Head Oil Ref. Co.*, 27 Del. Ch. 356, 38 A.2d 743 (1944) and Section 109 of the DGCL.

<sup>90</sup> Section 109 of the DGCL.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, if the certificate of incorporation confers the power to adopt, amend and repeal Supermajority Provisions upon the board of directors and Supermajority Provisions are provided in the bylaws only.  <input checked="" type="checkbox"/> Upon authorization of the shareholders
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: In the absence of a specific provision in the certificate of incorporation, any amendment thereto, or the bylaws, a majority of the shares outstanding and entitled to vote present in person or represented by proxy (and if a separate vote by any separate class or series is required, such as would be required for an amendment to the certificate of incorporation, a majority of the outstanding shares of such class or series as well). <sup>91</sup>  <input checked="" type="checkbox"/> Majority: In the absence of a specific provision in the certificate of incorporation or any amendment thereto, the affirmative vote of the majority of all shares issued and outstanding and entitled to vote on the subject matter (and if a separate vote by a class or series is required, such as would be required for an amendment to the certificate of incorporation, the affirmative vote of a majority of the shares of such class or series as well). <sup>92</sup>
<input checked="" type="checkbox"/> Other: Written consent of stockholders in lieu of a general meeting	<input checked="" type="checkbox"/> Unless the certificate of incorporation expressly prohibits stockholders from acting by written consent, stockholders holding a majority (or, if the certificate of incorporation or bylaws provide for a higher percentage with respect to the adoption, amendment or repeal of Supermajority Provisions, such higher percentage) of all outstanding shares may adopt, amend or repeal Supermajority Provisions by written consent without a general meeting. <sup>93</sup>

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of the certificate of incorporation and any amendment thereto must be filed with the Delaware Secretary of State and with the SEC as an exhibit to a current report on Form 8-K. In addition, copies of the bylaws and any amendment thereto must be filed with the SEC as an exhibit to a current report on Form 8-K.
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<sup>91</sup> Section 216 of the DGCL.

<sup>92</sup> Section 242(b) of the DGCL.

<sup>93</sup> Section 228 of the DGCL.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Where the authority to adopt, amend and repeal the bylaws is vested in the board of directors in the certificate of incorporation, such bylaws must be filed with the SEC as an exhibit to a current report on Form 8-K.

If changes to the bylaws require an amendment to the certificate of incorporation, such amendment must be filed with the Delaware Secretary of State to become effective<sup>94</sup> and filed as an exhibit to a current report on Form 8-K.<sup>95</sup>

Periodic disclosure statements, such as quarterly reports on Form 10-Q and annual reports on Form 10-K, will also require disclosure of changes to Supermajority Provisions.<sup>96</sup>

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Yes, in quarterly reports on Form 10-Q and annual reports on Form 10-K.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: If an amendment to the certificate of incorporation is required, it must be filed with the Delaware Secretary of State and with the SEC as an exhibit to a current report on Form 8-K.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association, if an amendment to the certificate of incorporation is required, it must be filed with the Delaware Secretary of State.</li> <li>- Specific Filing: a current report on Form 8-K will need to be publicly filed with the Securities Exchange Commission for (a) any required amendment to the certificate of incorporation and (b) any modification of the rights of security holders.</li> <li>- Specific Notification – N/A, except see “Specific Filing” and “Information to shareholders”</li> <li>- Information to shareholders, if a shareholder vote is required in order to adopt an amendment to the certificate of incorporation, a proxy statement will need to be sent to shareholders in advance of the shareholder meeting at which such vote will be held.</li> <li>- Annual Report – Form 10-K, see above.</li> <li>- Periodic Report – Form 10-Q, see above.</li> <li>- Special Report – Form 8-K, see “Specific Filing.”</li> </ul>
---	---

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The implementation of Supermajority provisions can be challenged when such implementation is inconsistent with the then governing certificate of incorporation or is against law or public policy<sup>97</sup>.

<sup>94</sup> Section 241 of the DGCL; Item 5.03 of Form 8-K.

<sup>95</sup> Item 5.03 of Form 8-K.

<sup>96</sup> Item 1 of Form 10-Q; Items 5 and 8 of Form 10-K; Item 201 of Regulation S-K.

<sup>97</sup> *Frankel v. Donovan*, 35 Del. Ch. 433, 120 A.2d 311 (1956) and *Ellingwood v. Wolf's Head Oil Ref. Co.*, 27 Del. Ch. 356, 38 A.2d 743 (1944) and Section 109 of the DGCL.

**GOLDEN SHARES**

**1) Is this CEM available?**

No. Golden Shares do not exist in the U.S.

Short form answer:

No (Clear Situation)

**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Not applicable.

**Other questions not applicable.**

## PARTNERSHIPS LIMITED BY SHARES

1) **Is this CEM available?**

Partnerships Limited by Shares are permitted under the Delaware Revised Uniform Limited Partnership Act and represent one of the basic forms of corporate organization. In the United States, a public company organized as a corporation would typically not convert into a limited partnership as a means of using such form as a CEM, although such conversion is permitted by Delaware law.

In addition, both Section 126 of AMEX Company Guide and Rule 4360 of NASDAQ Marketplace Rules provide that a Partnership Limited by Shares can be publicly listed if it satisfies any other applicable listing requirements and has a corporate general partner or co-general partner which meets the independent director and audit committee requirements. Rule 4360 of NASDAQ Marketplace Rules also requires that each publicly-listed Partnership Limited by Shares distribute annual reports and, if applicable, interim reports and proxy statements, to limited partners to protect the rights of limited partners.

NYSE Listed Company Manual does not have provisions specifically for Partnerships Limited by Shares.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
---

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Section 266 of the DGCL specifically authorizes a corporation to convert into another form; in order to convert to another form, the shareholders of all outstanding shares, whether voting or non-voting, must approve the conversion. Thus, a conversion of a publicly-traded corporation is practically-speaking unachievable. Nonetheless, Section 126 of the AMEX Company Guide and Rule 4360 of NASDAQ Marketplace Rules expressly authorize the use of Partnerships Limited by Shares.

Short form answer:

<input checked="" type="checkbox"/> Laws (State Law)	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule

3) **If this CEM is available, is it subject to any restrictions?**

Please see answer 1 above.

Short form answer:

<input checked="" type="checkbox"/> Partnerships Limited by Shares may only be set up for companies meeting certain criteria	See Section 126 of AMEX Company Guide and Rule 4360 of NASDAQ Marketplace Rules.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

Section 266 of the DGCL specifically authorizes a corporation to convert into another form; in order to convert to another form, the shareholders of all outstanding shares, whether voting or non-voting, must approve the conversion. Thus, a conversion of a publicly-traded corporation is practically-speaking unachievable.

The structure and the terms of a Partnership Limited by Shares are provided in a partnership agreement entered into between general partners and limited partners and are subject to general contract law and the Delaware Revised Uniform Limited Partnership Act.

Short form answer:

Who decides:

Other: Conversion from a corporation to another entity must be approved by the shareholders of all outstanding shares, whether voting or non-voting.

Specific conditions: None

**5) Are there ongoing disclosure requirements regarding such CEM?**

Publicly listed Partnerships Limited by Shares must comply with the periodic reporting requirements under the Exchange Act and file annual reports and if applicable, interim reports and annual proxy statements.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: The converted entity would continue to be required to file annual reports, as a public company.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association – Delaware Secretary of State</li> <li>- Information to shareholders – Proxy Statement to be distributed to all shareholders prior to the meeting at which the vote on the conversion proposal would be held.</li> <li>- Annual Report – Yes, if the Limited Partnership continues to be a publicly-traded company.</li> <li>- Periodic Report – Yes, if the Limited Partnership continues to be a publicly-traded company.</li> <li>- Special Report – Yes, if the Limited Partnership continues to be a publicly-traded company.</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

In the United States, a public company organized as a corporation would typically not convert into a limited partnership as a means of using such form as a CEM.

**CROSS-SHAREHOLDINGS**

**1) Is this CEM available?**

Delaware law does not restrict Cross-Shareholdings. However, it is not typical for U.S. public companies.

If a Cross-Shareholding exceeds 5% of any class of publicly registered voting securities of a public company, such ownership must be disclosed in a statement on Schedule 13D or 13G filed by the shareholder and in an annual report on Form 10-K and/or a proxy statement of the target company.<sup>98</sup>

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
---

**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Please see answer 1 above.

Short form answer:

<input checked="" type="checkbox"/> Laws (federal law)	<input checked="" type="checkbox"/> Binding Rule
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**3) If this CEM is available, is it subject to any restrictions?**

Please see answer 1 above.

Moreover, the fiduciary duties are considered as restrictions to the implementation of this CEM.

Short form answer:

<input checked="" type="checkbox"/> Others (please specify): If a Cross-Shareholding exceeds 5% of any class of registered voting securities of a public company, such ownership must be disclosed in a statement on Schedule 13D or 13G, an annual report on Form 10-K and/or annual proxy statement.
--

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The board of directors of each company has the power to determine whether it is in the best interest of the stockholders to have an interest in other companies.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
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<sup>98</sup> Item 404 of Regulation S-K and Regulation 13D under the Exchange Act.

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): (please answer 5 below)

**5) Are there ongoing disclosure requirements regarding such CEM?**

Yes, Cross-Shareholdings exceeding 5% of any class of publicly registered voting securities of a U.S. public company need to be disclosed in an annual proxy statement or annual report on Form 10-K of such public company. In addition, if there is any change to the Cross-Shareholdings which would result in a change of ownership by more than 1% or there is a change in intent to this ownership or other items set forth in Schedule 13D or 13G, such change must be disclosed in an amendment to Schedule 13D or 13G by the company holding such Cross-shareholding interest.<sup>99</sup>

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis: Annual proxy statement or annual report of the target company. <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: If there is any change to the Cross-Shareholdings which would result in a change of ownership by more than 1%, such change must be disclosed in an amendment to Schedule 13D or 13G by the company holding holds such Cross-Shareholding interest. <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> <li>- Specific Filing – Schedule 13D or 13 G and Schedule 13D/A or 13G/A as above.</li> <li>- Information to shareholders – Proxy Statement of the target company.</li> <li>- Annual Report – Annual Report on Form 10-K of the target company.</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The decision of the board of directors of each company to have a Cross-Shareholding interest in another company is generally protected by the business judgment rule under Delaware law, which rule presupposes that “in making a business decision the directors of a corporation act on an informed basis, in good faith and in the honest belief that the action taken is in the best interests of the corporation.”<sup>100</sup> However, if the decision is taken as a defensive mechanism in response to an alleged threat to corporate control or policy, such a decision will be subject to an “enhanced scrutiny” standard of review, under which standard the board of directors will have the burden to prove that (i) it had reasonable grounds for believing that a danger to the corporation existed and (ii) the adoption of the CEM was reasonable in relation to the threat posed.<sup>101</sup>

<sup>99</sup> Rule 13d-2 of the Exchange Act.

<sup>100</sup> *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. Supr. 1984).

<sup>101</sup> *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. Supr. 1985).

Short form answer:

The decision to implement the CEM is in the sole interest of the management or current ownership without valid business or economic reasons. In the United States, most challenges to board action would be formulated as breach of fiduciary duty claims. Allegations that a decision is in the sole interest of management or without valid business reason are examples of possible arguments in a breach of fiduciary duty claim.

## SHAREHOLDERS' AGREEMENTS

**1) Is this CEM available?**

Shareholders' Agreements are permitted under Delaware law.

Although Shareholders' Agreements are more prevalent in private company settings, Shareholders' Agreements are sometimes entered into among shareholders of a public company or between a shareholder and the company (agreements between shareholders and the company are not covered by this analysis).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

If a Shareholders' Agreement (including any material amendment to such agreement) is entered into among shareholders of a public company and any of those shareholders own more than 5% of a class of voting securities of the company or such shareholders constitute a "group" for purposes of Regulation 13D under the Exchange Act and collectively own more than 5% of such securities, such agreement must be disclosed in a statement on Schedule 13D by those shareholders and filed as an exhibit thereto.<sup>102</sup>

Short form answer:

<input checked="" type="checkbox"/> Laws (federal)	<input checked="" type="checkbox"/> Binding Rule
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**3) If this CEM is available, is it subject to any restrictions?**

No. The Shareholders' Agreement will be a matter of contract law between the parties, subject only to the disclosure requirements listed above.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The shareholders in question enter into the agreement at their own election, subject only to the disclosure requirements listed above.

Specific conditions:

Specific requirements when deciding to implement the CEM:
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<input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Schedule 13D by shareholders holding more than 5% of a class of registered voting securities at the time that Shareholders' Agreement is entered into and amended.
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<sup>102</sup>

Regulation 13D-G.

5) **Are there ongoing disclosure requirements regarding such CEM?**

Please see answer 2 above.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: a statement on Schedule 13D by the shareholders holding directly or indirectly more than 5% of a class of the registered voting securities of the company within 10 days after a Shareholders' Agreement is entered into or an amendment to Schedule 13D promptly after an amendment to the Shareholders' Agreement is entered into.  <input checked="" type="checkbox"/> The following disclosure requirements apply: - Specific Filing – Schedule 13D or 13 G and Schedule 13D/A or 13G/A as above. - Information to shareholders – Annual report.
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Violations of disclosure requirements under the U.S. federal securities laws.

**B – GENERAL BACKGROUND QUESTIONS**

**1) What are the rules for Board elections? How many corporate votes are required to appoint or remove corporate directors?**

Unless otherwise provided in the certificate of incorporation or bylaws, directors are elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.<sup>103</sup> Directors can be removed, with or without cause, by the holders of a majority of the shares then entitled to vote on the election of directors, except that (i) in the case of a classified board, directors can only be removed for cause unless the certificate of incorporation otherwise provides and (ii) in the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against the removal of such director would be sufficient to elect such director.<sup>104</sup>

If a seat becomes vacant in the board of directors, the rest of the directors can co-opt a new director. The ratification of such an election shall take place in the next election by the GMS.

Short form answer:

Majority required for Board election: plurality required, unless otherwise provided in the certificate of incorporation.

For Board removal: majority required.

Quorum required for shareholders' meetings proceeding with the election or removal of board members: majority of the shares entitled to vote, present in person or represented by proxy, unless otherwise provided in the certificate of incorporation, but in no event shall a quorum consist of less than 1/3 of the shares entitled to vote.<sup>105</sup>

Specific mechanisms (such as cumulative voting) authorise minority shareholders to be represented at the board (unless the certificate of incorporation provides for cumulative voting for the election of directors, cumulative voting is not otherwise permitted<sup>106</sup>)

**2) What shareholders' decisions require a vote from more than a simple majority?**

Under Delaware law, unless otherwise provided in the certificate of incorporation or the bylaws, no shareholders' decision requires more than a simple majority vote.

With respect to the simple majority vote requirement, the amendment of certificate of incorporation, removal of directors, merger (other than a short-form merger between a subsidiary and a parent corporation owning at least 90% of the outstanding shares of each class of such subsidiary), consolidation, sale, lease or exchange of all or substantially all assets, and dissolution and revocation of dissolution, of the corporation require an affirmative vote of a majority of the outstanding shares of the

<sup>103</sup> Section 216 of the DGCL.

<sup>104</sup> Section 141(k) of the DGCL.

<sup>105</sup> Section 216 of the DGCL.

<sup>106</sup> Section 214 of the DGCL.

corporation entitled to vote;<sup>107</sup> while the other corporate actions that need shareholder approval only require an affirmative vote of the majority of shares present in person or represented by proxy at the meeting and entitled to vote thereon (other than the election of directors, which requires a plurality vote<sup>108</sup>).

Stockholders present either in person or represented by proxy at a shareholders' meeting who either do not participate in the vote or cast a blank vote are counted as voting "no."<sup>109</sup>

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<sup>107</sup> Sections 242, 141, 251, 271, 275 and 311 of the DGCL.

<sup>108</sup> Section 216 of the DGCL.

<sup>109</sup> Section 216 of the DGCL and *Licht v. Storage Tech. Corp.*, 2005 Del. Ch. Lexis 64 (2005).



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES: EXTERNAL  
STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

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# PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES: COMPARATIVE LEGAL STUDY

## JAPAN

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## MULTIPLE VOTING RIGHTS SHARES

[Note: Our responses below are subject to the general notes set out in Exhibit A attached hereto]

### 1) Is this CEM available?

Yes. Under the Corporation Act, a company may not, as a general rule, issue shares which have more than one voting right per share<sup>110</sup>. However, the Corporation Act permits companies to adopt a “unit” (or *tangen*) share system, pursuant to which a company may specify in its articles of incorporation the number of shares that will constitute one unit, with each unit being entitled to one voting right. If the company has issued more than one class of shares, it may prescribe in its articles of incorporation a different number of shares constituting one unit for each class.

Consequently, a company may, subject to the limitations discussed under item 3 below, achieve an effect similar to the Multiple Voting Rights Shares described in Exhibit I to the Instructions by issuing different classes of shares and adopting the unit system. A company may divide its stock into different classes of shares and prescribe different unit thresholds for each class. For example, a company may divide its stock into (a) class “A” shares, each unit of which is composed of 100 shares, (b) class “B” shares, each unit of which is composed of 1,000 shares, and (c) common shares that are not divided into units. In this situation, each common share will be entitled to one voting right, whereas each holder of class “A” and class “B” shares will be only be entitled to one voting right if they hold 100 class “A” shares or 1000 class “B” shares (in this sense, the voting rights of class “A” and class “B” shares are somewhat “diluted” as a class “A” share only has 1/100 of a voting right and a class “B” share only has 1/1,000 of a voting right).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	A listed company may not issue shares with more than one voting right per share. However, a company may achieve an effect similar to Multiple Voting Rights Shares by issuing different classes of shares and adopting the unit share system.
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

#### (i) Laws

As stated above, under the Corporation Act a company may not, as a general rule, issue shares which have more than one voting right per share.<sup>111</sup> However, the Corporation Act permits companies to adopt a “unit” share system, pursuant to which a company may specify in its articles of incorporation the number of shares that will constitute one unit, with each unit being entitled one voting right. If the company has issued more than one class of shares, it may prescribe in its articles of incorporation a different number of shares constituting one unit for

<sup>110</sup> There is an exception to this general rule but such exception does not apply to listed companies.

<sup>111</sup> See note 1.

each class. Consequently, a company may achieve an effect similar to Multiple Voting Rights Shares by issuing different classes of shares<sup>112</sup> and adopting the unit share system.

The Corporation Act also provides that the number of shares that will constitute one unit shall not exceed the number prescribed by the Ministry of Justice. The Ministry of Justice has issued an Ordinance prescribing that the number of constitutive shares per unit may not exceed 1,000.

(ii) Stock Exchange Rules

The TSE will delist an issuer if it determines that the rights of such issuer’s shareholders have been “unreasonably restricted” and such situation is not cured within six months. There is some risk that the TSE will take the view that a company that avails itself of the CEM described in this section has imposed such an unreasonable restriction on its shareholders’ rights that the TSE will consequently delist the issuing company’s shares.

(iii) Corporate Governance Codes

On May 27, 2005, the Ministry of Economy, Trade and Industry and the Ministry of Justice jointly issued a guideline for anti-takeover measures in order to secure and enhance the corporate value and the common interest of shareholders (the “Guideline”). The Guideline is not binding but is generally followed when Japanese companies are contemplating the introduction of a defensive measure.

The Guideline requires, among other things, the necessity and the reasonableness of the defensive measure paying attention to the principle of the equality of shareholders, the protection of proprietary rights, and the prevention of self-interested decisions by the management. To be prudent, it is advisable when issuing different classes of shares and adopting the unit system as defensive measures, to determine whether such measures conform with the Guideline.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	A listed company may not issue shares with more than one voting right per share. However, the company may achieve an effect similar to Multiple Voting Rights Shares by issuing different classes of shares and adopting the unit share system.
<input checked="" type="checkbox"/> Administrative Rules	<input checked="" type="checkbox"/> Binding Rule	Pursuant to an Ordinance issued by the Ministry of Justice, the number of constitutive shares of one unit may not exceed 1,000.

<sup>112</sup> Please note that for purposes of this section on Multiple Voting Rights Shares, we have assumed that while common shares of the company in question are listed, a listing of the Multiple Voting Rights Shares is not contemplated.

<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	There is some risk that the TSE will take the view that a listed company that issues different classes of shares and adopts the unit share system has imposed an “unreasonable restriction” on its shareholders’ rights and consequently, delist the issuing company’s shares.
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	The Guideline requires the necessity and the reasonableness of the defensive measure paying attention to the principle of the equality of shareholders, the protection of proprietary rights, and the prevention of self-interested decisions by the management.

**3) If this CEM is available, is it subject to any restrictions?**

The Corporation Act provides that the number of shares that will constitute one unit shall not exceed the number prescribed by the Ministry of Justice. The Ministry of Justice has issued an Ordinance prescribing that the number of constitutive shares per unit may not exceed 1,000.

