France

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI Ratings about 102 companies in France as of 31 August 2012.

Shareowner interests in France traditionally have been subordinate to those of the company and society at large. French-style capitalism in past decades has involved state intervention, cross-shareholdings, and protectionism practices that are generally against the interests of minority shareowners. Not surprisingly, shareowner engagement in France has often been looked upon unfavorably, with activists viewed as short-term investors solely interested in a quick return. Recently, however, shareowner activists have won significant victories against senior managers who had previously gone unchallenged.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	53%	
What percentage of companies have fully independent audit committees?	26.5%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	36.3%	
Is voting by proxy permitted?	Yes	
Must shares be deposited or blocked from trading in order to vote?	No	This practice is no longer required under French law.
Are there share ownership limitations in this market?	No	Such limitations are rare in this market.
Are there (other) common restrictions on the rights of shareowners to vote in person or by proxy?	No	
Do companies adhere to a majority voting standard in the election of board members?	Yes	This practice is common in France.

(continued)

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies allow for cumulative voting in the election of board members?	No	
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	Yes	Under French law (binding in 2009), companies are required to submit some compensation packages to a shareowner vote.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	Yes	Under French law, companies are required to submit some compensation packages to a shareowner vote.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Subject to a minimum holding requirement of 5% of capital for firms with capital less than EUR750,000
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	Shareowners usually have this right, although many companies neglect to disclose relevant information. Shareowners representing a minimum of 5% of shares may call a general meeting, but the meeting can be convened only by a representative appointed by the president of the Tribunal de Commerce (Tribunal of Commerce), who must verify that the proposed agenda is in the "objectif l'intérêt social de la société" (objective interest of society).
What percentage of companies include golden shares in their capital structure?	2%	The European Union is pushing all European countries to abolish golden shares.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Recently legalized, these plans are increasingly common.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	Approval by a simple majority of shareowners is required.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies require a supermajority vote to approve a merger?	Yes	A two-thirds majority vote is required (with a minimum 25% quorum at the first