There can be no “unreasonable restrictions” on shareholders rights.

Short form answer:

<input checked="" type="checkbox"/> Maximum number of votes per share	One. However, the voting rights of each share of a class that has been divided into units may be “diluted” to less than one vote as stated above. Pursuant to the Ministry of Justice Ordinance referred to above, the dilution may not exceed 1/1,000 per share.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

Unless a company’s current articles of incorporation authorise the issuance of different classes of shares having different unit thresholds, a company may not avail itself of the CEM described above without first amending its articles of incorporation.

Amendments to a company’s articles of incorporation must be approved by a supermajority vote at a general shareholders meeting (and by a supermajority vote of holders of each class of shares, if there is more than one class of shares and the amendments in question are likely to be harmful to the holders of such class). The quorum for such a shareholders meeting generally consists of shares representing more than half of the voting rights, unless the articles of incorporation provide for a lower requirement (which may not, however, be reduced to shares representing less than one-third of the total voting rights). A “supermajority” generally means at least two-thirds of the voting rights of the shareholders present, unless the articles of incorporation provide for a higher requirement.

Once the company’s articles of incorporation authorise it to issue different classes of shares and adopt a unit system, the actual issuance of the new shares must be approved at a meeting of the board of directors meeting by a majority vote, unless a different voting requirement is provided in the company’s internal rules.

In the case of a Company with Committees, an executive officer may be authorized to make a decision to issue the new shares.

Unless otherwise stipulated in the articles of incorporation or (where the authority to issue shares has been delegated) the resolution authorizing the delegate to issue new shares, there is no time limit on the issuance of shares with different unit thresholds.

Please note that any issuance of shares made on terms especially favorable to a third party requires the approval of a supermajority vote at a general shareholders meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, unless issuance is made on terms specially favorable to a third party (in which case, shareholder approval is required)	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Generally more than 1/2 of total voting rights <input checked="" type="checkbox"/> Majority: Generally not less than 2/3 of voting rights present	<p>Only where an amendment to the issuing company's articles of incorporation is necessary to authorize the issuance of the new shares or the issuance is made on terms specially favorable to a third party.</p> <p>If the shareholders may authorize the board or the Chairman or GM to implement the CEM.</p>

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p>Extraordinary Report under the Securities and Exchange Law on amendments to the articles of incorporation and issuance of new shares.</p> <p>Timely disclosure under the Timely Disclosure Rule on amendments to the articles of incorporation and issuance of new shares.</p> <p>Please also note that information such as certain terms of each class of shares, the number of shares issued of each class and the number of shares that will constitute each unit or <i>tangen</i> is required to be included in the company's corporate registry.</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

The Company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These Reports must describe, among other things, the number of issued shares of each class, certain terms of each class of shares and the number of issued shares per certain categories. In addition, the articles of incorporation must be attached to the Securities Report.

Further, the company is required to prepare, and present to the shareholders, the business report for each fiscal year, which report must describe, among other things, the basic policy on the defensive measures.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis.  The Company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year, which Reports must describe, among other things, the number of issued shares of each class and the number of issued shares per certain categories. Also, the articles of incorporation must be attached to the Securities Report.  Further, the company is required to prepare, and present to the shareholders, the business report for each fiscal year, which report must describe, among other things, the basic policy on the defensive measures.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Under Article 210(i) of the Corporation Act, a shareholder may seek an injunction against the issuance of shares on the basis that such issuance constitutes or will constitute a violation of applicable laws or regulations, or of the company's articles of incorporation. An example of a share issuance that may be validly enjoined thereunder is the issuance of shares in favor of a third party on especially favorable conditions without shareholder approval.

Similarly, Article 210(ii) of the Corporation Act provides that a shareholder may seek an injunction against the issuance of shares where the issuance in question is implemented in a "significantly unfair manner" and is likely to be detrimental to the shareholders. The Corporation Act is not clear as to the circumstances under which a company will be deemed to be issuing shares in a "significantly unfair manner." However, there are several lower court precedents that have addressed this issue. In a recent case, a lower court granted an injunction to restrain an issuance of rights to a third party that could have substantially diluted the shareholding of a hostile acquirer. (Although strictly speaking, this case involves the issuance of rights to subscribe for shares and not the issuance of shares themselves, we believe that the reasoning applied in this case may be applied to an actual issuance of shares). The lower court issued the injunction on the following basis:

- Rights to subscribe for shares may be validly issued to a third party pursuant to a third party allotment even if such issuance may result in a reduction of the shareholding ratio of existing shareholders, as long as such issuance is based on the business judgment of the board of directors concerning matters under its general management authority and is necessary and reasonable from a practical business perspective.
- The issuance of rights to subscribe for shares to a third party may be validly enjoined where the continued exercise of control by current management is actually at risk and the issuance of subscription rights is made for the primary purpose of maintaining control by current management by reducing the shareholding ratio of the hostile acquirer, except in the limited cases where the company establishes that the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer.

Short form answer:

The decision may be enjoined where continued management control by existing management is actually at risk and the CEM is availed of for the primary purpose of maintaining management control by the existing management team. However, except where the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer, the CEM will be upheld.

## NON-VOTING SHARES

[Note: Our responses below are subject to the general notes set out in Exhibit A.]

1) **Is this CEM available?**

Yes. Under the Corporation Act, a company may issue different classes of shares, including Non-voting Shares as described in Exhibit I to the Instructions, subject to the restrictions discussed under item 3 below.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The Corporation Act explicitly authorizes Japanese companies to issue different classes of shares, including Non-voting Shares, subject to the restrictions discussed under item 3 below.<sup>113</sup>

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Explicitly authorized.
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3) **If this CEM is available, is it subject to any restrictions?**

The Corporation Act provides that if the number of issued shares with restricted voting rights (as used in this section, “Restricted Voting Shares”) exceeds half of the company’s total issued shares, that company must take all actions necessary to reduce the number of issued Restricted Voting Shares to no more than half of its total issued shares.

In addition, the Corporation Act provides that holders of Non-voting Shares continue to be entitled to vote at a class shareholders’ meeting on certain types of actions where such action is likely to be harmful to the shareholders of that class. Those types of actions include a stock consolidation, stock split, gratis allotment of shares and merger. Although these residual voting rights may be validly denied by express provision of the company’s articles of incorporation, the Corporation Act provides that in no case may holders of Non-voting Shares be denied the right to vote at a class shareholders’ meeting when the action proposed to be taken is an amendment of the company’s articles of incorporation involving the addition of a new class of shares or a change in the terms or in the number of authorized shares (or of a certain class of shares) where such amendment is likely to be harmful to the shareholders of that class.

<sup>113</sup> Please note that for purposes of this section on Non-voting Shares, we have assumed that while common shares of the company in question are listed, a listing of the Non-voting Shares is not contemplated.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Non-voting Shares	Half of all of the company’s issued shares.
Reinstatement of voting rights in certain circumstances	No, unless otherwise expressly provided in the company’s articles of incorporation.
<input checked="" type="checkbox"/> Others	Right to vote on certain actions in a class shareholders meeting may not be excluded.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Under the Corporation Act, any limitations on the voting rights of shares or of a class of shares in a company (including any conditions that must be satisfied before holders of such shares may exercise their voting rights) must be specified in the company’s articles of incorporation. Consequently, unless the company’s current articles of incorporation authorise the issuance of Non-voting Shares, a company may not issue Non-voting Shares without first amending its articles of incorporation.

Amendments to a company’s articles of incorporation must be approved by a supermajority vote at a general shareholders meeting (and by a supermajority vote of holders of each class of shares, if there is more than one class of shares and the amendments in question are likely to be harmful to the holders of such class). The quorum for such a shareholders meeting generally consists of shares representing more than half of the total voting rights, unless the articles of incorporation provide for a lower requirement (which may not, however, be reduced to shares representing less than one-third of the total voting rights). A “supermajority” generally means at least two-thirds of the voting rights of the shareholders present, unless the articles of incorporation provide for a higher requirement.

Where the company’s articles of incorporation already authorise the issuance of Non-voting Shares, the actual issuance of new Non-voting Shares must be approved at a meeting of the board of directors by a majority vote, unless a different voting requirement is provided in the company’s internal rules.

In the case of a company with committees, an executive officer may be authorized to issue new shares.

Please note that any issuance of shares made on terms especially favorable to a third party requires the approval of a supermajority vote at a general shareholders meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, unless the issuance is made on terms especially favorable to a third party (in which case, shareholder approval is required).	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Generally more than 1/2 of total voting rights. <input checked="" type="checkbox"/> Majority: Generally not less than 2/3 of voting rights present	Only where an amendment of the company’s articles of incorporation is necessary to authorise the issuance of the shares with limited voting rights, or the issuance is made on terms specially favorable to a third party.

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):

Extraordinary Report under the SEL on amendments to the articles of incorporation and issuance of new shares.

Timely disclosure under the Timely Disclosure Rule on amendments to the articles of incorporation and issuance of new shares.

Please also note that information such as certain terms of each class of shares and the number of shares issued of each class is required to be included in the company's corporate registry.

5) **Are there ongoing disclosure requirements regarding such CEM?**

The company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These reports must describe, among other things, the number of issued shares of each class, certain terms of each class of shares, and the number of issued shares for certain categories such as Non-voting Shares and Restricted Voting Shares. In addition, the articles of incorporation must be attached to the Securities Report.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis.</p> <p>The company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These reports must describe, among other things, the number of issued shares of each class and the number of issued shares per certain categories such as Non-voting Shares and Restricted Voting Shares. Additionally, the articles of incorporation must be attached to the Securities Report.</p>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Under Article 210(i) of the Corporation Act, a shareholder may seek an injunction against the issuance of shares on the basis that such issuance constitutes or will constitute a violation of applicable laws or regulations, or of the company's articles of incorporation. An example of a share issuance that may be validly enjoined thereunder is the issuance of shares in favor of a third party on specially favorable conditions without shareholder approval.

Similarly, Article 210(ii) of the Corporation Act provides that a shareholder may seek an injunction against the issuance of shares where the issuance in question is implemented in a "significantly unfair manner" and is likely to be detrimental to the shareholders. The Corporation Act is not clear as to the circumstances under which a company will be deemed to be issuing shares in a "significantly unfair manner." However, there are several lower court precedents that have addressed this issue. In a recent case, a lower court granted an injunction to restrain an issuance of rights to a third party that could have substantially diluted the shareholding of a hostile acquirer. (Although strictly speaking, this case involves the issuance of rights to subscribe for shares and not the issuance of shares themselves, we believe that

the reasoning applied in this case may be applied to an actual issuance of shares). The lower court issued the injunction on the following basis:

- Rights to subscribe for shares may be validly issued to a third party pursuant to a third party allotment even if such issuance may result in a reduction of the shareholding ratio of existing shareholders, as long as such issuance is based on the business judgment of the board of directors concerning matters under its general management authority and is necessary and reasonable from a practical business perspective.
- The issuance of rights to subscribe for shares to a third party may be validly enjoined where the continued exercise of control by current management is actually at risk and the issuance of subscription rights is made for the primary purpose of maintaining control by current management by reducing the shareholding ratio of the hostile acquirer, except in the limited cases where the company establishes that the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer.

Short form answer:

<p><input checked="" type="checkbox"/> The decision may be enjoined where continued management control by existing management is actually at risk and the CEM is availed of for the primary purpose of maintaining management control by the existing management team. However, except where the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer, the CEM will be upheld.</p>
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## NON-VOTING PREFERENCE SHARES

[Note: Our responses below are subject to the general notes set out in Exhibit A.]

1) **Is this CEM available?**

Yes. Under the Corporation Act, a company may issue different classes of shares, including Non-voting Preference Shares as described in Exhibit 1 to the Instructions, subject to the restrictions stated below.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The Corporation Act explicitly authorizes Japanese companies to issue different classes of shares, including Non-voting Preference Shares, subject to the restrictions discussed under item 3 below.<sup>114</sup>

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Explicitly authorized.
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3) **If this CEM is available, is it subject to any restrictions?**

The Corporation Act provides that if the number of issued shares with restricted voting rights (as used in this section, “Restricted Voting Shares”) exceeds half of the company’s total issued shares, that company must take all actions necessary to reduce the number of issued Restricted Voting Shares to no more than half of its total issued shares.

In addition, the Corporation Act provides that holders of Non-voting Preference Shares continue to be entitled to vote at a class shareholders’ meeting on certain types of actions where such action is likely to be harmful to the shareholders of that class. Those types of actions include a stock consolidation, stock split, gratis allotment of shares and merger. Although these residual voting rights may be validly denied by express provision of the company’s articles of incorporation, the Corporation Act provides that in no case may holders of Non-voting Preference Shares be denied the right to vote at a class shareholders’ meeting when the action proposed to be taken is an amendment of the company’s articles of incorporation involving the addition of a new class of shares or a change in the terms or in the number of authorized shares (or of a certain class of shares) where such amendment is likely to be harmful to the shareholders of that class.

<sup>114</sup> Please note that for purposes of this section on Non-voting Preference Shares, we have assumed that while common shares of the company in question are listed, a listing of the Non-voting Preference Shares is not contemplated.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Non-voting Preference Shares	1/2 of all of the company's issued shares
<input checked="" type="checkbox"/> Reinstatement of voting rights in certain circumstances	No, unless otherwise expressly provided in the company's articles of incorporation
<input checked="" type="checkbox"/> Others	Right to vote on certain actions in a class shareholders' meeting may not be excluded.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Under the Corporation Act, any limitations on the voting rights of shares or of a class of shares in a company (including any conditions that must be satisfied before holders of such shares may exercise their voting rights) must be specified in the company's articles of incorporation. Consequently, unless the company's current articles of incorporation authorise the issuance of Non-voting Preference Shares, a company may not issue Non-voting Preference Shares without first amending its articles of incorporation.

Amendments to a company's articles of incorporation must be approved by a supermajority vote at a general shareholders meeting (and by a supermajority vote of holders of each class of shares, if there is more than one class of shares and the amendments in question are likely to be harmful to the holders of such class). The quorum for such a shareholders meeting generally consists of shares representing more than half of the total voting rights, unless the articles of incorporation provide for a lower requirement (which may not, however, be reduced to shares representing less than one third of the total voting rights). A "supermajority" generally means at least two-thirds of the voting rights of the shareholders present, unless the articles of incorporation provide for a higher requirement.

Where the company's articles of incorporation already authorise the issuance of Non-voting Preference Shares, the actual issuance of new Non-voting Preference Shares must be approved at a meeting of the board of directors by a majority vote, unless a different voting requirement is provided in the company's internal rules.

In the case of a company with committees, an executive officer may be authorized to issue new shares.

Unless otherwise stipulated in the articles of incorporation or (where the authority to issue shares has been delegated) the resolution authorizing the delegate to issue new shares, there is no time limit on the issuance of Non-voting Preference Shares.

Please note that any issuance of shares made on terms especially favorable to a third party requires the approval of a supermajority vote at a general shareholders meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, unless the issuance is made on terms specially favorable to a third party (in which case, shareholder approval is required)	
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<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Generally more than 1/2 of total voting rights  <input checked="" type="checkbox"/> Majority: Generally not less than 2/3 of total voting rights present	Only where an amendment of the company's articles of incorporation is necessary to authorise the issuance of the shares with limited voting rights, or the issuance is made on terms specially favorable to a third party.
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Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Extraordinary Report under the SEL on amendments to the articles of incorporation and issuance of new shares.  Timely disclosure under the Timely Disclosure Rule on amendments to the articles of incorporation and issuance of new shares.  Please also note that information such as certain terms of each class of shares and the number of shares issued of each class is required to be included in the company's corporate registry.
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**5) Are there ongoing disclosure requirements regarding such CEM?**

The company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These reports must describe, among other things, the number of issued shares of each class, certain terms of each class of shares, and the number of issued shares for certain categories such as non-voting shares and Restricted Voting Shares. In addition, the articles of incorporation must be attached to the Securities Report.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis  The company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These reports must describe, among other things, the number of issued shares of each class and the number of issued shares per certain categories such as Non-voting Preference Shares and Restricted Voting Shares. Additionally, the articles of incorporation must be attached to the Securities Report.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Under Article 210(i) of the Corporation Act, a shareholder may seek an injunction against the issuance of shares on the basis that such issuance constitutes or will constitute a violation of applicable laws or regulations, or of the company's articles of incorporation. An example of a share issuance that may be validly enjoined thereunder is the issuance of shares in favor of a third party on especially favorable conditions without shareholder approval.

Similarly, Article 210(ii) of the Corporation Act provides that a shareholder may seek an injunction against the issuance of shares where the issuance in question is implemented in a “significantly unfair manner” and is likely to be detrimental to the shareholders. The Corporation Act is not clear as to the circumstances under which a company will be deemed to be issuing shares in a “significantly unfair manner.” However, there are several lower court precedents that have addressed this issue. In a recent case, a lower court granted an injunction to restrain an issuance of rights to a third party that could have substantially diluted the shareholding of a hostile acquirer. (Although strictly speaking, this case involves the issuance of rights to subscribe for shares and not the issuance of shares themselves, we believe that the reasoning applied in this case may be applied to an actual issuance of shares). The lower court issued the injunction on the following basis:

- Rights to subscribe for shares may be validly issued to a third party pursuant to a third party allotment even if such issuance may result in a reduction of the shareholding ratio of existing shareholders, as long as such issuance is based on the business judgment of the board of directors concerning matters under its general management authority and is necessary and reasonable from a practical business perspective.
- The issuance of rights to subscribe for shares to a third party may be validly enjoined where the continued exercise of control by current management is actually at risk and the issuance of subscription rights is made for the primary purpose of maintaining control by current management by reducing the shareholding ratio of the hostile acquirer, except in the limited cases where the company establishes that the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer.

Short form answer:

<p>☒ The CEM may be enjoined where continued management control by existing management is actually at risk and the CEM is availed of for the primary purpose of maintaining management control by the existing management team. However, where the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer, the CEM will be upheld.</p>
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## PYRAMID STRUCTURES

**[Note: Our responses below are subject to the general notes set out in Exhibit A.]**

**1) Is this CEM available?**

Yes. Pyramid Structures (as described in Exhibit I to the Instructions) are not prohibited, subject to the restrictions discussed under item 3 below.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The Corporation Act does not contain any prohibition against an entity holding a controlling stake in another company that may hold a controlling stake in another company or companies. The Corporation Act does provide, however, that a subsidiary may not acquire shares of its parent company except in certain exceptional cases. Even in these exceptional cases, the shares held by the subsidiary are not permitted to have voting rights and must be disposed of within a reasonable time period. The test for determining whether a parent-subsidiary relationship exists between two companies is discussed under item 3 below.

Similarly, the Stock Exchange Rules of the TSE do not prohibit the holding of a controlling stake in a listed company by another company. However, there are certain share distribution thresholds that must be met in order for a listed company to maintain its listing on the TSE. These thresholds are discussed under item 3 below.<sup>115</sup>

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Implicitly authorized.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Implicitly authorized.

**3) If this CEM is available, is it subject to any restrictions?**

A subsidiary may not acquire shares of its parent company except in certain exceptional cases. Even in these exceptional cases, no voting rights are permitted for the shares acquired by the subsidiary, and the subsidiary must dispose of such shares within a reasonable time period. The Corporation Act employs a substantive test in determining whether a parent-subsidiary relationship exists between two companies. Instances where a company will be considered the “parent” of another are not limited to cases where it holds a majority of the voting rights in the subsidiary, but also extend to situations where the holding

<sup>115</sup> Our responses in this section on Pyramid Structures are based on the assumption, for purposes of the Stock Exchange Rules of the TSE and the SEL, that the controlling stake of a listed company is held by a non-listed company, a controlling stake in which is in turn held by another non-listed company.

company is considered to manage or control the financial and business policies of the subsidiary under certain criteria prescribed in the relevant ordinance.

Pyramid structures may also result in the delisting of shares in the controlled entity, pursuant to certain delisting criteria prescribed by the TSE. Shares may be delisted where, among other instances where delisting is warranted under TSE rules, the aggregate number of a company's treasury shares and the shares held by its ten major shareholders, directors and auditors exceeds 75% of the number of listed shares, and such proportion does not fall below 75% within one year.

In addition, although anti-trust regulation is not within the coverage of this survey, please note that shareholdings in a manner that substantially restricts competition are generally prohibited. There is, however, no general restriction of "pure holdings," i.e., establishing a company for the sole purpose of holding an interest in a subsidiary.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

For purposes of our response, we have assumed the decision to implement the CEM is to be made by a listed company (a "Company") in connection with the acquisition of a controlling stake therein by a non-listed company (a "Parent"). If a majority of shares of the Company is purchased by the Parent from a third party, then there would be nothing for the Company to decide. Please note that if a takeover bid is commenced in respect of shares of the Company, the Company will be required to express its views on such bid under the SEL, but we have assumed that such takeover bid related regulations are outside of the scope of this study.

On the other hand, if a controlling stake in the Company is acquired by the Parent by way of a new issuance of shares, such new issuance of shares may require certain corporate and internal approvals on the part of the Company. Unless the Company has sufficient authorized but unissued shares to cover the number of shares intended to be issued in favor of the Parent, the issuance of new shares may not be implemented without amending the Company's articles of incorporation. Amendments to a company's articles of incorporation must be approved by a supermajority vote at a general shareholders meeting (and by a supermajority vote of holders of each class of shares, if there is more than one class of shares and the amendments in question are likely to be harmful to the holders of such class). The quorum for such a shareholders meeting generally consists of shares representing more than half of the total voting rights, unless the articles of incorporation provide for a lower requirement (which may not, however, be reduced to shares representing less than one third of the total voting rights). A "supermajority" generally means at least two-thirds of the voting rights of the shareholders present, unless the articles of incorporation provide for a higher requirement.

Where the Company already has sufficient authorized but unissued shares to cover the number of shares intended to be issued in favor of the Parent, the actual issuance of new shares must be approved at a board of directors meeting by a majority vote unless a different voting requirement is provided in the Company's internal rules.

In the case of a Company with Committees, an executive officer may be authorized to make a decision to issue new shares.

Please note that any issuance of shares made on terms especially favorable to a third party requires the approval of a supermajority vote at a general shareholders meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, unless made on terms specially favorable to a third party (in which case, shareholder approval is required)	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Generally more than 1/2 of total voting rights.  <input checked="" type="checkbox"/> Majority: Generally not less than 2/3 of voting rights present.	Only where an amendment to the issuing company's articles of incorporation is necessary to increase the company's number of shares to accommodate the shares intended to be issued in favor of the parent company, or the issuance is made on terms specially favorable to a third party.

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <p>Extraordinary Report under SEL with respect to the change of major shareholders and on issuance of new shares, if applicable, by the Company.</p> <p>Timely disclosure under Timely Disclosure Rule on the change of major shareholders and on issuance of new shares, if applicable, by the Company.</p> <p>There are also certain disclosure requirements on the Parent – Report on Substantial Shareholding under SEL.</p> <p>Please also note that information such as the number of shares issued is required to be included in the Company's corporate registry.</p> <p>Applicable notification requirements under the anti-trust laws must also be complied with by an acquirer of shares.</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

The Company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These Reports must describe, among other things, the distribution of shares and the list of major shareholders.

Please note that parent companies, as defined in SEL and Timely Disclosure Rule, respectively, will be subject to certain ongoing disclosure requirements.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis  The Company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These Reports must describe, among other things, the distribution of shares and the list of major shareholders.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

If the pyramid structure is created by way of issuance of new shares by the Company, a shareholder may, under Article 210(i) of the Corporation Act, seek an injunction against the issuance of shares on the basis that such issuance constitutes or will constitute a violation of applicable laws or regulations, or of the company's articles of incorporation. An example of a share issuance that may be validly enjoined thereunder is the issuance of shares in favor of a third party on especially favorable conditions without shareholder approval.

Similarly, Article 210(ii) of the Corporation Act provides that a shareholder may seek an injunction against the issuance of shares where the issuance in question is implemented in a "significantly unfair manner" and is likely to be detrimental to the shareholders. The Corporation Act is not clear as to the circumstances under which a company will be deemed to be issuing shares in a "significantly unfair manner." However, there are several lower court precedents that have addressed this issue. In a recent case, a lower court granted an injunction to restrain an issuance of rights to a third party that could have substantially diluted the shareholding of a hostile acquirer. (Although strictly speaking, this case involves the issuance of rights to subscribe for shares and not the issuance of shares themselves, we believe that the reasoning applied in this case may be applied to an actual issuance of shares). The lower court issued the injunction on the following basis:

- Rights to subscribe for shares may be validly issued to a third party pursuant to a third party allotment even if such issuance may result in a reduction of the shareholding ratio of existing shareholders, as long as such issuance is based on the business judgment of the board of directors concerning matters under its general management authority and is necessary and reasonable from a practical business perspective.
- The issuance of rights to subscribe for shares to a third party may be validly enjoined where the continued exercise of control by current management is actually at risk and the issuance of subscription rights is made for the primary purpose of maintaining control by current management by reducing the shareholding ratio of the hostile acquirer, except in the limited cases where the company establishes that the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer.

Short form answer:

<input checked="" type="checkbox"/> (In respect of an issuance of new shares) The CEM may be enjoined where continued management control by existing management is actually at risk and the CEM is availed of for the primary purpose of maintaining management control by the existing management team. However, where the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer, the CEM will be upheld.
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### PRIORITY SHARES

[Note: Our responses below are subject to the general notes set out in Exhibit A.]

1) **Is this CEM available?**

- (a) Listed companies are prohibited from issuing shares that grant specific power to propose candidates to the board of directors or to directly appoint Board members.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Listed companies are explicitly prohibited from issuing shares that grant specific power to propose candidates to the board of directors or to directly appoint board members.
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- (b) The issuance of shares granting veto rights in decisions to be taken at the general shareholders' meeting is generally available, subject to the restrictions stated below.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	The issuance of shares granting veto rights in decisions to be taken at the general shareholders' meeting are explicitly authorized.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

- (a) Shares granting specific power to propose candidates to the board of directors or to directly appoint board members:

The Corporation Act explicitly prohibits the issuance of a class of shares with the power to appoint directors or statutory auditors at the class shareholders' meeting for such class of shares, unless the issuer provides in its articles of incorporation that board approval is required for the transfer of shares of all classes. Under the rules of the TSE, listed companies are generally not permitted to require board approval as a condition to the transfer of listed shares. Consequently, listed companies may not issue shares with the power to appoint directors or statutory auditors at the class shareholders' meeting for such class of shares.

The Corporation Act does not permit any other type of shares with a specific power of decision at the general meeting of shareholders (other than the veto rights discussed below).

Please note that any shareholder that has continuously owned 10% or more of the voting rights (or 300 voting rights or more) during the preceding six-month period may require that certain items (including but not limited to the appointment of directors) be included in the agenda of and proposed at the general meeting of shareholders. We have assumed, however, that a discussion of such a general right common to all shareholders is not relevant for purposes of this survey.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	The Corporation Act requires that shares with the power to appoint directors or statutory auditors at the class shareholders meeting for such class of shares may be issued only if the issuer's articles of incorporation provide that board approval is required for the transfer of shares of all classes. Because TSE rules prohibit listed companies from requiring board approval for transfer of listed shares, listed companies may not issue this type of shares.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	TSE rules do not generally permit an issuer to require board approval for transfer of listed shares.

(b) Shares granting veto right in decisions to be taken at the general meeting:

(i) Laws

The Corporation Act explicitly permits Japanese companies, by stipulating so in their articles of incorporation, to adopt a rule that certain matters may not be undertaken by the company without the affirmative resolution of the class shareholders meeting by the holders of a particular class of shares (“Veto Shares”), even if such matters may have already been approved at the general meeting of shareholders or at the board of directors meeting, as applicable. Such matters include the appointment and removal of directors. The issuance of Veto Shares will grant veto rights to the shareholders of such class of shares for the matter specified in the articles of incorporation.

(ii) Stock Exchange Rules<sup>116</sup>

The TSE will delist an issuer if it determines that the rights of such issuer's shareholders have been unreasonably restricted and such situation is not cured within six months. According to the press release by TSE dated January 24, 2006, an issuer's shares may be delisted where, among other instances where the TSE considers an issuer to have imposed “unreasonable restrictions” on shareholder rights, the issuer has issued Veto Shares that require a class shareholders meeting approval in order to appoint or remove the majority of the board members or in order to take other important actions.

The TSE initially proposed on November 22, 2005 that the issuance of any type of Veto Shares would constitute a delisting event. Subsequently, however, the TSE limited the scope of the rule against “unreasonable restrictions” as stated above.

<sup>116</sup> Our responses in this section on Priority Shares are based on the assumption, for purposes of the Stock Exchange Rules of the TSE and the SEL, that common shares of the company in question are listed but that a listing of the Priority Shares is not contemplated.

Consequently, a listed company that issues Veto Shares faces the risk of having its shares delisted, if such issuance is deemed by the TSE an “unreasonable restriction” on shareholder rights as discussed above.

(iii) Corporate Governance Codes

On May 27, 2005, the Ministry of Economy, Trade and Industry and the Ministry of Justice jointly issued a guideline for anti-takeover measures in order to secure and enhance the corporate value and the common interest of shareholders (the “Guideline”). The Guideline is not binding but is generally followed when Japanese companies are contemplating the introduction of a defensive measure.

The Guideline requires, among other things, the necessity and the reasonableness of the defensive measure paying attention to the principle of the equality of shareholders, the protection of proprietary rights, and the prevention of self-interested decisions by the management, and as example of such situation, explicitly mentions the issuance of Veto Shares. To be prudent, it is advisable, in issuing Priority Shares as a defensive measure, to see whether it conforms with the Guideline.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	The Corporation Act explicitly permits the issuance of a class of shares with a veto right.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	The TSE may possibly delist the issuer of shares with a veto power for appointing or removing the majority of the board members or for taking other important actions.
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	The Guideline requires the necessity and the reasonableness of the defensive measure (explicitly referring to issuance of shares with veto power) paying attention to the principle of the equality of shareholders, the protection of proprietary rights, and the prevention of self-interested decisions by the management.

**3) If this CEM is available, is it subject to any restrictions?**

Please refer to the discussion under item 2 above.

In addition, please note that although generally there is no ceiling on the maximum percentage of Priority Shares that a company may issue, under the Corporation Act, where a company has issued shares with restricted voting rights in such number as exceeds half of the company’s total issued shares, that company must take all actions necessary to reduce the number of shares with restricted voting rights to no more than half of all of the issued shares of the company.

Listed Companies are explicitly prohibited from issuing shares that grant specific power to propose candidates to the board of directors or to directly appoint Board members.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Unless the issuance of Priority Shares is authorized by the company’s current articles of incorporation, a company may not issue such Priority Shares without first amending its articles of incorporation.

Amendments to a company’s articles of incorporation must be approved by a supermajority vote at a general shareholders’ meeting (and by a supermajority vote of holders of each class of shares, if there is more than one class of shares and the amendments in question are likely to be harmful to the holders such class). The quorum for such a shareholders’ meeting generally consists of shares representing more than half of the total voting rights, unless the articles of incorporation provide for a lower requirement (which may not, however, be reduced to shares representing less than one-third of the total voting rights). A “supermajority” generally means at least two-thirds of the voting rights of the shareholders present, unless the articles of incorporation provide for a higher requirement.

Where the company’s articles of incorporation already authorise the issuance of Priority Shares, the actual issuance of new Priority Shares must be approved at a meeting of the board of directors by a majority vote, unless a different voting requirement is provided in the company’s internal rules.

In the case of a Company with a supervisory board, an executive officer may be authorized to issue new shares.

Please note that any issuance of shares made on terms especially favorable to a third party requires the approval of a supermajority vote at a general shareholders meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, unless the issuance is made on terms specially favorable to a third party (in which case, shareholder approval is required)	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Generally more than 1/2 of total voting right  <input checked="" type="checkbox"/> Majority: Generally not less than 2/3 of total voting rights present	<p>Only where an amendment to the issuer’s articles of incorporation is necessary to authorise the issuance of Priority Shares or the issuance is made on terms specially favorable to a third party.</p> <p>If the shareholders may authorise the board or the Chairman or GM to implement the CEM.</p>

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):

Extraordinary Report under the Securities and Exchange Law on amendments to the articles of incorporation and issuance of new shares.

Timely disclosure under the timely disclosure rule of the Tokyo Stock Exchange on amendments to the articles of incorporation and issuance of new shares.

Please also note that information such as certain terms of each class of shares and the number of shares issued of each class is required to be included in the Company's corporate registry.

5) **Are there ongoing disclosure requirements regarding such CEM?**

The Company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These Reports must describe, among other things, the number of issued shares of each class and the number of issued shares per certain categories. In addition, the articles of incorporation must be attached to the Securities Report.

Further, the company is required to prepare, and present to the shareholders, the business report for each fiscal year, which report must describe, among other things, the basic policy on the defensive measures.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis</p> <p>The Company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These Reports must describe, among other things, the number of issued shares of each class and the number of issued shares per certain categories such as non-voting shares and Restricted Voting Shares, and the major terms and conditions of the shares (usually the matters to be affirmed by the class shareholders meeting are listed in the report).</p> <p>Further, the company is required to prepare, and present to the shareholders, the business report for each fiscal year, which report must describe, among other things, the basic policy on the defensive measures. The business report shall be sent to the shareholders before the annual general meeting, and is also required to be attached to the Securities Reports.</p>
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Under Article 210(i) of the Corporation Act, a shareholder may seek an injunction against the issuance of shares on the basis that such issuance constitutes or will constitute a violation of applicable laws or regulations, or of the company's articles of incorporation. An example of a share issuance that may be

validly enjoined is the issuance of shares in favor of a third party on especially favorable conditions without shareholder approval.

Similarly, Article 210(ii) of the Corporation Act provides that a shareholder may seek an injunction against the issuance of shares where the issuance in question is implemented in a “significantly unfair manner” and is likely to be detrimental to the shareholders. The Corporation Act is not clear as to the circumstances under which a company will be deemed to be issuing shares in a “significantly unfair manner.” However, there are several lower court precedents that have addressed this issue. In a recent case, a lower court granted an injunction to restrain an issuance of rights to a third party that could have substantially diluted the shareholding of a hostile acquirer. (Although strictly speaking, this case involves the issuance of rights to subscribe for shares and not the issuance of shares themselves, we believe that the reasoning applied in this case may be applied to an actual issuance of shares). The lower court issued the injunction on the following basis:

- Rights to subscribe for shares may be validly issued to a third party pursuant to a third party allotment even if such issuance may result in a reduction of the shareholding ratio of existing shareholders, as long as such issuance is based on the business judgment of the board of directors concerning matters under its general management authority and is necessary and reasonable from a practical business perspective.
- The issuance of rights to subscribe for shares to a third party may be validly enjoined where the continued exercise of control by current management is actually at risk and the issuance of subscription rights is made for the primary purpose of maintaining control by current management by reducing the shareholding ratio of the hostile acquirer, except in the limited cases where the company establishes that the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer.

Short form answer:

☒ The CEM may be enjoined where continued management control by existing management is actually at risk and the CEM is availed of for the primary purpose of maintaining management control by the existing management team. However, where the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer, the CEM will be upheld.

## DEPOSITARY CERTIFICATES

[Note: Our responses below are subject to the general notes set out in Exhibit A.]

1) **Is this CEM available?**

We are not aware of any equivalent securities in Japan that precisely meet your description of “Depositary Certificates.”

Short form answer:

<input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> Other: We are not aware of any equivalent securities in Japan that precisely meet your description of “Depositary Certificates.”
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**Other questions not applicable.**

## VOTING RIGHT CEILINGS

**[Note: Our response below is subject to the general notes as described in Exhibit A.]**

**1) Is this CEM available?**

Unclear. Although the Corporation Act permits the issuance of a class of shares with restricted voting rights (“Restricted Voting Shares”), there is no prevailing view on whether Restricted Voting Shares may be used to create a Voting Right Ceiling or not. Please note that if the issuer is operating certain regulated businesses, such as broadcasting or aviation, there may be a voting right ceiling for certain types of shareholders by operation of law. In addition, shareholders in businesses such as banking or insurance may be subject to voting right ceilings, but we believe that these are not within the coverage of this survey.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation.	The Unclear Situation is one of the following types:  <input checked="" type="checkbox"/> Untested Situation.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

(i) Laws

The Corporation Act explicitly permits the issuance of Restricted Voting Shares. The issue is how the voting rights of the shares may be restricted. While there is no question that a company may issue shares with no voting rights at all (subject to certain restrictions: please see the section on “Non-voting Shares”), or shares with no voting rights on certain matters, it is not clear whether such company may issue shares with voting rights the exercise of which is conditional upon the number of voting rights the shareholder holds (i.e., a shareholder that holds more shares than a prescribed threshold is prohibited from exercising the voting rights corresponding to the number of shares in excess of such threshold) . Because the Corporation Act explicitly requires the equal treatment of shareholders by stating that a company shall treat its shareholders equally in accordance with the particulars and number of the shares held by them, there is a view that voting rights ceilings cannot be created by the use of Restricted Voting Shares. Thus, according to a prestigious scholar, voting right ceilings should not be permitted. On the other hand, a Ministry of Justice officer who was in charge of drafting the Corporation Act unofficially states that it is possible to create a class of shares for which voting rights may be exercisable only if the holding ratio of their shareholders to the total shares does not exceed a particular threshold (e.g., 20%). If a company tries to create such type of shares, then the company would need to amend the articles of incorporation so that the company may issue such class of stock but because of the unclear situation of the Voting Right Ceilings, this study does not discuss the regulations, restrictions and procedures related to the issuance thereof.

(ii) Stock Exchange Rules

The TSE will delist the issuer if it determines that the rights of shareholders are “unreasonably restricted”, and such situation is not cured within six months. As discussed above, it is likely that the TSE will determine that the issuance of such class of shares is an “unreasonable restriction.”

(iii) Corporate Governance Codes

The Ministry of Economy, Trade and Industry and the Ministry of Justice jointly issued a Guideline for anti-takeover measures in order to secure and enhance the corporate value and the common interest of shareholders. The Guideline is not binding but is generally followed when Japanese companies are contemplating the introduction of a defensive measure.

The Guideline requires, among other things, the necessity and the reasonableness of the defensive measure paying attention to the principle of the equality of shareholders, the protection of proprietary rights, and the prevention of self-interested decisions by the management.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input type="checkbox"/> Binding Rule <input type="checkbox"/> Non-Binding Rule	Unclear
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	The Stock Exchange is likely to delist the issuer of such class of shares.
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Binding Rule	The Guideline requires the necessity and the reasonableness of the defensive measure paying attention to the principle of the equality of shareholders, the protection of proprietary rights, and the prevention of self-interested decisions by the management.

**Other questions not applicable.**

## OWNERSHIP CEILINGS

[Note: Our response below is subject to the general notes as described in Exhibit A.]

1) **Is this CEM available?**

No.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Straightforward ownership ceilings are not permitted because a shareholder may freely transfer his/her shares. A similar effect could theoretically be achieved by requiring board approval for the transfer of shares, but such alternative is not a realistic one because the TSE will delist the shares if the listed company places restrictions on transfer of shares.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Straightforward ownership ceilings are not permitted, although restrictions on the transfer might be used as an alternative.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Restrictions on the transfer of shares will result in the delisting of the company's shares.

**Other questions not applicable.**

## SUPERMAJORITY PROVISIONS

**[Note: Our responses below are subject to the general notes set out in Exhibit A.]**

**1) Is this CEM available?**

In general, resolutions at a general meeting of shareholders must be adopted by a simple majority of votes cast by shareholders present at a general meeting at which a quorum is present (“General Resolutions”).

The Corporation Act requires that certain matters must be adopted by at least two-thirds of the votes of the shareholders present at a meeting at which a quorum is present (“Special Resolutions”).

A company may require a Special Resolution for the matters otherwise requiring General Resolution by stipulating so in the articles of incorporation. Further, a company may increase the minimum number of votes required for each resolution.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Under the Corporation Act, it is implicitly authorized for a company (i) to increase voting requirements above a simple majority or (ii) to require a Special Resolution for items otherwise requiring a General Resolution.

Also, the Corporation Act explicitly authorizes a company to increase the requirements for a Special Resolution.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
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**3) If this CEM is available, is it subject to any restrictions?**

There are no specific restrictions.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Under the Corporation Act, a company is required to provide in its articles of incorporation (i) any matters requiring a General Resolution of the general meeting of shareholders in addition to those matters stipulated in Corporation Act, (ii) matters requiring a Special Resolution of the general meeting of shareholders in addition to the matters stipulated in Corporation Act, and (iii) additional requirements for the General Resolution and Special Resolution. Thus, if a company intends to require a supermajority of votes on a certain item which is not a matter requiring a Special Resolution under the Corporation Act, the articles of incorporation of the company will need to be amended.

Amendments to a company’s articles of incorporation must be approved by a supermajority vote at a general shareholders’ meeting (and by a supermajority vote of holders of each class of shares, if there is more than one class of shares and the amendments in question are likely to be harmful to the holders of

such class). The quorum for such a shareholders' meeting generally consists of shares representing more than half of the total voting rights, unless the articles of incorporation provide for a lower requirement (which may not, however, be reduced to shares representing less than one-third of the total voting rights). A "supermajority" generally means at least two-thirds of the voting rights of the shareholders present, unless the articles of incorporation provide for a higher requirement.

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Generally more than 1/2 of total voting rights <input checked="" type="checkbox"/> Majority: Generally not less than 2/3 of total voting rights (These are the quorum and majority requirements to introduce "supermajority provisions in the articles of incorporation.)
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Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Extraordinary Report under the Securities and Exchange Law on amendments to the articles of incorporation. Timely disclosure under the Timely Disclosure Rule on amendments to the articles of incorporation.
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**5) Are there ongoing disclosure requirements regarding such CEM?**

The company is required to file Securities Reports for each fiscal year to which the articles of incorporation must be attached.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

There is no specific restriction after the implementation of the CEM, i.e., completion of the amendment of the articles of incorporation.

However, the shareholders can challenge the validity of the resolution by the general rule (not specific to this CEM), if there is a violation of law or articles of incorporation, or the participation of the interested shareholder has led to a significantly unfair conclusion, etc.

## GOLDEN SHARES

[Note: Our response below is subject to the general notes as described in Exhibit A.]

1) **Is this CEM available?**

Yes. Golden Shares are generally available, subject to the restrictions stated below.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Shares granting veto rights in decisions to be taken at the general meeting are explicitly authorized.
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

(i) Laws

The Corporation Act explicitly permits Japanese companies, by stipulating so in their articles of incorporation, to adopt a rule that certain matters may not be undertaken by the company without the affirmative resolution of the class shareholders meeting by the holders of a particular class of shares (“Veto Shares”), even if such matters may have already been approved at the general meeting of shareholders or at the board of directors meeting, as applicable. Such matters include the appointment and removal of directors. The issuance of Veto Shares will grant veto rights to the shareholders of such class of shares for the matter specified in the articles of incorporation.

(ii) Stock Exchange Rules<sup>117</sup>

The TSE will delist an issuer if it determines that the rights of such issuer’s shareholders have been unreasonably restricted and such situation is not cured within six months. According to the press release by TSE dated January 24, 2006, an issuer’s shares may be delisted where, among other instances where the TSE considers an issuer to have imposed “unreasonable restrictions” on shareholder rights, the issuer has issued Veto Shares that require a class shareholders’ meeting approval in order to appoint or remove the majority of the board members or in order to take other important actions.

The TSE initially proposed on November 22, 2005, that the issuance of any type of Veto Shares would constitute a delisting event. Subsequently, however, the TSE limited the scope of the rule against “unreasonable restrictions” as stated above.

Consequently, a listed company that issues Veto Shares faces the risk of having its shares delisted, if such issuance is deemed by the TSE an “unreasonable restriction” on shareholder rights as discussed above.

<sup>117</sup> Our responses in this section on Priority Shares are based on the assumption, for purposes of the Stock Exchange Rules of the TSE and the SEL, that common shares of the company in question are listed but that a listing of the Priority Shares is not contemplated.

Notwithstanding the foregoing, the TSE may allow a listed company to maintain its listed status if the TSE determines that there is minimal risk to the interests of investors given the scope of activities of the issuer, the purpose of issuing the Veto Shares, the nature of the subscriber, the details of the granted power and other terms and conditions of the Veto Shares. The TSE first proposed to exclude any cases where the government owns the Veto Shares in accordance with certain national policy (proposal announced on November 22, 2005), and seemed to once explicitly allow the Golden Shares, but later took back this language.

We are aware of one precedent for the issuance of Golden Shares in this jurisdiction. On November 17, 2004, INPEX Corporation, a company listed on the TSE, issued Veto Shares to the Japanese government (at that time through Japan National Oil Corporation). These Veto Shares required the approval of its class shareholders meeting for the appointment or removal of the directors (only if there is a major shareholder other than the government who owns more than 20% of the voting right), disposal of material assets, amendment of the articles of incorporation, mergers, capital reduction and dissolution.

(iii) Corporate Governance Codes

On May 27, 2005, the Ministry of Economy, Trade and Industry and the Ministry of Justice jointly issued a guideline for anti-takeover measures in order to secure and enhance the corporate value and the common interest of shareholders (the “Guideline”). The Guideline is not binding but is generally followed when Japanese companies are contemplating the introduction of a defensive measure.

The Guideline requires, among other things, the necessity and the reasonableness of the defensive measure paying attention to the principle of the equality of shareholders, the protection of proprietary rights, and the prevention of self-interested decisions by the management, and as example of such situation, explicitly mentions the issuance of Veto Shares. To be prudent, it is advisable, in issuing Priority Shares as a defensive measure, to see whether it conforms with the Guideline.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	The Corporation Act explicitly permits the issuance of a class of shares with a veto right.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	The Stock Exchange may possibly delist the issuer of shares with a veto power for appointing or removing the majority of the board members or for taking other important actions. The Stock Exchange, however, may allow a listed company to continue its shares to be listed if the Stock Exchange determines that there is minimal risk to the interests of investors given the scope of activities of the issuer, the purpose of issuing the Veto Shares, the nature of the subscriber, the details of the granted power and other terms and conditions thereof.

<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	The Guideline requires the necessity and the reasonableness of the defensive measure (explicitly referring to issuance of shares with veto power) paying attention to the principle of the equality of shareholders, the protection of proprietary rights, and the prevention of self-interested decisions by the management.
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**3) If this CEM is available, is it subject to any restrictions?**

Please refer to the discussion under item 2 above.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Under the Corporation Act, a class of shares is entitled to veto power only if the company’s articles of incorporation expressly grant such power and specify the items covered thereby. Consequently, unless the issuance of Veto Shares is already authorized by the company’s current articles of incorporation, a company may not issue Veto Shares without first amending its articles of incorporation.

Amendments to a company’s articles of incorporation must be approved by a supermajority vote at a general shareholders meeting (and by a supermajority vote of holders of each class of shares, if there is more than one class of shares and the amendments in question are likely to be harmful to the holders of such class). The quorum for such a shareholders meeting generally consists of shares representing more than half of the voting rights, unless the articles of incorporation provide for a lower requirement (which may not, however, be reduced to shares representing less than one-third of the total voting rights). A “supermajority” generally means at least two-thirds of the voting rights of the shareholders present, unless the articles of incorporation provide for a higher requirement.

Where the company’s articles of incorporation already authorize the issuance of Veto Shares, the actual issuance of new Veto Shares must be approved at the board of directors’ meeting by a majority vote, unless a different voting requirement is provided in the company’s internal rules.

In the case of a Company with a supervisory board, an executive officer may be authorized to make a decision to issue new Veto Shares.

Please note that any issuance of shares made on terms especially favorable to a third party requires the approval of a supermajority vote at a general shareholders meeting.

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, unless issuance is made on terms specially favorable to a third party (in which case, shareholder approval is required)	
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<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Generally more than 1/2 of total voting rights.  <input checked="" type="checkbox"/> Majority: Generally not less than 2/3 of total voting rights present.	Only where an amendment to the issuing company's articles of incorporation is necessary to authorise the issuance of Veto Shares, or the issuance is made on terms specially favorable to a third party.
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Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <p>Extraordinary Report under the SEL on amendments to the articles of incorporation and issuance of new shares. It needs to disclose the class of shares to be issued, the unit price and the aggregate price of issuance, the method of issuance, the name, address and business of the subscriber and the relationship of the issuer and the subscriber. The minutes of the board meeting and/or the GMS resolving the issuance (details of the terms and conditions of the issuance are described) also need to be attached to such a report.</p> <p>Timely disclosure under the timely disclosure rule of the TSE on amendments to the articles of incorporation and issuance of new shares.</p> <p>Please note that information such as certain terms of each class of shares and the number of shares issued of each class is required to be included in the company's corporate registry.</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

The Company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These Reports must describe, among other things, the number of issued shares of each class and the number of issued shares per certain categories. Also, the articles of incorporation must be attached to the Securities Report.

Further, the company is required to prepare, and present to the shareholders, the business report for each fiscal year, which report must describe, among other things, the company's basic policy on the defensive measures.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis.  The Company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These Reports must describe, among other things, the number of issued shares of each class and the number of issued shares per certain categories such as non-voting shares and Restricted Voting Shares, and the major terms and conditions of the shares (usually the matters to be affirmed by the class shareholders meeting are listed in the report).  Further, the company is required to prepare, and present to the shareholders, the business
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	report for each fiscal year, which report must describe, among other things, the company's basic policy on the defensive measures.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Under Article 210(i) of the Corporation Act, a shareholder may seek an injunction against the issuance of shares on the basis that such issuance constitutes or will constitute a violation of applicable laws or regulations, or of the company's articles of incorporation. An example of a share issuance that may be validly enjoined is the issuance of shares to a third party on especially favorable conditions made without shareholder approval.

Similarly, Article 210(ii) of the Corporation Act provides that a shareholder may seek an injunction against the issuance of shares where the issuance in question is implemented in a "significantly unfair manner" and is likely to be detrimental to shareholders. The Corporation Act is not clear as to the circumstances under which a company will be deemed to be issuing shares in a "significantly unfair manner." However, there are several lower court precedents that have addressed the issue. In a recent case, a lower court granted an injunction to stop an issuance of rights to a third party that could have diluted the shareholding of a hostile acquirer. (Although strictly speaking, this case involves the issuance of rights to subscribe for shares and not the issuance of shares themselves, we believe that the reasoning applied in this case may be applied to an actual issuance of shares). The lower court issued the injunction on the following basis:

- Rights to subscribe for shares may be validly issued to a third party pursuant to a third-party allotment even if such issuance may result in a reduction of the shareholding ratio of existing shareholders, so long as such issuance is based on the business judgment of the board of directors concerning matters under its general management authority and is necessary and reasonable from a practical business perspective.
- The issuance of rights to subscribe for shares to a third party may be validly enjoined where the continued exercise of control by current management is actually at risk and the issuance of subscription rights is made for the primary purpose of maintaining control by current management by reducing the shareholding ratio of the hostile acquirer, except in the limited cases where the company establishes that the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer.

Short form answer:

<p>☒ The decision may be enjoined where continued management control by existing management is actually at risk and the CEM is availed of for the primary purpose of maintaining management control by the existing management team. However, where the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer, the CEM will be upheld.</p>
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**PARTNERSHIPS LIMITED BY SHARES**

**[Note: Our responses below are subject to the general notes set out in Exhibit A.]**

**1) Is this CEM available?**

Under the Corporation Act, there exists a type of corporation called an incorporated limited partnership (*goshi kaisha*), with regard to which there must be two types of members – members who will bear unlimited liability and members who will bear only limited liability to the company’s creditors. This type of corporation appears to be similar to “Partnerships Limited by Shares” as described in Exhibit 1 to the Instructions.

However, an equity interest in an incorporated limited partnership (*goshi kaisha*) is not a security which is permitted to be listed on the TSE. Therefore, this type of CEM is not available for a listed company.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Under the current TSE regulations, an equity interest in an incorporated limited partnership (*goshi gaisha*) is not a security that is permitted to be listed on the TSE.

Short form answer:

<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule
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**Other questions not applicable.**

## CROSS-SHAREHOLDINGS

[Note: Our responses below are subject to the general notes set out in Exhibit A.]

1) **Is this CEM available?**

Yes. Cross-shareholdings (as described in Exhibit I to the Instructions) are not prohibited, subject to the restrictions stated below. In Japan, cross-shareholdings among companies were popular for decades until the end of the 1980s. In the 1990s, the number of cross-shareholdings drastically decreased. Recently, however, faced with the threat of hostile takeovers, some Japanese companies, especially industrial companies (among others, those in the steel industry and paper industry), are reviving cross-shareholding. The percentage of shares subject to cross-shareholding is not as high as 10%, and in major cases is only 1% to 5%.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The Corporation Act does not contain any general prohibition on cross-shareholdings. The Corporation Act does provide, however, that a subsidiary may not acquire shares of its parent company except in certain exceptional cases. Even in these exceptional cases, the shares held by the subsidiary are not permitted to have voting rights and must be disposed of within a reasonable time period. The test for determining whether a parent-subsidary relationship exists between two companies is discussed under item 3 below.

In addition, please note that where 25% or more of voting rights of a company (in this paragraph, “Company A”) is held by another company (in this paragraph, “Company B”), Company A is not entitled to exercise any voting rights in respect of shares of Company B held by Company A. This rule is discussed in more detail under item 3 below.

The Stock Exchange Rules of the TSE do not contain any general prohibition on (i) the holding of shares in a listed company by another company nor (ii) the holding of shares of another company by a listed company. However, in respect of the holding of shares in a listed company by another company, there are certain share distribution thresholds that must be met in order for a listed company to maintain its listing on the TSE. These thresholds are discussed under item 3 below.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Implicitly authorized.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Implicitly authorized.

**3) If this CEM is available, is it subject to any restrictions?**

A subsidiary may not acquire shares of its parent company except in certain exceptional cases. Examples of such exceptional cases are: (a) when the acquisition is a result of a merger or corporate split, (b) when the acquisition is without any consideration, (c) when the acquisition is a result of a distribution of dividends in kind, etc. Even in these exceptional cases, no voting rights are permitted for the shares acquired by the subsidiary, and the subsidiary must dispose of such shares within a reasonable time period. The Corporation Act employs a substantive test in determining whether a parent-subsidary relationship exists between two companies. Instances where a company will be considered the “parent” of another are not limited to cases where it holds a majority of the voting rights in the subsidiary, but also extend to situations where the holding company is considered to manage to control the financial and business policies of the subsidiary under certain criteria prescribed in the relevant ordinance.

In addition, where 25% or more of voting rights of a company (in this paragraph, “Company A”) is held by another company (in this paragraph, “Company B”), Company A is not entitled to exercise any voting rights in respect of shares of Company B held by Company A. Similarly, where 25% or more of voting rights of Company A is held by a company (in this paragraph, “Company C”) together with its subsidiary or held only by Company C’s subsidiary, Company A is not entitled to exercise any voting rights in respect of shares of Company C held by Company A.

Cross-shareholdings may also result in the delisting of shares in the listed company, pursuant to certain delisting criteria prescribed by the TSE. Shares may be delisted where, among other instances where delisting is warranted under TSE rules, the aggregate number of a company’s treasury shares and the shares held by its ten major shareholders, directors and auditors exceeds 75% of the number of listed shares, and such proportion does not fall below 75% within one year.

In addition, although anti-trust regulation is not within the coverage of this survey, please note that shareholdings in a manner that substantially restricts competition are generally prohibited.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

Please note that the discussion under this section is limited to decisions required to be made by a listed company (in this paragraph, “Company A”), in connection with (i) the acquisition of shares of another company (in this paragraph, “Company B”) and (ii) the acquisition of Company A’s shares by Company B.

**(I) Case I: Acquisition of Company B’s shares by Company A**

Under the Corporation Act, where an acquisition of Company B’s shares by Company A will constitute an “acquisition of important assets,” that acquisition must be approved at a meeting of Company A’s board of directors meeting by a majority vote (unless a different voting requirement is provided in Company A’s internal rules). If required by Company A’s articles of incorporation such acquisition may also need to be approved at a shareholders’ meeting of Company A.

If Company A is a Company with Committees, an executive officer may be authorized to make a decision to acquire shares in Company B even if the acquisition of Company B shares by Company A is classifiable as an “acquisition of important assets.”

If Company B is a listed company, an acquisition of Company B shares by Company A may be subject to takeover bid related regulations in certain circumstances, but we assume that such takeover bid related regulations are not expected to be covered here.

(II) Case II: Acquisition of Company A’s shares by Company B

If shares of Company A are purchased by Company B from a third party, then there would be nothing for Company A to decide. Please note that if a takeover bid is commenced in respect of shares of Company A, Company A will be required to express its views on such bid under the SEL, but we assume that such takeover bid related regulations are not expected to be covered here.

On the other hand, if the cross-shareholding structure is created by way of the issuance of new shares in Company A in favor of Company B, such new issuance of shares may require certain corporate and internal approvals on the part of Company A. Unless Company A has sufficient authorized but unissued shares to cover the number of shares intended to be issued in favor of Company B, the issuance of new shares may not be implemented without amending Company B’s articles of incorporation. Amendments to Company B’s articles of incorporation must be approved by a supermajority vote at a general shareholders meeting (and by a supermajority vote of holders of each class of shares, if there is more than one class of shares and the amendments in question are likely to be harmful to the holders of such class). The quorum for such a shareholders meeting generally consists of shares representing more than half of the total voting rights, unless the articles of incorporation provide for a lower requirement (which may not, however, be reduced to shares representing less than one-third of the total voting rights). A “supermajority” generally means at least two-thirds of the voting rights of the shareholders present, unless the articles of incorporation provide for a higher requirement.

Where Company A already has sufficient authorized but unissued shares to cover the number of shares intended to be issued in favor of Company B, the actual issuance of new shares must be approved at a board of directors meeting by a majority vote unless a different voting requirement is provided in Company A’s internal rules. If Company A is a Company with Committees, an executive officer may be authorized to make a decision to issue new shares in favor of Company B.

Please note that any issuance of shares made on terms especially favorable to a third-party requires the approval of a supermajority vote at a general shareholders meeting.

**Case I: Acquisition of Company B’s shares by Company A**

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision.	Board approval is required only to the extent the acquisition of Company B’s shares by Company A constitutes an “acquisition of important assets” for Company A.
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**Specific conditions (in respect of Company A):**

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Extraordinary Report under SEL with respect to the change of certain subsidiary, if applicable.</p> <p>Timely disclosure under Timely Disclosure Rule on the change of subsidiary, if applicable.</p> <p>Certain disclosure requirements – Report on Substantial Shareholding under SEL, if Company B is also a listed company.</p> <p>Applicable notification requirements under the Anti-trust law must also be complied with by Company A.</p>
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**Case II: Acquisition of Company A’s shares by Company B**

**Who decides:**

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, unless made on terms specially favorable to a third party (in which case, shareholder approval is required)	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Generally more than 1/2 of total voting rights <input checked="" type="checkbox"/> Majority: Generally not less than 2/3 of voting rights present	Only where an amendment to the issuing company’s articles of incorporation is necessary to increase the company’s number of shares to accommodate the shares intended to be issued in favor of the parent company, or the issuance is made on terms specially favorable to a third party.

**Specific conditions (in respect of Company A):**

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Extraordinary Report under SEL with respect to the change of major shareholders and on issuance of new shares, if applicable.</p> <p>Timely disclosure under Timely Disclosure Rule on the change of major shareholders and on issuance of new shares, if applicable.</p> <p>Please also note that information such as the number of shares issued is required to be included in the company’s corporate registry.</p>
--

5) **Are there ongoing disclosure requirements regarding such CEM?**

Listed companies are required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These Reports must describe, among other things, the distribution of shares, the list of major shareholders and restriction of voting rights (if any) caused by cross-shareholdings as described above.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis  Listed companies are required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year. These Reports must describe, among other things, the distribution of shares, the list of major shareholders and restriction of voting rights (if any) caused by cross-shareholdings as described above.
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6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

If the cross-shareholdings are created by way of issuance of new shares by a company, a shareholder of the issuing company may, under Article 210(i) of the Corporation Act, seek an injunction against the issuance of shares on the basis that such issuance constitutes or will constitute a violation of applicable laws or regulations, or of the company's articles of incorporation. An example of a share issuance that may be validly enjoined thereunder is the issuance of shares in favor of a third party on especially favorable conditions without shareholder approval.

Similarly, Article 210(ii) of the Corporation Act provides that a shareholder may seek an injunction against the issuance of shares where the issuance in question is implemented in a "significantly unfair manner" and is likely to be detrimental to the shareholders. The Corporation Act is not clear as to the circumstances under which a company will be deemed to be issuing shares in a "significantly unfair manner." However, there are several lower court precedents that have addressed this issue. In a recent case, a lower court granted an injunction to restrain an issuance of rights to a third party that could have substantially diluted the shareholding of a hostile acquirer. (Although strictly speaking, this case involves the issuance of rights to subscribe for shares and not the issuance of shares themselves, we believe that the reasoning applied in this case may be applied to an actual issuance of shares.). The lower court issued the injunction on the following basis:

- Rights to subscribe for shares may be validly issued to a third party pursuant to a third party allotment even if such issuance may result in a reduction of the shareholding ratio of existing shareholders, as long as such issuance is based on the business judgment of the board of directors concerning matters under its general management authority and is necessary and reasonable from a practical business perspective.
- The issuance of rights to subscribe for shares to a third party may be validly enjoined where the continued exercise of control by current management is actually at risk and the issuance of subscription rights is made for the primary purpose of maintaining control by current management by reducing the shareholding ratio of the hostile acquirer, except in the limited cases where the company establishes that the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer.

Short form answer:

(In respect of an issuance of new shares)

The CEM may be enjoined where continued management control by existing management is actually at risk and the CEM is availed of for the primary purpose of maintaining management control by the existing management team. However, where the hostile acquirer does not contemplate reasonable management of the company in good faith and there exist circumstances indicating that the company will suffer irreparable harm as a result of the acquisition of management control by the hostile acquirer, the CEM will be upheld.

## SHAREHOLDERS' AGREEMENTS

[Note: Our responses below are subject to the general notes set out in Exhibit A.]

### 1) Is this CEM available?

Yes<sup>118</sup>. Under general principles of freedom of contract, shareholders of a listed company may enter into a shareholders' agreement. Under the Corporation Act, there exists no general prohibition on agreements among shareholders.

Please note that in practice, a shareholders' agreement is more often used in a situation involving a non-listed company. This is partly because Japanese Stock Exchanges tend to take the position that a shareholders' agreement should be terminated at the time of listing.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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### 2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

As stated above, under general principles of freedom of contract, shareholders of a listed company may enter into a shareholders' agreement. Under the Corporation Act, there exists no general prohibition on agreements among shareholders.

The relevant Stock Exchanges tend to take the position that a shareholders' agreement should be terminated at the time of listing.

Although we have not addressed them here, there are various court precedents in which certain issues are raised in respect of specific provisions in a relevant shareholders' agreement. A recent court decision by the Tokyo district court (2005) thus examined whether there was a breach of a representations and warranties provision of a shareholders' agreement. The court ruled that a shareholders' agreement is valid.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Implicitly authorized.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Non-Binding Rule	At the time of listing, the relevant Stock Exchanges tend to take the position that a shareholders' agreement should be terminated.

### 3) If this CEM is available, is it subject to any restrictions?

Depending on the terms and conditions contained in a shareholders' agreement, there may be certain provisions that are considered to be invalid or not enforceable, for example, on the basis that the relevant

<sup>118</sup> Please note that for purposes of this section on shareholders' agreements, we have assumed that a shareholders' agreement will be entered into among two or more shareholders of a listed company, and that the listed company itself will not be a party to the agreement.

provisions are in violation of mandatory rules or in conflict with certain provisions of the Corporation Act. Please also note that even if one of the parties is in breach of a shareholders' agreement (for example, the voting rights were exercised in violation of the shareholders' agreement), the relevant action of the issuer (the company) would not be affected (e.g., considered void) merely because of such breach.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

We have assumed that this question is raised in respect of a decision to be made by a listed company (a "Company"), whose shareholders enter into a shareholders' agreement. As stated in note 9 above, we have further assumed that the Company is not a party to the agreement, and thus there would be nothing for the Company to decide.

Short form answer: Shareholders who are party to the agreement.

Specific conditions: None.

**5) Are there ongoing disclosure requirements regarding such CEM?**

A listed company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year, which Reports must describe, among other things, the risks regarding the business of the company. The company may be required to describe a shareholders' agreement known to the company in such Reports, depending on the contents and nature of such agreement.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis  A listed company is required to file Securities Reports for each fiscal year and Semiannual Reports for the first half of each fiscal year, which Reports must describe, among other things, the risks regarding the business of the company. The company may be required to described the shareholders' agreement known to the company in such Reports, depending on the contents and nature of such agreement.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

We are not aware of any specific method to challenge a shareholders' agreement after it is executed.

**B – GENERAL BACKGROUND QUESTIONS**

**1) What are the rules for Board elections? How many corporate votes are required to appoint or remove corporate directors?**

The directors of a company shall be appointed and may be dismissed by a resolution of the general meeting of shareholders. The resolution of the general meeting of shareholders to appoint or dismiss the director must be adopted by a majority vote of the shareholders present who hold 1/2 or more of the voting rights of the shareholders who are entitled to vote, unless otherwise stipulated in the articles of incorporation. The Corporation Act permits other requirements for a quorum to be provided in the articles of incorporation, but such quorum may not be lower than 1/3 of the votes of all shareholders.

The company may increase the number of votes required for such a resolution. However, it is not very common for a listed company to increase the number of votes required for the dismissal of directors.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for Board election: 1/2 (which may be increased by the articles of incorporation). For Board removal: 1/2 (which may be increased by the articles of incorporation). Quorum required for shareholders' meetings for the election or removal of Board members: 1/2 (which may be reduced by the articles of incorporation to not less than one third).</p>	<p><input checked="" type="checkbox"/> Board members may always be removed without cause and/or without notice and/or without indemnity.</p> <p>If the board member is removed by the shareholders meeting without cause, the company shall indemnify such board member. The board member can be removed without cause and without notice subject to the foregoing.</p> <p>In the case of a classified board, directors cannot be removed by the general shareholders meeting, unless otherwise stated in the articles of incorporation or unless there is no shareholder that can exercise the voting right at the class shareholders' meeting that has elected such director. In the case of a director elected by use of cumulative voting, supermajority (2/3) is required even if the articles of incorporation are silent on the issue.</p>
	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened. Shareholders having 3% or more of the total voting rights of all shareholders continuously for at least the preceding 6 months may demand the convocation of a shareholders' meeting by describing the agenda of the meeting, and the reason for such convocation.</p> <p>Shareholders having more than 1% of the total voting rights of all shareholders for the preceding 6 months have the right to add items to the agenda.</p>

	<input checked="" type="checkbox"/> Proxy solicitation is authorized. Under the Corporation Act, each shareholder may demand to see or receive a copy of the register of shareholders which describes the names and addresses of shareholders. Therefore, if the person soliciting the proxies is a shareholder of the company, the person has access to the names and addresses of shareholders.
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**2) What shareholders' decisions require a vote from more than a simple majority?**

Under the Corporation Act, the general rule is that resolutions at a general meeting of shareholders must be adopted by a simple majority of votes cast by shareholders present at a general meeting at which a quorum is present ("General Resolutions"). Such quorum could be provided in the articles of incorporation, but may not be lower than one-third of the votes of all shareholders.

However, the Corporation Act requires that certain matters must be adopted by at least two-thirds of the votes of the shareholders present at a meeting at which a quorum is present ("Special Resolutions"). Such quorum could be provided in the articles of incorporation, but may not be lower than one-third of the votes of all shareholders.

Matters that generally require a Special Resolution under the Corporation Act are as follows (please note that this list is not intended to be exhaustive, but to highlight matters that are often relevant to Japanese listed companies):

- (i) Acquisition of treasury shares from specified shareholders upon an agreement
- (ii) Consolidation of shares (*kabushiki-heigou*)
- (iii) Dismissal of auditors
- (iv) Partial exemption of directors and auditors, etc. from liability to the company
- (v) Reduction of amount of capital (except in certain cases)
- (vi) Determination of the distribution of surpluses in kind without giving rights to request for the distribution by cash
- (vii) Amendment of the articles of incorporation
- (viii) Transfer of all or material part of business of the company\*
- (ix) Acquisition or lease of all of the business of any other company
- (x) Post-incorporation acquisition (*jigo-setsuritsu*)
- (xi) Dissolution of the company
- (xii) Reorganization
- (xiii) Merger\*
- (xiv) Corporate division (*kaisha-bunkatsu*)\*
- (xv) Share exchange whereby one party becomes another's wholly owned subsidiary (*kabushiki-kokan*)\*
- (xvi) Transfer of shares to incorporate a parent company having whole ownership (*kabushiki-iten*)

Short form answer:

<p><input checked="" type="checkbox"/> All changes in bylaws / articles of incorporation</p> <p><input checked="" type="checkbox"/> Issuance of shares / bonds with share subscription rights / other financial instruments with share subscription rights where the price of such issuance of the shares or the share subscription rights are specially favorable to the third party to whom the company allots the shares or share subscription rights.</p> <p><input checked="" type="checkbox"/> Mergers / acquisitions of the company by a third party where such acquisitions constitute a statutory share exchange (<i>kabushiki kokan</i>) or a statutory share transfer (<i>kabushiki iten</i>).</p>	<p><input checked="" type="checkbox"/> Change of corporate purpose. Change of corporate purpose constitutes a change of articles of incorporation.</p> <p><input checked="" type="checkbox"/> Sale of all or substantially all the assets provided that such sale constitutes a business transfer.</p>
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\* There are exceptions for certain small-scale transactions where no resolution by the general meeting of shareholders are required.

**Exhibit A**General Notes and Glossary

## 1. General Notes

- Special regulations (*e.g.* banking law, broadcasting law, aviation law, anti-trust law etc.) are not covered in our responses. For example, there exist certain ownership ceilings under special regulations such as broadcasting law and aviation law, but we have assumed that we are not requested to cover regulations and restrictions under such special regulations.
- Stock Exchange Rules will vary depending on the relevant Stock Exchange. In our responses, reference is made only to the rules for the first section of the Tokyo Stock Exchange, which rules are generally regarded as equivalent to or more strict than rules of other exchanges.
- In Japan, a unitary structure (*i.e.*, board of directors only) seems to be the most common structure for listed companies. However, there also exist that have adopted a statutory authorized committee structure (*iinkai-setchi-kaisha*) (such company is called a “company with committees”). In case of a Company with Committees, the board of directors may delegate substantial management authority to executive officers. In our response, we have assumed that the company in question will be a company that has a board of directors only. Where relevant, we will refer to a Company with Committees as well.

## 2. Glossary

- “Corporation Act” means the Corporation Act (Law No. 86, 2005).
- “Instructions” means the documents entitled “Regulatory Framework for Control-Enhancing Mechanisms” that you provided to us.
- “SEL” means the Securities and Exchange Law (Law No. 25, 1948).
- “Timely Disclosure Rule” means the timely disclosure rules for the first section of the TSE.
- “TSE” means the Tokyo Stock Exchange.



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:  
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

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**PROPORTIONALITY BETWEEN OWNERSHIP  
AND CONTROL IN EU LISTED COMPANIES:  
COMPARATIVE LEGAL STUDY**

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**MULTIPLE VOTING RIGHTS SHARES****1) Is this CEM available?**

No, this CEM is not available.

Corporations which are both incorporated and listed in Australia, are regulated by the Corporations Act 2001 (Corporations Act) and the Australian Stock Exchange (ASX) Listing Rules.

An Australian listed corporation is required to have a constitution under the ASX Listing Rules. The ASX Listing Rules are given the force of law under sections 793C and 1101B of the Corporations Act. (Note that the Corporations Act 2001 is effectively a “Federal” rule, as a result of a reference by each state of its powers relating to corporations to the Commonwealth of Australia. The ASX Listing Rules are also “Federal” rules).

The Corporations Act adopts a presumption of voting equality under section 250E (one share one vote); however, it is possible for a company to depart from this by, for example, providing for different classes of shareholders in its constitution. A company’s constitution can be altered by special resolution (a majority of 75%) of shareholders. However, stricter rules apply in relation to voting equality for listed corporations as a result of the operation of the ASX Listing Rules.

The ASX Listing Rules provide that an entity may have only one class of ordinary shares, unless the ASX approves otherwise, or the additional class is of partly paid securities which, if fully paid, would be in the same class as the ordinary securities. An entity may also issue preference shares which, in the case of an entity listed on the ASX, have limited voting rights.

On a resolution decided by a show of hands, each holder of an ordinary security (or preference security who has a right to vote) must have only one vote. On a poll, each holder of an ordinary security (or preference security who has a right to vote) has one vote per fully paid security and a fraction of a vote for each partly paid security. As such, listed entities incorporated in Australia cannot have multiple voting rights shares.

An Australian listed and incorporated company sought to introduce multiple voting shares in 1993. In this instance, the company put a proposal to the ASX for the introduction of a new class of shares bearing 25 votes per share by pro rata entitlement. This proposal was widely condemned from a policy perspective as an entrenchment and anti-takeover device, which would erode general shareholder rights. In light of this criticism, the company withdrew its proposal.

In December 1993, the Federal Attorney General established an expert panel to examine the ability of listed companies to issue super-voting shares. The expert panel recommended that the ASX Listing Rules should continue to apply the “one share one vote” principle. The ASX agreed with this recommendation.

Please note: Our response to multiple voting rights shares has indicated a ‘no’ to this CEM being available, rather than stating it as a ‘yes and subject to ASX approval’ (as is the case for non-voting shares). This distinction between multiple voting rights shares and non-voting shares was made based on the fact that this CEM has already been sought to be introduced by a listed Australian company and has been rejected by both the expert panel of the Federal Attorney General and the ASX.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Whilst the Corporations Act provides that a company's constitution may govern the terms upon which shares are issued, companies which are incorporated and listed in Australia are also governed by the ASX Listing Rules. These Listing Rules preclude a holder of ordinary or preference shares having more than one vote per share.

Short form answer:

<input checked="" type="checkbox"/> Laws Corporations Act 2001	<input checked="" type="checkbox"/> Binding Rule	<p>A company may determine the terms on which its shares are issued and the rights or restrictions attaching to the shares in accordance with the company's constitution (sections 124, 125, and 254B of the Act).</p> <p>A company's power to issue shares includes preference shares, provided the rights attached to the shares relate to certain matters, and such rights are set out in the company's constitution, or have been approved by a special resolution of shareholders (sections 254A and 254B).</p> <p>However, the freedom of a company to determine its own rules for the issue of shares is subject to the restrictions set out in the ASX Listing Rules below.</p>
<input checked="" type="checkbox"/> Stock Exchange Rules ASX Listing Rules	<input checked="" type="checkbox"/> Binding Rule	<p>An entity may have only one class of ordinary securities unless the following applies:</p> <ul style="list-style-type: none"> <li>• ASX approves the terms of an additional class; or</li> <li>• The additional class is of a partly paid security which, if fully paid, would be in the same class as the ordinary securities (rule 6.2).</li> </ul> <p>On a resolution to be decided by a show of hands, each holder of an ordinary security and each holder of a preference security who has a right to vote, must be entitled to one vote (rule 6.8).</p> <p>On a resolution to be decided on a poll, each holder of an ordinary security, and each holder of a preference security who has a right to vote, must be entitled to one vote for each fully paid security, and a fraction of a vote for each partly paid security (rule 6.9).</p> <p>This rule 6.9 does not apply to securities of a listed entity issued (in accordance with the Listing Rules) before the first general meeting of the entity that was held after 1 July 1993. This exception ceases to operate if the terms of the securities change. This rule 6.9 does also not apply to securities of a registered</p>

		<p>managed investment scheme.</p> <p>An entity must not remove or change a security holder's right to vote, or receive dividends (in the case of a trust, distributions), in respect of particular securities except in any of the following cases:</p> <p>Calls due and payable on those securities have not been paid.</p> <p>In the case of the voting right, the instrument appointing a proxy in respect of those securities has not been deposited in accordance with the entity's constitution.</p> <p>In the case of the voting right, the person became the holder of those securities after the time determined under the Corporations Regulations as the "specified time" for deciding who held securities for the purposes of the meeting.</p> <p>The right is removed or changed under Australian legislation, or under a provision in the entity's constitution that must be included to comply with Australian legislation. Any provision must cease to operate once it is no longer necessary.</p> <p>The right is removed or changed under a provision in the entity's constitution that is permitted by the listing rules, or that ASX has approved as appropriate and equitable.</p> <p>The right is removed or changed under a court order.</p>
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**Other questions not applicable.**

**NON-VOTING SHARES**

**1) Is this CEM available?**

In the case of corporations which are both incorporated and listed in Australia, there is no provision in the Corporations Act or the ASX Listing Rules which directly prohibits a company seeking to issue non-voting shares from doing so (whether or not such shares carry special cash flow rights as compensation for an absence of voting rights). However, any proposed issue of non-voting shares would be subject to the approval of the ASX and must be provided for under the company’s constitution or by a special resolution of shareholders.

It should be noted that our response to this CEM has not considered nor included the non-voting shares sought to be issued by News Corporation Limited prior to its delisting on the ASX. We presume that any non-voting shares which may have been issued by News Corporation since its listing on the NYSE will be addressed by US Counsel. We are not aware of any other proposed issues of non-voting shares being made by an incorporated and listed Australian company.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Available but subject to ASX approval
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The ASX Listing Rules are based on a “one share, one vote” principle which regulates the issue of shares by incorporated and listed companies in Australia.

As an issue of non-voting shares does not represent this “one share, one vote principle”, an Australian incorporated and listed company seeking to issue non-voting shares would need to obtain a waiver from the ASX. Note, however, ASX Listing Rule 6.3 provides that the holder of a non-voting preference share must be entitled to a right to vote in certain circumstances and in no others.

An Australian incorporated and listed company seeking to issue non voting shares would also need to ensure that any proposed issue of non voting shares by directors was undertaken in accordance with the company’s constitution. Where the constitution does not provide for directors to issue non voting shares, shareholder approval would need to be obtained by passing a special resolution of members at a general meeting. Any proposed issue of non voting shares would also need to specifically set out the rights attached to the shares (*i.e.*, no voting rights).

Short form answer:

<input checked="" type="checkbox"/> Laws Corporations Act 2001	<input checked="" type="checkbox"/> Binding Rule	A company may determine the terms on which its shares are issued and the rights or restrictions attaching to the shares in accordance with the company’s constitution (sections 124, 125, and 254B of the Act).
<input checked="" type="checkbox"/> Stock Exchange Rules ASX Listing Rules	<input checked="" type="checkbox"/> Binding Rule	An entity may have only one class of ordinary securities unless the following applies: <ul style="list-style-type: none"> <li>• ASX approves the terms of an additional class; or</li> <li>• The additional class is of a partly paid security which, if fully paid, would be in the same class as the ordinary securities (rule 6.2).</li> </ul>

**3) If this CEM is available, is it subject to any restrictions?**

An Australian listed company seeking to issue non-voting shares would need to obtain a waiver from the ASX.

Normally, the constitution of incorporated and listed companies confers upon directors the power to issue shares with such rights and upon such terms as the directors think fit, without the need for the terms of an issue by directors to be approved by shareholders (irrespective of whether the shares are voting or non-voting shares). Where the constitution does not provide for directors to undertake a non-voting share issue, approval for such an issue would need to be obtained from a special resolution of members. A proposed issue of non-voting shares would also need to specifically set out the rights attached to the shares (*i.e.*, no voting rights).

Short form answer:

<input checked="" type="checkbox"/> Others (please specify)	Approval by the ASX is required and an issue of non-voting shares must be permitted by the company's constitution or approved by special resolution of members.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

Under the Corporations Act, a company may determine the terms on which its shares are issued and the rights and restrictions attaching to the shares.

Allocation of corporate powers is determined by the corporation's constitution. The constitution is alterable by special resolution (75% majority) of the shareholders in general meeting. The constitution of a listed company typically vests full managerial power in the board of directors and confers upon directors the power to issue shares upon such terms as the directors think fit, without the need for the terms of issue by directors to be approved by shareholders. In the absence of such a provision, the constitution would need to be altered by a special resolution of shareholders to vest the power to issue shares in the board of directors, prior to the directors making a share issue.

Although the Corporations Act adopts a presumption of voting equality, it is *prima facie* possible for a company to depart from this by creating different classes of shares, such as non-voting shares. Where separate classes of shares are created, the rights attached to those shares are protected under the Corporations Act and can only be varied with the consent of a specified proportion of class members.

Stricter rules apply in relation to voting equality for listed corporations under the ASX Listing Rules. Any proposed issue of non voting shares by a corporation which is both incorporated and listed in Australia, would be subject to approval by the ASX.

The ASX can refuse the approval on grounds based on Listing Rule 6.9 which provides for the 'one share, one vote' principle.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors.	<input checked="" type="checkbox"/> Autonomous decision	
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Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):

For a company which is both incorporated and listed in Australia, the Australian Securities and Investments Commission (ASIC) and the ASX would both need to be notified of a non-voting share issue by the company (and ASX approval sought).

An issue of non-voting shares would also need to be disclosed to members in the company's annual report (even where approval has already been sought and obtained at a general meeting of shareholders).

Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities).

ASX approval required.

**5) Are there ongoing disclosure requirements regarding such CEM?**

For a company which is both incorporated and listed in Australia, the ASIC and the ASX would both need to be notified of a non-voting share issue by the company (and ASX approval sought).

An issue of non-voting shares would also need to be disclosed to members in the company's annual report (even where approval has already been sought and obtained at a general meeting of shareholders).

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis</p> <p>An issue of non-voting shares would need to be disclosed to members in the company's annual report (even where approval has already been sought and obtained at a general meeting of shareholders).</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>For a company which is both incorporated and listed in Australia, the Australian Securities and Investments Commission (ASIC) and the ASX would both need to be notified of a non-voting share issue by the company (and ASX approval sought).</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <p>-Filing of articles of association: must be filed at incorporation of the company. A consolidated copy must also be filed if an amendment to the constitution is required to provide for this CEM, and such amendment is approved by a special resolution of shareholders.</p> <p>- Specific Filing,</p> <p>- Admission documentation,</p> <p>- Annual Report.</p>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

There is a general duty at common law which requires directors to act in the best interests of the company as a whole. The decision by directors of a company incorporated and listed in Australia to issue non-voting shares may be challenged by members on the grounds that to issue non-voting shares may be a breach of this duty. An argument may arise in extreme cases that an issue of such securities may only represent the best interests of a particular class of shareholders, rather than the best interests

of the company as a whole. However, we are not aware of a case where such a challenge has been successful in relation to a listed Australian company. Australian Courts are not inclined to delve into the commercial decisions of boards of directors absent a clear breach of duty.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders, at the expense of the minority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders as a whole.
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The grounds upon which a decision to implement this CEM may be challenged operate in the alternative.

**NON-VOTING PREFERENCE SHARES**

**1) Is this CEM available?**

Yes.

In the case of corporations which are both incorporated and listed in Australia, a company’s power to issue preference shares is governed by the Corporations Act. The limited voting rights attached to these shares are governed by the ASX Listing Rules.

In recent years a number of Australian listed and incorporated companies have issued preference shares with limited voting rights as a means of maintaining efficiency in their overall capital structures.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Preference shares must not carry voting rights except in a limited set of circumstances governed by the ASX Listing Rules.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The holder of a preference share must be entitled to a right to vote in each of the following circumstances and in no others: during a period within which a dividend (or part of a dividend) in respect of the share is in arrears (Note: This voting right would also be applicable for any period during which no dividends are paid but where the terms of the preference issue provide that the holder is entitled to a dividend each and every year); on a proposal to reduce the entity’s share capital or on a resolution to approve the terms of a share buy-back agreement; on a proposal that affects rights attached to the share; on a proposal to wind up the entity; on a proposal for the disposal of the whole of the entity’s property, business and undertaking; or during the winding up of the entity.

The ASX Listing Rules also provide that where preference shares are issued by a company, they must not carry voting rights except where limited circumstances arise. A preference security issued by a company which is not a share is also subject to these same limited voting rights. The term ‘security’ is broadly defined under the ASX Listing Rules. Given this broad definition, the preference shares with limited voting rights issued by some listed Australian companies in recent years would fall within this category. We are not aware of any other non-voting preference securities which would fall outside the classification of shares issued by an Australian listed company.

Short form answer:

<input checked="" type="checkbox"/> Laws Corporations Act 2001	<input checked="" type="checkbox"/> Binding Rule	A company’s power to issue shares includes the power to issue preference shares (section 254A(1)).  A company can issue preference shares only if the rights attached to the shares, with respect to matters such as voting rights, are set out in the company’s constitution or have been otherwise approved by special resolution of the company (section 254A(2)).
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Listing Rule 6.3: <ul style="list-style-type: none"> <li>The holder of a preference share must be entitled to a right to vote in each of the</li> </ul>

<p>ASX Listing Rules</p>		<p>following circumstances and in no others:</p> <ul style="list-style-type: none"> <li>○ during a period within which a dividend (or part of a dividend) in respect of the share is in arrears.</li> </ul> <p>[Note: This voting right would also be applicable for any period during which no dividends are paid but where the terms of the preference issue provide that the holder is entitled to a dividend each and every year];</p> <ul style="list-style-type: none"> <li>○ on a proposal to reduce the entity's share capital or on a resolution to approve the terms of a share buy-back agreement;</li> <li>○ on a proposal that affects rights attached to the share;</li> <li>○ on a proposal to wind up the entity;</li> <li>○ on a proposal for the disposal of the whole of the entity's property, business and undertaking; or</li> <li>○ during the winding up of the entity.</li> </ul> <p>ASX Definitions:</p> <ul style="list-style-type: none"> <li>• A security has the following meaning under the ASX Listing Rules: <ul style="list-style-type: none"> <li>○ A security within the meaning given to that expression by section 92(1) of the Corporations Act;</li> <li>○ An option over an unissued security within the meaning given to that expression by section 92(1) of the Corporations Act;</li> <li>○ A renounceable or unrenounceable right to subscribe for a security within the meaning given to that expression by section 92(1) of the Corporations Act; and</li> <li>○ a financial product traded under ASX's rules.</li> </ul> </li> </ul> <p>Listing Rule 6.4:</p> <ul style="list-style-type: none"> <li>• A preference security that is not a share must entitle the holder to a right to vote as set out in rule 6.3, with any necessary adaptation.</li> </ul>
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**3) If this CEM is available, is it subject to any restrictions?**

The holder of a preference share must be entitled to a right to vote in each of the following circumstances and in no others: during a period within which a dividend (or part of a dividend) in respect of the share is in arrears (Note: This voting right would also be applicable for any period during which no dividends are paid but where the terms of the preference issue provide that the holder is entitled to a dividend each and every year); on a proposal to reduce the entity's share capital or on a resolution to approve the terms of a share buy-back agreement; on a proposal that affects rights attached to the share; on a proposal to wind up the entity; on a proposal for the disposal of the whole of the entity's property, business and undertaking; or during the winding up of the entity.

Short form answer:

<input checked="" type="checkbox"/> Others	Holders of preference shares have the right to vote in certain circumstances provided by the ASX Listing Rules.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

The Corporations Act confers on companies the power to issue preference shares. The constitution of incorporated and listed companies normally vests managerial power in the board of directors and confers upon directors to issue shares with such rights and upon such terms as the directors think fit. In the absence of authorization in the constitution for the directors to exercise the company's power to issue shares, the constitution would need to be altered by a shareholder's special resolution (75% majority) to enable the directors to issue preference shares.

The Corporations Act contains an additional requirement in relation to preference share issues, stipulating that a company can issue preference shares only if specified rights attached to the shares are either set out in the company's constitution or have otherwise been approved by a special resolution of shareholders.

In the case of corporations which are both incorporated and listed in Australia, a company seeking to issue new preference shares that rank equally with existing preference shares may be deemed to vary the rights of the existing class of preference shareholders, unless such an issue is authorized by the existing preference shares or the constitution. Where there is such a variation of class rights, class members whose rights would be varied must also consent to the share issue.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision	
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<input checked="" type="checkbox"/> Other: Shareholder approval	<p>The company can issue preference shares only if the rights attached to the shares with respect to certain specified matters are set out in either the company's constitution or have been approved by special resolution of the shareholders.</p> <p>If a preference share issue is deemed to vary the rights of existing preference shareholders, a resolution of the existing class of preference shareholders may also be required.</p>	<p>The authorization given by shareholders would be valid for the specific share issue for which approval has been sought.</p>
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Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <p>For a company which is both incorporated and listed in Australia, ASIC and the ASX would both need to be notified of a preference share issue by the company.</p> <p>An issue of preference shares would also need to be disclosed to members in the company's annual report (even where approval has already been sought and obtained at a general meeting of shareholders).</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

For a company which is both incorporated and listed in Australia, ASIC and the ASX would both need to be notified of a non-voting preference share issue by the company (and ASX approval sought).

An issue of non-voting preference shares would also need to be disclosed to members in the company's annual report (even where approval has already been sought and obtained at a general meeting of shareholders).

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis  An issue of preference shares would need to be disclosed to members in the company's annual report (even where approval has already been sought and obtained at a general meeting of shareholders).  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:  For a company which is both incorporated and listed in Australia, the ASIC and the ASX would both need to be notified of a preference share issue by the company.  <input checked="" type="checkbox"/> The following disclosure requirements apply:  -Filing of articles of association: must be filed at incorporation of the company. A consolidated copy must also be filed if an amendment to the constitution is required to provide for this CEM, and such amendment is approved by a special resolution of shareholders.  - Specific Filing, - Specific Notification, - Admission documentation, - Annual Report.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

There is a general duty at common law which requires directors to act in the best interests of the company as a whole.

The decision by directors of a company incorporated and listed in Australia to issue non-voting preference shares may be challenged by members on the grounds that to issue such shares may be a breach of this duty. An argument may arise in extreme cases that the issue of these securities may only represent the best interests of a particular class of shareholders, rather than the best interests of the company as a whole. However, we are not aware of a case where such a challenge has been successful in relation to a listed Australian company. Australian Courts are not inclined to delve into the commercial decisions of boards of directors absent a clear breach of duty.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders, at the expense of the minority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders as a whole.
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**PYRAMID STRUCTURES**

**1) Is this CEM available?**

In the case of corporations which are both incorporated and listed in Australia, there is no provision in the Corporations Act or the ASX Listing Rules which specifically regulates the holding of controlling stakes in a corporation in a pyramid type structure.

There are, however, provisions in the Corporations Act and the Foreign Acquisitions and Takeovers Act dealing with takeover situations which may impact on the controlling stakes held by corporations in a pyramid type structure. Whilst pyramid structures do exist in Australian listed and incorporated companies, they are not very common in Australia.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Whilst there is no individual provision of the Corporations Act or the Listing Rules which directly regulates the controlling stakes held by Australian listed and incorporated companies, in a pyramid type structure there are various provisions in the Corporations Act and the Foreign Acquisitions and Takeovers Act dealing with takeover situations which may impact on this CEM.

There are also various Laws which act in conjunction with the Listing Rules and the Australian Accounting Standards, and which may indirectly regulate this CEM. For example, where the controlling stakes held by corporations in a pyramid type structure may involve related party transactions taking place, approval may need to be obtained from a majority of shareholders at general meeting (in the absence of a statutory exception set out below applying).

Short form answer:

<input checked="" type="checkbox"/> Laws Corporations Act 2001	<input checked="" type="checkbox"/> Binding Rule	Section 208 <ul style="list-style-type: none"> <li>• For a public company, or an entity that the public company controls, to give a financial benefit to a related party of the public company:                         <ul style="list-style-type: none"> <li>○ the public company must obtain the approval of the members in the way provided for under this Act, and give the benefit within 15 months after such approval is obtained; or</li> <li>○ the giving of the benefit must fall within one of the exceptions set out under this Act.</li> </ul> </li> <li>• The exceptions cited under the Act include:                         <ul style="list-style-type: none"> <li>○ where the financial benefit is given on terms that would be reasonable in the circumstances if the public company were dealing at arm's length; or</li> <li>○ where the financial benefit is given on terms which are less favorable to the</li> </ul> </li> </ul>
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		<p>related party than the terms which would be given if the public company were dealing at arm's length.</p> <p>Section 671B:</p> <ul style="list-style-type: none"> <li>• A person must give the information required under this Act to a listed company if: <ul style="list-style-type: none"> <li>○ the person begins to have, or ceases to have, a substantial holding in the company; or</li> <li>○ the person has a substantial holding in the company or scheme and there is a movement of at least 1% in their holding; or</li> <li>○ the person makes a takeover bid for securities of the company or scheme.</li> </ul> </li> <li>• The person must also give the information to each relevant market operator.</li> </ul> <p>Chapter 6:</p> <ul style="list-style-type: none"> <li>• The Act prohibits any person from acquiring a relevant interest in issued voting shares if after the acquisition, that person's or any other person's voting power would exceed 20% of the total voting power held in the company, except in limited circumstances.</li> <li>• A person is deemed to have a voting power under the Act if the person or an associate of the person has power to exercise or control the exercise of: <ul style="list-style-type: none"> <li>○ the right to vote attached to the share; or</li> <li>○ dispose of or control the disposal of share.</li> </ul> </li> <li>• The circumstances within which exceeding the 20% limit would be permitted include: <ul style="list-style-type: none"> <li>○ where a person makes a formal off-market takeover offer in writing to shareholders;</li> <li>○ an on-market bid is made on behalf of a person by their stockbroker in the home exchange of the company;</li> <li>○ a person has held voting power of 19% or more in the company and acquires not more than 3% additional voting power in any period of 6 months; or</li> </ul> </li> </ul>
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		<ul style="list-style-type: none"> <li>○ shareholder approval is obtained by a majority vote of disinterested shareholders.</li> </ul>
Foreign Acquisitions and Takeovers Act 1975		<p>Section 9(1):</p> <ul style="list-style-type: none"> <li>• A person seeking to acquire an interest in the issued shares of an Australian corporation which would result in one foreign person alone or with associated persons controlling 15% or more of total voting power of issued shares, must provide prior notification to and obtain approval from the Treasurer of the Australian Commonwealth Government in relation to such acquisition.</li> <li>• Where two or more non-associated foreign persons or associated foreign persons are seeking to acquire 40% or more of the total voting power of issued shares, prior notification to and approval from the Treasurer of the Australian Commonwealth Government must be obtained in relation to such acquisition.</li> </ul>
<input checked="" type="checkbox"/> Stock Exchange Rules ASX Listing Rules	<input checked="" type="checkbox"/> Binding Rule	<p>Listing Rule 3.19:</p> <ul style="list-style-type: none"> <li>• If an entity's constitution with ASX's agreement, or a law (except the Corporations Act or the Foreign Acquisitions and Takeovers Act), restricts the ownership or control of securities or control of votes of a specified percentage, and the entity becomes aware that the percentage held by the class of persons restricted to owning or controlling that percentage has come within 5 percentage points of the restriction, or equals or exceeds it, the following rules apply:                     <ul style="list-style-type: none"> <li>○ If the entity becomes aware of any changes of more than 1 percentage point in the capital (in the case of trusts, interests) or votes held by persons in the class, the entity must immediately tell the ASX of the change. (Rule 3.19.1)</li> <li>○ Each time the entity tells the ASX of any change, it must state what action it will take to divest the securities, or remove or change the voting or other rights attaching to them, if it receives a transfer document for securities whose transfer would result in the restriction being exceeded. (Rule 3.19.2)</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>o If the entity becomes aware that the percentage of capital (interests) or votes held by the class of persons referred to in rule 3.19.1 has ceased to be within 5 percentage points of the restriction, or to equal or exceed it, the entity must immediately tell the ASX. (Rule 3.19.3).</li> </ul>
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**3) If this CEM is available, is it subject to any restrictions?**

ASIC must be notified of the ultimate holding entity in a pyramid type structure, and be provided with a register of beneficial interests held in a listed Australian company. ASIC and the ASX must be notified of any substantial shareholding in an entity (which equates to 5% of the issued share capital) and movement of at least 1% in the holding.

Any related party transactions arising in the context of pyramid structures may also need to be approved by a majority of shareholders. Those shareholders who would be participating in the related party transaction would be excluded from voting on this matter.

Any pyramid type structures which give rise to related party transactions will also need to be approved by a majority of shareholders.

Any pyramid type structures which result in an Australian person acquiring more than a relevant interest in 20% of the voting rights attached to issued share capital in an Australian listed company would not be permitted, except pursuant to a general takeover offer to all shareholders.

Any pyramid type structures which result in a foreign person alone or together with an associated person acquiring more than 15% of the total voting power of issued shares in an Australian listed company would not be permitted. A pyramid type structure which results in two or more foreign persons together with associated persons acquiring more than 40% of the total voting power of issued shares in an Australian listed company would not be permitted.

Short form answer:

<input checked="" type="checkbox"/> Others	A pyramid type structure which results in a related party transaction taking place would need shareholder approval. A pyramid type structure which results in a substantial shareholding arising would need to notify ASIC and the ASX of this shareholding. A pyramid type structure which results in a breach of the local or foreign takeover provisions would not be permitted.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

In the case of corporations which are both incorporated and listed in Australia, where the controlling stakes held by corporations in a pyramid type structure would involve related party transactions taking place, approval may need to be obtained from a majority of shareholders at general meeting (in the absence of a statutory exception applying).

Where the controlling stakes held by corporations in a pyramid type structure would impact on the statutory takeover restrictions, the requirements which are imposed at a government level would need to be satisfied and would not be subject to any discretion at the board or shareholder level of a company.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision	
<input checked="" type="checkbox"/> Other: Ownership Ceiling restrictions	Statutory Requirements – no Board or shareholder discretion.	

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <p>For a company which is both incorporated and listed in Australia, ASIC would need to be notified of the ultimate controller in a pyramid structure and the ultimate controller would have to lodge with ASIC all relevant disclosure documents sent to shareholders. ASIC and the ASX would also need to be notified of any substantial shareholdings. ASIC and shareholders would need to be notified in writing of any related party transactions requiring shareholder approval.</p> <p>Any pyramid type structure arrangements would also need to be disclosed to members in the company’s annual report (even where approval has already been sought and obtained at a general meeting of shareholders).</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

For a company which is both incorporated and listed in Australia, ASIC would need to be notified of the ultimate controller in a pyramid structure and the ultimate controller would have to lodge with ASIC all relevant disclosure documents sent to shareholders. ASIC and the ASX would also need to be notified of any substantial shareholdings (which equates to 5% of the issued share capital) or movements of at least 1% in this holding. ASIC and shareholders may also need to be notified in writing of any related party transactions which may require shareholder approval.

Any pyramid type structure arrangements would also need to be disclosed to members in the company’s annual report (even where approval has already been sought and obtained at a general meeting of shareholders).

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis</p> <p>Any pyramid type structure arrangements would need to be disclosed to members in the company’s annual report (even where approval has already been sought and obtained at general a general meeting of shareholders).</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>For a company which is both incorporated and listed in Australia, ASIC would need to be notified of the ultimate controller in a pyramid structure and the ultimate controller would have to lodge with ASIC all relevant disclosure documents sent to shareholders. ASIC and the ASX would also need to be notified of any substantial shareholdings. ASIC and shareholders would also need to be notified in writing of any related party transactions requiring shareholder approval.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <p>-Filing of articles of association: must be filed at incorporation of the company. A consolidated copy must also be filed if an amendment to the constitution is required to</p>
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	<p>provide for this CEM, and such amendment is approved by a special resolution of shareholders.</p> <ul style="list-style-type: none"> <li>- Specific Filing;</li> <li>- Admission documentation;</li> <li>- Annual Report.</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

There is a general duty at common law which requires directors to act in the best interests of the company as a whole. The decision by directors of a company incorporated and listed in Australia to undertake a controlling stake in a pyramid type structure may be challenged by members on the grounds that to do so may be a breach of this duty. An argument may arise in extreme cases that undertaking a controlling stake in a pyramid type structure may only represent the best interests of a particular class of shareholders, rather than the best interests of the company as a whole. However, we are not aware of a case where such a challenge has been successful in relation to a listed Australian company.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders at the expense of the minority of shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders as a whole.
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The grounds upon which a decision to implement this CEM may be challenged operate in the alternative.

**PRIORITY SHARES**

**1) Is this CEM available?**

In the case of corporations which are both incorporated and listed in Australia, there is no specific provision in the Corporations Act or ASX Listing Rules which prohibits a company from issuing shares which would grant a certain class of shareholders specific decision making powers or veto rights, irrespective of the proportion of equity held.

Due to the “one share one vote” principle contained in the ASX Listing Rules, any provision of priority shares by an Australian listed and incorporated company would require approval from the ASX.

Notwithstanding this fact, there are specific examples of Australian listed and incorporated companies which have provided for a form of priority shares in the company’s constitution. One such example of this is AWB Limited (AWB).

AWB’s company constitution has two classes of shares, Class A and Class B. Class A Shares may only be issued to persons identified as Growers. Growers are defined as persons who produce an average tonnage of at least 33 1/3 tonnes of wheat per year. Under the AWB constitution, Growers may only hold one Class A share. Class A shares provide shareholders with a form of priority share entitling them to elect 7 Class A Directors to the board. Class B shareholders, however, are only entitled to elect 1 Class B Director, or up to 4 Class B Directors where director recommendation and shareholder approval has been obtained.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Subject to ASX Approval
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The ASX Listing Rules are based on a “one share, one vote” principle which regulates the issue of shares by incorporated and listed companies in Australia.

As an issue of priority shares does not represent this “one share, one vote” principle, an Australian incorporated and listed company seeking to issue priority shares would need to obtain a waiver from the ASX.

A proposed issue of priority shares by directors would also need to be provided for in the company’s constitution. Where an incorporated and listed company’s constitution does not provide for a priority share issue, approval would need to be obtained from a special resolution of members.

Where a proposed issue of priority shares results in a variation of class rights of existing shareholders, approval must also be obtained from those members whose rights are being varied, in accordance with the company’s constitution. Where the constitution does not prescribe a procedure for varying class rights of shareholders, approval must be obtained from those members whose rights are being varied, by passing a special resolution at general meeting or by obtaining the written consent of 75% of members whose rights are being varied.

Short form answer:

<input checked="" type="checkbox"/> Laws Corporations Act 2001	<input checked="" type="checkbox"/> Binding Rule	A company may determine the terms on which its shares are issued and the rights or restrictions attaching to the shares in accordance with the company’s constitution (sections 124, 125, and 254B of the Act). A company’s power under section 124 to
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		<p>issue shares includes the power to issue:</p> <ul style="list-style-type: none"> <li>o bonus shares; and</li> <li>o preference shares; and</li> <li>o partly-paid shares (section 254A of the Act).</li> </ul> <p>However, the freedom of a company to determine its own rules for the issue of shares is subject to the restrictions set out in the ASX Listing Rules below.</p>
<input checked="" type="checkbox"/> Stock Exchange Rules ASX Listing Rules	<input checked="" type="checkbox"/> Binding Rule	<p>An entity may have only one class of ordinary securities unless the following applies:</p> <ul style="list-style-type: none"> <li>• ASX approves the terms of an additional class; or</li> <li>• The additional class is of a partly paid security which, if fully paid, would be in the same class as the ordinary securities (rule 6.2).</li> </ul> <p>On a resolution to be decided on a poll, each holder of an ordinary security, and each holder of a preference security who has a right to vote, must be entitled to one vote for each fully paid security, and a fraction of a vote for each partly paid security (rule 6.9).</p> <p>This rule 6.9 does not apply to securities of a listed entity issued (in accordance with the Listing Rules) before the first general meeting of the entity that was held after 1 July 1993. This exception ceases to operate if the terms of the securities change. This rule 6.9 does also not apply to securities of a registered managed investment scheme.</p>

**3) If this CEM is available, is it subject to any restrictions?**

In the case of corporations which are both incorporated and listed in Australia, a company seeking to issue priority shares would need to obtain a waiver from the ASX.

This proposed issue of priority shares by directors would also need to be provided for in the company’s constitution. Where an incorporated and listed company’s constitution does not provide for a priority share issue, approval would need to be obtained from a special resolution of members.

Where a proposed issue of priority shares results in a variation of class rights of existing shareholders, approval must also be obtained from those members whose rights are being varied, in accordance with the company’s constitution. Where the constitution does not prescribe a procedure for varying class rights, approval must be obtained from those members whose rights are being varied by passing a special resolution at general meeting or by obtaining the written consent of 75% of members whose rights are being varied.

Short form answer:

<input checked="" type="checkbox"/> Others	ASX approval would be required and the priority share issue must be provided for under the company’s constitution or approved by a special resolution of members.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

In the case of corporations which are both incorporated and listed in Australia, a company’s proposal to issue priority shares would need to be approved by the ASX.

In addition to this ASX approval being obtained, an issue of priority shares would need to be approved at a company level. In this sense, the constitution of incorporated and listed companies normally confers upon directors the power to issue shares with such rights and upon such terms as the directors think fit, without the need for the terms of an issue to be approved by shareholders. Where the constitution does not provide for directors to undertake a priority share issue, approval would need to be obtained from shareholders by way of a special resolution at general meeting (75% of eligible voters present and entitled to vote).

Where a proposed issue of priority shares results in a variation of class rights of shareholders, approval must also be obtained from those members whose rights are being varied, in accordance with the company’s constitution. Where the constitution does not prescribe a procedure for varying class rights, approval must be obtained from those members whose rights are being varied by passing a special resolution at general meeting or by obtaining the written consent of 75% of members whose rights are being varied.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision	
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Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <p>For a company which is both incorporated and listed in Australia, prior ASX approval would need to be sought and ASIC would need to be notified of a priority share issue by the company.</p> <p>This issue of priority shares would also need to be disclosed to members in the company’s annual report (even where approval has already been sought and obtained at a general meeting of shareholders).</p> <p><input checked="" type="checkbox"/> Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities:</p> <p>ASX approval required.</p>
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**5) Are there ongoing disclosure requirements regarding such CEM?**

For a company which is both incorporated and listed in Australia, prior ASX approval would need to be sought and ASIC would need to be notified of a priority share issue by the company.

This issue of priority shares would also need to be disclosed to members in the company’s annual report (even where approval has already been sought and obtained at a general meeting of shareholders).

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis  This issue of priority shares would need to be disclosed to members in the company’s annual report (even where approval has already been sought and obtained).  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:  For a company which is both incorporated and listed in Australia, prior ASX approval would need to be sought and ASIC would need to be notified of a priority share issue by the company.  <input checked="" type="checkbox"/> The following disclosure requirements apply:  -Filing of articles of association: must be filed at incorporation of the company. A consolidated copy must also be filed if an amendment to the constitution is required to provide for this CEM, and such amendment is approved by a special resolution of shareholders.  - Specific Filing;  - Admission documentation;  - Annual Report.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

There is a general duty at common law which requires directors to act in the best interests of the company as a whole. The decision by directors of a company incorporated and listed in Australia to issue priority shares may be challenged by members on the grounds that to do so may be a breach of this duty. An argument may arise in extreme cases that an issue of such securities may only represent the best interests of a particular class of shareholders, rather than the best interests of the company as a whole. However, we are not aware of a case where such a challenge has been successful in relation to a listed Australian company. Australian Courts are not inclined to delve into the commercial decisions of boards of directors absent a clear breach of duty.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders, at the expense of the minority of shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders as a whole.
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The grounds which a decision to implement this CEM may be challenged operate in the alternative.

**DEPOSITORY CERTIFICATES**

**1) Is this CEM available?**

In the case of corporations which are both incorporated and listed in Australia, Chess Depository Instruments (CDI) may be argued to represent a form of depository certificates which are issued by a company on a local Stock Exchange, and which provide holders of the CDIs with the beneficial ownership, whilst retaining the legal ownership of the CDI with a depository nominee.

Although we are aware of foreign incorporated companies that have issued CDIs on the Australian Stock Exchange (ASX), we are not aware of any Australian listed and incorporated companies that have issued CDIs on the ASX. The basis upon which foreign companies issue CDIs on the ASX is so they can participate in the electronic settlement and trade of securities in Australia. As Australian listed companies can already participate in such ASX activities, we cannot see a clear reason why an Australian listed company would seek to issue CDIs.

The absence of any listed Australian company to undertake an issue of CDIs is further supported by the fact that neither the Corporations Act nor the ASX Listing Rules provide any strict guidelines on the issuing arrangements or voting rights required to be contained in CDIs of listed Australian corporations. Given this lack of precedent and lack of statutory authority, we cannot comment definitively on this type of CEM.

It should also be noted that whilst there are other derivatives such as options and warrants which are traded on the ASX, these securities do not require the holding institution to retain the underlying legal interest in the security. Given this fact, we would therefore not consider these derivatives to fall within your description of depository certificates and have excluded them from our discussion on this basis.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Untested Situation
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

There is no provision under the Corporations Act or ASX Listing Rules which provides any strict guidelines on the issuing arrangements or voting rights required to be contained in CDIs of listed Australian corporations. We cannot therefore comment definitively on this issue as this CEM is yet to be tested by an Australian listed corporation.

**Other questions not applicable.**

**VOTING RIGHT CEILINGS****1) Is this CEM available?**

No.

The ASX Listing Rules are based on a “one share, one vote” principle which regulates the issue of shares by incorporated and listed companies in Australia.

This principle would preclude an Australian incorporated and listed company from voluntarily and unilaterally implementing any restrictions that would prohibit shareholders from voting above a certain threshold, irrespective of the number of shares held. We are therefore not aware of any constitutional voting right ceilings adopted by an Australian listed and incorporated company.

Notwithstanding this fact, it should be noted that there are certain statutory exceptions related to the Australian State and National interests, which operate at both a Federal and State level to limit the level of ownership able to be acquired in an Australian corporation, and which also limit the voting rights that may be cast by shareholders, irrespective of the number of shares held.

One such example of this statutory exemption is the Santos Limited (Regulation of Shareholdings) Act 1989 (the Santos Act). The Santos Act restricts a shareholder from having more than 15% of the shareholding in Santos Limited and controlling more than 15% of the voting rights in Santos Limited. Where a person exceeds this voting right ceiling, the Minister can order the shareholder to dispose of a specified number of shares, and if such order is not complied with, order the shares to be forfeited to the Crown.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation) - Statutory exemptions may exist.
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**Other questions not applicable.**

**OWNERSHIP CEILINGS**

**1) Is this CEM available?**

Takeover Laws

In the case of corporations which are both incorporated and listed in Australia, there are various takeover provisions contained in the Corporations Act which prohibit acquisitions beyond a certain threshold, unless certain permitted statutory pathways are followed.

There are also various Federal and State Acts related to the National and State interest, which operate to limit the level of ownership which may be obtained by one member (and his or her associate) or by one class of member in certain Australian corporations. These Acts include the Santos Limited (Regulation of Shareholdings) Act 1989 and the Telstra Corporation Act 1991 (Telstra Act).

There are also other statutory laws which operate from a competition perspective and which may impact on the level of participation permitted by an investor in an Australian company. These laws would operate where participation in a corporation occurs above a certain threshold and such participation may have the effect or likelihood of substantially lessening competition in the market within which the corporation operates. Any such level of participation by an investor would need to be approved by the Australian Competition and Consumer Commission (ACCC).

In addition to these statutory authorities, the Australian Wheat Board Limited (AWB) provides an example of an Australian listed and incorporated company which has included provision for an ownership ceiling within the company’s constitution. The AWB constitution contains a specific restriction prohibiting a person from holding more than 10% of Class B Shares issued by the Company. Any such restriction imposed by a listed Australian company would require an ASX waiver.

Foreign Takeover Laws

In addition to the takeover laws which operate to limit the level of ownership held by local investors in Australian listed companies, there are also various laws which limit the level of ownership held by foreign investors in Australian listed companies. These restrictions imposed on foreign investors are contained in the Foreign Acquisitions and Takeovers Act. Like the Corporations Act, the Foreign Acquisitions and Takeovers Act is a Federal rule.

In addition to these statutory restrictions Telstra Corporation Limited (Telstra) provides an example of an Australian listed and incorporated company which has included provision for a foreign ownership ceiling within the company’s constitution. In this respect, the Telstra constitution contains a general prohibition on any person breaching the foreign ownership restrictions contained in the Telstra Act.

Short form answer:

Yes (Clear Situation)

**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

In the case of corporations which are both incorporated and listed in Australia, the takeover Laws which regulate an investor’s participation in a company provide that a person must not acquire more than 20% of the voting power held in a company unless limited circumstances are satisfied. These takeover Laws are set out below.

There are also restrictions on the rights of non-residents to acquire shares in Australian corporations which are contained in the Foreign Acquisitions and Takeovers Act also set out below.

There are also various Laws which act in conjunction with the Listing Rules and the Australian Accounting Standards and which may indirectly regulate this CEM. For example, where the

ownership levels in an Australian incorporated and listed company may involve related party transactions taking place, approval may need to be obtained from a majority of shareholders.

Short form answer:

<input checked="" type="checkbox"/> Laws Corporations Act 2001	<input checked="" type="checkbox"/> Binding Rule	Chapter 6: <ul style="list-style-type: none"> <li>• The Act prohibits any person from acquiring a relevant interest in issued voting shares if, after the acquisition, that person's, or any other person's voting power would exceed 20% of the total voting power held in the company, except in limited circumstances.</li> <li>• A person is deemed to have a voting power under the Act if the person or an associate of the person has power to exercise or control the exercise of:                         <ul style="list-style-type: none"> <li>○ the right to vote attached to the share; or</li> <li>○ disposal of or control of the disposal of share.</li> </ul> </li> <li>• The circumstances within which exceeding the 20% limit would be permitted include:                         <ul style="list-style-type: none"> <li>○ where a person makes a formal off-market takeover offer in writing to shareholders;</li> <li>○ an on-market bid is made on behalf of a person by their stockbroker in the home exchange of the company;</li> <li>○ a person has held voting power of 19% or more in the company and acquires not more than 3% additional voting power in any period of 6 months; or</li> <li>○ shareholder approval is obtained by a majority vote of disinterested shareholders.</li> </ul> </li> </ul>
<input checked="" type="checkbox"/> Laws Foreign Acquisitions and Takeovers Act 1975	<input checked="" type="checkbox"/> Binding Rule	Section 9(1): <ul style="list-style-type: none"> <li>• A person seeking to acquire an interest in the issued shares of an Australian corporation which would result in one foreign person alone or with associated persons controlling 15% or more of total voting power of issued shares must provide prior notification to and obtain approval from the Treasurer of the Australian Commonwealth Government in relation to such acquisition.</li> </ul>

		<ul style="list-style-type: none"> <li>Where two or more non associated foreign persons or associated foreign persons are seeking to acquire 40% or more of the total voting power of issued shares, prior notification to and approval from the Treasurer of the Australian Commonwealth Government must be obtained in relation to such acquisition.</li> </ul>
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**3) If this CEM is available, is it subject to any restrictions?**

Yes.

ASIC must be notified of the ultimate controller in a corporate group. Additionally, ASIC and the ASX must be notified of any substantial shareholding in an entity (which equates to 5% of the issued share capital) and a movement of at least 1% in the holding.

Any levels of ownership which give rise to related party transactions which are not exempted under the Corporations Act may also need to be approved by a majority of shareholders. Those shareholders who may be participating in the related party transaction would be excluded from voting on this matter.

Any levels of ownership which result in an Australian person acquiring more than a relevant interest in 20% of the voting rights attached to issued share capital in an Australian listed company would not be permitted.

Additionally, any levels of ownership which result in a foreign person alone or together with an associated person acquiring more than 15% of the total voting power of issued shares in an Australian listed company would not be permitted. Ownership which results in two or more foreign persons together with associated foreign persons acquiring more than 40% of the total voting power of issued shares in an Australian listed company would not be permitted.

Short form answer:

<input checked="" type="checkbox"/> Others	Any level of ownership which would result in a breach of the local or foreign takeover provisions would not be permitted.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

In the case of corporations which are both incorporated and listed in Australia, the statutory ownership ceilings set in place are requirements which are imposed at a government level, and are not subject to any discretion at the board or shareholder level of a company.

Where ownership ceilings are sought to be introduced at a constitutional level by an Australian listed and incorporated entity (as occurred with AWB Limited), a special resolution approving including the ownership ceiling in the company's constitution, would need to be passed at a general meeting (75% of members present and entitled to vote).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: none. <input checked="" type="checkbox"/> Majority: 75%	If the shareholders may authorise the board or the Chairman or GM to implement the CEM:
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**AUSTRALIA**

		<input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration):  Until shareholders passed a special resolution removing the ownership ceiling.  If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed?
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Specific conditions:

Specific requirements when deciding to implement the CEM:  <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):  For a company incorporated and listed in Australia, shareholders would need to be notified in writing of an off-market acquisition which would result in a takeovers provision of the Corporations Act being breached.  Details of any notifications provided to the Treasurer or other Government authority in respect of acquisitions which would result in the Foreign Acquisitions and Takeovers Act or any other statutory restrictions being breached would also need to be disclosed to shareholders in the annual report.
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**5) Are there ongoing disclosure requirements regarding such CEM?**

ASIC must be notified of the ultimate controller in a corporate group. Additionally, ASIC and the ASX must be notified of any substantial shareholding in an entity (which equates to 5% of the issued share capital) and movement of at least 1% in the holding.

Any levels of ownership which give rise to related party transactions which are not exempted under the Corporations Act may also need to be approved by a majority of shareholders. Those shareholders who may be participating in the related party transaction would be excluded from voting on this matter.

Any levels of ownership which result in an Australian person acquiring more than a relevant interest in 20% of the voting rights attached to issued share capital in an Australian listed company would not be permitted.

Additionally, any levels of ownership which result in a foreign person alone or together with an associated person acquiring more than 15% of the total voting power of issued shares in an Australian listed company would not be permitted. Ownership which results in two or more foreign persons together with associated foreign persons acquiring more than 40% of the total voting power of issued shares in an Australian listed company would not be permitted.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis  Details of any notifications provided to the Treasurer or other Government authority in respect of acquisitions which would result in the Foreign Acquisitions and Takeovers Act or any other statutory restrictions being breached would need to be disclosed to shareholders in the annual report.  <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: See comments in
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	<p>narration above.</p> <p>For a company incorporated and listed in Australia, shareholders would need to be notified in writing of an off-market acquisition which would result in a takeovers provision of the Corporations Act being breached.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <p>-Filing of articles of association: must be filed at incorporation of the company. A consolidated copy must also be filed if an amendment to the constitution is required to provide for this CEM, and such amendment is approved by a special resolution of shareholders.</p> <p>- Specific Filing,</p> <p>- Admission documentation,</p> <p>- Annual Report.</p>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Where this CEM is imposed by virtue of statutory authority at a Federal or State level, this CEM cannot be challenged, unless a review of the legislation is sought through the National Competition Council. The National Competition Council is a federal independent statutory body which provides competition policy advice to the Australian government at a Federal and State level.

Where this CEM is imposed by a listed Australian company at a constitutional level, it may be challenged by shareholders by proposing a constitutional amendment. Any such amendment may need to be approved by a special resolution of members (75% of members present and eligible to vote) at a general meeting, prior to taking effect.

<p><input checked="" type="checkbox"/> The decision to implement the CEM is based on a proposed constitutional amendment and opposed by shareholders.</p>
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**SUPERMAJORITY PROVISIONS**

**1) Is this CEM available?**

The Corporations Act and the ASX Listing Rules require that certain corporate actions and transactions must be decided by the members in general meeting, either by “ordinary” or “special” resolution. A special resolution requires the resolution to be passed by at least 75% of votes cast by members entitled to vote on the resolution. An example of this is an amendment of a provision in a company’s constitution.

There is, however, no Law (although ASX approval would be required) which precludes a corporation from setting in its constitution an additional hurdle for shareholder approval on any item of business above the 75% threshold provided by the Corporations Act. For example, setting shareholder approval for certain matters where a special resolution is required at a level of 90%. The Corporations Act implicitly permits this, by stating that a company’s constitution may provide that a special resolution altering or repealing the constitution does not have effect unless a ‘further requirement’ has been complied with. However, we are not aware of such additional hurdle being introduced by a listed Australian company.

The Corporations Act also provides that a company may include in its constitution an additional hurdle that must be satisfied if a special resolution proposing to modify or repeal its constitution is to have effect, for example, a greater majority or the approval of an external person. An example of where such a supermajority provision has been introduced into the constitution of an Australian listed and incorporated entity in relation to a preliminary matter (being the nomination of persons for election as director) is Boral Limited. Boral’s constitution requires that an outside candidate nominated for election as a director be nominated by members with at least 5% of the votes that may be cast at the general meeting, or to be nominated by at least 100 members who are entitled to vote at the meeting. However, the vote to elect directors at the general meeting remains a simple 50% majority.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	At times required by Law and possible to be included in a company’s constitution.
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

In addition to the statutory requirements imposed by the Corporations Act which specifies certain matters of an incorporated and listed corporation that need to be approved by a supermajority (*i.e.*, special resolution), a company’s constitution may also impose supermajority approval on particular items of business, such as a modification or repeal of the constitution. Any such additional supermajority approval proposed by a company’s constitution would be subject to approval by the ASX.

Short form answer:

<input checked="" type="checkbox"/> Laws Corporations Act 2001	<input checked="" type="checkbox"/> Binding Rule	As an example, section 136(2) of the Corporations Act requires that a modification or repeal of a provision of a Company’s constitution may be made by special resolution (which is defined in section 9 of the Act as requiring a 75% majority of votes cast at a meeting on the resolution).
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		<p>In addition, sections 136(3) and (4) make clear that a company may enshrine in its constitution an additional hurdle that must be satisfied in order for a special resolution proposing to modify its constitution to have effect – for example, a greater majority or the approval of an external person.</p>
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**3) If this CEM is available, is it subject to any restrictions?**

No, except that a proposal to include a supermajority provision into a listed Australian company’s constitution which extends beyond those matters required to be approved by a special resolution under the Corporations Act would need to be approved by a special resolution of shareholders.

Short form answer:

<input checked="" type="checkbox"/> No
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

In the case of corporations which are both incorporated and listed in Australia, the requirement for some matters to be passed by special resolution is a statutory requirement which is not subject to any discretion at the board or shareholder level of a company.

However, the extension of this statutory requirement for special resolution approval to other matters within a company’s affairs may be provided for in the constitution, although any such provision would need to be approved by a special resolution of shareholders before taking effect, and may not be enforceable where the Corporations Act specifically provides for shareholder approval by ordinary resolution.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders to amend the constitution	<input checked="" type="checkbox"/> Quorum: Set by constitution <input checked="" type="checkbox"/> Majority: 75% of votes cast by shareholders entitled to vote on the resolution.	<p>If the shareholders may authorise the board or the Chairman or GM to implement the CEM:</p> <p><input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration):</p> <p>The authorization given by shareholders to extend the statutory requirement for supermajority provisions to other matters within the company’s constitution would be valid until the constitutional supermajority provision was amended or was removed by shareholder resolution.</p> <p>There would normally be no time limit, however this would be subject to any conditional authority given by the</p>
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		shareholders.
<input checked="" type="checkbox"/> Other:	In relation to statutory requirements – no board or shareholder discretion is available.	

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):

For a company incorporated and listed in Australia, a copy of the special resolution adopting, modifying or repealing the constitution must be lodged with ASIC within 14 days after it is passed.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>For a company incorporated and listed in Australia, a copy of the special resolution adopting, modifying or repealing the constitution must be lodged with ASIC within 14 days after it is passed.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association: must be filed at incorporation of the company. A consolidated copy must also be filed if an amendment to the constitution is required to provide for this CEM, and such amendment is approved by a special resolution of shareholders.</li> <li>- Specific Filing,</li> <li>- Admission documentation,</li> <li>- Annual Report.</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Where this CEM is imposed by virtue of statutory authority at a Federal or State level, this CEM cannot be challenged. Where this CEM is sought to be extended to other matters within a company's affairs at a constitutional level, it may be challenged by shareholders on grounds that it may be oppressive, unfairly prejudicial, or unfairly discriminatory to a class of shareholders or minority shareholders. However, we are not aware of a case where such a challenge relates to the introduction of supermajority provisions in a listed Australian company's constitution.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders, and at the expense of the minority of shareholders.
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## GOLDEN SHARES

**1) Is this CEM available?**

In the case of corporations which are both incorporated and listed in Australia, there is no provision in the ASX Listing Rules or Corporations Act which confers special rights on national or local governments to grant themselves rights which go beyond those associated with a normal shareholding. Notwithstanding this fact, the ability for corporations to issue golden shares could be introduced into the Australian marketplace in the future through Parliament enacting the relevant legislation. However, given the “one share, one vote” principle contained in the ASX Listing Rules, any issue of golden shares would need to obtain a waiver from the ASX.

We are not aware of an issue of golden shares by an incorporated and listed Australian company taking place, and cannot therefore comment definitively on this type of legal structure given that it does not yet exist in Australia.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

There is no provision under the Corporations Act or ASX Listing Rules which would permit or regulate golden shares being introduced to Australian listed companies. We cannot therefore comment definitively on this issue as this type of CEM does not yet exist in Australia.

**3) If this CEM is available, is it subject to any restrictions?**

The restrictions which may be applicable to golden shares being introduced into Australian listed companies would depend on the content of the statutory authority and Listing Rule implemented to permit and regulate this type of security. We cannot therefore comment definitively on this issue as this type of legal structure does not yet exist in Australia.

**4) Who decides whether this CEM should be implemented, and under what conditions?**

The introduction of golden shares to an Australian listed company would need to be recognised under Australian Law and have the approval of the ASX, before the conditions attached to this type of security and its implementation could be determined. We cannot therefore comment definitively on this issue as this type of CEM does not yet exist in Australia.

**5) Are there ongoing disclosure requirements regarding such CEM?**

The ongoing disclosure requirements which may be applicable to an issue of golden shares for an Australian listed company would depend upon the content of the statutory authority and Listing Rules implemented to permit and regulate this type of security. We cannot therefore comment definitively on this issue as this type of CEM does not yet exist in Australia.

**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The substantive grounds upon which a decision to introduce golden shares to an Australian listed company could be challenged would depend on the content of the statutory authority and Listing Rules implemented to permit and regulate this type of legal structure. We cannot therefore comment definitively on this issue as this type of legal structure does not yet exist in Australia.

**PARTNERSHIPS LIMITED BY SHARES**

**1) Is this CEM available?**

The law governing limited partnerships differs in each state or territory as provided for by the relevant Partnerships Acts. Australian partnership law recognizes both general and limited partnerships, but there is no direct analogy to the limited partnership under Australian company law. There is also no provision in the ASX Listing Rules or the Corporations Act which governs this type of legal structure for incorporated and listed corporations in Australia.

This lack of regulation by the Corporations Act may be argued to be sufficient grounds for the ASX to reject an application for listing of an Australian partnership limited by shares. On the other hand it may be equally argued that provided a partnership limited by shares can establish that its conduct would be governed by rules similar to a constitution, and can ensure that the appropriate level of public filing and reporting systems are in place, there may be no reason why the ASX would reject listing such a legal structure in Australia.

We cannot however comment definitively on this issue as this type of legal structure does not yet exist in Australia.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation	The Unclear Situation is one of the following types:  <input checked="" type="checkbox"/> Untested Situation
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The laws governing partnerships differ in each state and territory based on the Partnership Act which has been enacted in the relevant jurisdiction. There is no provision under the Partnerships Act or any other existing statutory authority or Listing Rule which may permit or regulate a partnership limited by shares being listed on the ASX. We cannot therefore comment definitively on this issue as this type of legal structure does not yet exist in Australia.

**3) If this CEM is available, is it subject to any restrictions?**

The establishment of a partnership limited by shares which is proposed to be listed on the ASX would need to be recognised under Australian Law and have the approval of the ASX and the members of the partnership. We cannot, however, comment definitively on this issue as this type of legal structure does not yet exist in Australia.

Short form answer:

<input checked="" type="checkbox"/> Others (please specify)	This would depend on the statutory authority and Listing Rule requirements yet to be introduced which would regulate a partnership limited by shares.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

The establishment of a partnership limited by shares which is proposed to be listed on the ASX would need to be recognised under Australian Law and have the approval of the ASX and the members of the partnership. We cannot, however, comment definitively on this issue as this type of legal structure does not yet exist in Australia.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other:	Approval by ASX is required and would be subject to a statutory authority permitting partnerships limited by shares being passed in Parliament.	
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Specific conditions:

Specific requirements when deciding to implement the CEM:	
<input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):	ASIC and the ASX would need to be notified of the intention to set up a partnership limited by shares.
<input checked="" type="checkbox"/> Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities (please specify)	ASX approval required.

**5) Are there ongoing disclosure requirements regarding such CEM?**

The ongoing disclosure requirements which may be applicable to a partnership limited by shares being listed on the ASX would depend on the content of the statutory authority and Listing Rule implemented to permit and regulate this type of legal structure. We cannot therefore comment definitively on this issue as this type of legal structure does not yet exist in Australia.

Short form answer:

<input checked="" type="checkbox"/> No	The level of ongoing disclosure required would depend on the statutory authority and Listing Rule requirements yet to be introduced which would regulate a partnership limited by shares.
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The substantive grounds upon which a decision to implement a partnership limited by shares being listed on the ASX could be challenged would depend on the content of the statutory authority and Listing Rule implemented to permit and regulate this type of legal structure. We cannot therefore comment definitively on this issue as this type of legal structure does not yet exist in Australia.

**CROSS-SHAREHOLDINGS**

**1) Is this CEM available?**

In the case of corporations which are both incorporated and listed in Australia, there is no provision in the Corporations Act or the ASX Listing Rules which specifically regulates the holding of shares in a cross-shareholding arrangement or a direct cross-shareholding type structure. However, depending on the level of cross-shareholding involved, the associate provisions of the takeovers section in the Corporations Act (which state that a person must not acquire more than 20% of the voting power held in a company unless limited circumstances are satisfied) may be relevant here.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

There are disclosure provisions in the Corporations Act which may, in conjunction with Australian accounting standards, indirectly serve to influence the cross-shareholdings held by listed corporations.

There are also various provisions in the Corporations Act and Listing Rules dealing with takeover situations which, depending on the level of cross-shareholding involved, may impact on the cross-shareholdings held by listed corporations in Australia. These takeover provisions are set out below.

Short form answer:

<input checked="" type="checkbox"/> Laws Corporations Act 2001	<input checked="" type="checkbox"/> Binding Rule	Chapter 6: <ul style="list-style-type: none"> <li>• The Act prohibits any person from acquiring a relevant interest in issued voting shares if, after the acquisition, that person's or any other person's voting power would exceed 20% of the total voting power held in the company, except in limited circumstances.</li> <li>• A person is deemed to have a voting power under the Act if the person or an associate of the person has power to exercise or control the exercise of:                         <ul style="list-style-type: none"> <li>○ the right to vote attached to the share; or</li> <li>○ disposal of or control of the disposal of share.</li> </ul> </li> <li>• The circumstances within which exceeding the 20% limit would be permitted include:                         <ul style="list-style-type: none"> <li>○ where a person makes a formal off-market takeover offer in writing to shareholders;</li> <li>○ an on-market bid is made on behalf of a person by their stockbroker in the home exchange of the company;</li> </ul> </li> </ul>
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		<ul style="list-style-type: none"> <li>○ a person has held voting power of 19% or more in the company and acquires not more than 3% additional voting power in any period of 6 months; or</li> <li>○ shareholder approval is obtained by a majority vote of disinterested shareholders.</li> </ul>
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**3) If this CEM is available, is it subject to any restrictions?**

Any cross-shareholdings which result in a person acquiring more than 20% of a relevant interest in the voting rights attached to issued share capital in an Australian listed company would not be permitted.

ASIC and the ASX must be notified of any substantial shareholding (which equates to 5% of the issued share capital) and movement of at least 1% in the holding in cross-shareholding arrangements.

Any cross-shareholding arrangements entered into by listed Australian corporations which give rise to related party transactions that are not exempted may also need to be approved by a majority of shareholders. Those shareholders who would be participating in the related party transaction would be excluded from voting on this matter.

Short form answer:

<input checked="" type="checkbox"/> Others	Restrictions are based on the takeover provisions contained in the Corporations Act.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

Where the cross-shareholdings held by Australian listed corporations may impact on the statutory restrictions, the requirements which are imposed at a government level would need to be satisfied and would not be subject to any discretion at the board or shareholder level of a company.

In all other cases, the entering into of cross-shareholding arrangements would need to be approved at a company level. In this sense, normally, the constitution of incorporated and listed companies confers upon directors the powers to manage the affairs of the company as the directors think fit. This power of directors would extend to entering into cross-shareholding arrangements, without the need for approval by shareholders. Where the constitution does not provide directors with such broad powers, approval would need to be obtained from shareholders at general meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision	
<input checked="" type="checkbox"/> Other: Ownership Ceiling Restrictions	Statutory Requirements – no Board or shareholder discretion	

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):

For a company which is both incorporated and listed in Australia, ASIC and the ASX would need to be notified of the relevant disclosures required under the Corporations Act and the Australian accounting standards.

Any cross-shareholding arrangements would also need to be disclosed to members in the company's annual report (even where approval has already been sought and obtained at a general meeting of shareholders).

**5) Are there ongoing disclosure requirements regarding such CEM?**

For a company which is both incorporated and listed in Australia, ASIC and the ASX would need to be notified of any substantial shareholdings that arises in cross-shareholding arrangements (which equates to 5% of the issued share capital) or movements of at least 1% in this holding. ASIC and shareholders would need to be notified in writing of any related party transactions requiring shareholder approval that arise as a result of cross-shareholding arrangements.

Any cross-shareholding arrangements would also need to be disclosed to members in the company's annual report (even where approval has already been sought and obtained at a general meeting of shareholders).

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis</p> <p>An issue of non-voting shares would need to be disclosed to members in the company's annual report (even where approval has already been sought and obtained at a general meeting of shareholders).</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>For a company which is both incorporated and listed in Australia, ASIC and the ASX would need to be notified of the relevant disclosures required under the Corporations Act and the Australian accounting standards.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association: must be filed at incorporation of the company. A consolidated copy must also be filed if an amendment to the constitution is required to provide for this CEM, and such amendment is approved by a special resolution of shareholders.</li> <li>- Specific Filing;</li> <li>- Admission documentation;</li> <li>- Annual Report.</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

There is a general duty at common law which requires directors to act in the best interests of the company as a whole. The decision by directors of a company incorporated and listed in Australia to enter into cross-shareholding arrangements may be challenged by members on the grounds that to do so may be a breach of this duty. An argument may arise in extreme cases that entering into cross-shareholding arrangements may only represent the best interests of a particular class of shareholders,

rather than the best interests of the company as a whole. However, we are not aware of a case where such a challenge has been successful in relation to a listed Australian company. Australian Courts are not inclined to delve into the commercial decisions of boards of directors absent a clear breach of duty.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management, and not the company as a whole.</p> <p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders at the expense of the minority of shareholders.</p>	<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders as a whole.</p>
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The grounds upon which a decision to implement this CEM may be challenged operate in the alternative.

**SHAREHOLDERS' AGREEMENTS**

**1) Is this CEM available?**

In the case of corporations which are both incorporated and listed in Australia, there is no Law which specifically precludes individual shareholders from entering into shareholders' agreements between themselves, subject to any restrictions which may be imposed by the ASX.

However, there is no Law which precludes individual shareholders from entering into shareholders' agreements between listed companies which restrict the right to transfer shares in the market in any respect, subject to any restrictions which may be imposed by the ASX.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	
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**2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

In the case of corporations which are both incorporated and listed in Australia, there are various provisions in the Corporations Act and competition laws which prohibit an investor from taking part in a company above a certain threshold. These ownership ceilings and competition laws may impact on the formal shareholders' agreements and/or informal alliances which may be formed between shareholders. There are also various Federal and State Acts related to the National and State interest, which may impact on the shareholders' agreements/informal alliance able to be formed by members in certain Australian corporations.

Short form answer:

<input checked="" type="checkbox"/> Laws Corporations Act 2001	<input checked="" type="checkbox"/> Binding Rule	Chapter 6: <ul style="list-style-type: none"> <li>• The Act prohibits any person from acquiring a relevant interest in issued voting shares if, after the acquisition, that person's, or any other person's voting power would exceed 20% of the total voting power held in the company, except in limited circumstances.</li> <li>• A person is deemed to have a voting power under the Act if the person or an associate of the person has power to exercise or control the exercise of:                         <ul style="list-style-type: none"> <li>○ the right to vote attached to the share; or</li> <li>○ disposal of or control of the disposal of share.</li> </ul> </li> <li>• The circumstances within which exceeding the 20% limit would be permitted include:                         <ul style="list-style-type: none"> <li>○ where a person makes a formal off-market takeover offer in writing to</li> </ul> </li> </ul>
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		<p>shareholders;</p> <ul style="list-style-type: none"> <li>○ an on-market bid is made on behalf of a person by their stockbroker in the home exchange of the company;</li> <li>○ a person has held voting power of 19% or more in the company and acquires not more than 3% additional voting power in any period of 6 months; or</li> <li>○ shareholder approval is obtained by a majority vote of disinterested shareholders.</li> </ul>
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**3) If this CEM is available, is it subject to any restrictions?**

Any formal shareholders' agreements and/or informal alliances which would result in an Australian person acquiring more than a relevant interest in 20% of the voting rights attached to issued share capital in an Australian listed company would not be permitted.

Additionally, any formal shareholders' agreement and/or informal alliances which would result in a foreign person alone or together with an associated person acquiring more than 15% of the total voting power of issued shares in an Australian listed company would not be permitted. Any formal shareholders' agreements and/or informal alliances which would result in two or more foreign persons together with associated foreign persons acquiring more than 40% of the total voting power of issued shares in an Australian listed company would not be permitted.

Short form answer:

<input checked="" type="checkbox"/> Others	Restrictions are based on the takeover provisions contained in the Corporations Act and the Foreign Acquisitions and Takeovers Act.
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**4) Who decides whether this CEM should be implemented, and under what conditions?**

In the case of corporations which are both incorporated and listed in Australia, the statutory restrictions in place which may impact on the ability for shareholders' agreements and/or informal alliances to be formed are requirements which are imposed at a government level, and are not subject to any discretion at the board or shareholder level of a company.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Others:	Statutory Requirements are not subject to any board or shareholder discretion	
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Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):

Details of any shareholders' agreements or informal alliances formed would need to be disclosed to members in the company's annual report.

**5) Are there ongoing disclosure requirements regarding such CEM?**

Any formal shareholders' agreements and/or informal alliances which would result in an Australian person acquiring more than a relevant interest in 20% of the voting rights attached to issued share capital in an Australian listed company would not be permitted.

Additionally, any formal shareholders' agreement and/or informal alliances which would result in a foreign person alone or together with an associated person acquiring more than 15% of the total voting power of issued shares in an Australian listed company would not be permitted. Any formal shareholders' agreements and/or informal alliances which would result in two or more foreign persons together with associated foreign persons acquiring more than 40% of the total voting power of issued shares in an Australian listed company would not be permitted.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis</p> <p>Details of any notifications provided to the Treasurer or other Government authority in respect of acquisitions which would result in the Foreign Acquisitions and Takeovers Act or any other statutory restrictions being breached would need to be disclosed to shareholders in the annual report.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>For a company which is both incorporated and listed in Australia, shareholders would need to be notified in writing of an off market acquisition which would result in a takeovers provisions of the Corporations Act being breached.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> <li>- Filing of articles of association: must be filed at incorporation of the company. A consolidated copy must also be filed if an amendment to the constitution is required to provide for this CEM, and such amendment is approved by a special resolution of shareholders.</li> <li>- Specific Filing;</li> <li>- Admission documentation;</li> <li>- Annual Report.</li> </ul>
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**6) When a CEM is implemented, on what substantive grounds may such decision be challenged?**

There is a general duty at common law which requires directors to act in the best interests of the company as a whole. The decision by directors of a company incorporated and listed in Australia to support the entering into of formal shareholders agreements and/or informal alliances may be challenged by members on the ground that to do so would be a breach of this duty. An argument may arise in extreme cases that the directors undertaking into such action only represents the best interests of a particular class of shareholders, rather than the best interests of the company as a whole.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders at the expense of the minority of shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders as a whole.
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The grounds upon which a decision to implement this CEM may be challenged operate in the alternative.

**B – GENERAL BACKGROUND QUESTIONS**

**1) What are the rules for Board elections? How many corporate votes are required to appoint or remove corporate directors?**

In the case of corporations which are both incorporated and listed in Australia, a company must have at least 3 directors, two of which must ordinarily reside in Australia. A person nominated to the board of directors must consent to an appointment before the appointment is considered valid by Law.

Persons may be elected and appointed to the board of directors by other directors, but any such appointment would need to be ratified by shareholders at the next annual general meeting of the company.

Short form answer:

<p><input checked="" type="checkbox"/> Simple majority required for Board election: Yes.</p> <p><input checked="" type="checkbox"/> For Board removal: Simple majority required. (More than 50% of the votes cast by shareholders entitled to vote on the resolution.</p> <p>Quorum required for shareholders' meetings proceeding with the election or removal of Board members: This would depend on the rules contained in the incorporated and listed company's constitution.</p> <p>If the company has adopted the replaceable rules under the Corporations Act, section 249T provides:</p> <p>The quorum for a meeting of a company's members is 2 members and the quorum must be present at all times during the meeting.</p> <p>Please note, however, that we are not aware of any listed incorporated company which has adopted the replaceable rules. Most listed Australian companies adopt their own constitution.</p>	<p><input checked="" type="checkbox"/> Board members may be revoked only if revocation is on the agenda.</p> <p>Section 203D(2) Corporations Act:</p> <ul style="list-style-type: none"> <li>• Notice of an intention to move a resolution for removal of director must be given to the company by members at least 2 months before the meeting is to be held. The company must then give the director a copy of the notice as soon as practicable after it is received.</li> </ul> <p><input checked="" type="checkbox"/> Board members may always be removed without cause and/or without indemnity.</p> <p>Removal without cause, is subject to notice of intention being given to the director (as stated above) and subject to entitlement of a director to put their case forward (as detailed below). Therefore cumulative conditions apply.</p> <p>Section 203D(1)</p> <ul style="list-style-type: none"> <li>• A public company may by resolution remove a director from office despite anything in:             <ul style="list-style-type: none"> <li>○ the company's constitution (if any);</li> <li>○ an agreement between the company and the director; or</li> <li>○ an agreement between any or all members of the company and the director.</li> </ul> </li> <li>• The director is entitled to put their case to members by:             <ul style="list-style-type: none"> <li>○ giving the company a written statement for circulation to members; and</li> <li>○ speaking to the motion at the meeting (whether or not the director is a member of the company).</li> </ul> </li> </ul>
<p><input checked="" type="checkbox"/> Electronic voting is authorized. This depends on the incorporated and listed company's constitution, and is not widely practiced in</p>	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened.</p>

<p>Australia. Although there is growing support amongst company boards for it to be introduced.</p>	<p>Section 249D Corporations Act:</p> <p>The directors of a company must call and arrange to hold a general meeting on the request of:</p> <ul style="list-style-type: none"> <li>• members with at least 5% of the votes that may be cast at a general meeting; or</li> <li>• at least 100 members who are entitled to vote at the general meeting.</li> </ul> <p>Section 249F Corporations Act:</p> <ul style="list-style-type: none"> <li>• members with at least 5% of the votes that may be cast at a general meeting of a company may call and arrange to hold a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.</li> </ul> <p><input checked="" type="checkbox"/> Proxy solicitation is authorized.</p> <p>Section 177(1)(A) Corporations Act enables persons wishing to act as proxies to advertise their services directly to shareholders. This provision states that the use of details obtained from the company register is permitted where:</p> <ul style="list-style-type: none"> <li>• the use of information is relevant to the holding of the interests recorded in the register or the exercise of rights attaching to them; or</li> <li>• approved by the company.</li> </ul> <p>Section 249Z of the Corporations Act also allows a company to send to members a list of persons willing to act as proxies at a meeting. If this is done, the list must be sent to all members entitled to attend and vote at the meeting.</p> <p>Furthermore, the address details of all shareholders must be maintained in the company register and accessible to the public pursuant to section 173 of the Corporations Act.</p>
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2) **What shareholders' decisions require a vote from more than a simple majority?**

In the case of corporations which are both incorporated and listed in Australia, a resolution for the amendment of a provision in a Company's constitution, an issue of preference shares or variation of class rights, or a change in the company's corporate purposes would require a 75% majority of shareholders present and eligible to vote, to vote in favor of the resolution.

Short form answer:

<input checked="" type="checkbox"/> All changes in bylaws / articles of association	<input checked="" type="checkbox"/> Change of corporate purpose
<input checked="" type="checkbox"/> Issuance of preference shares	

Shareholders who are present or represented at a shareholders meeting and who do not participate in the vote are not counted at all towards the simple majority. Shareholders who are present or represented at a shareholders meeting and who do not participate or submit a blank vote (i.e. no vote is indicated on the voting form) are not counted towards the vote.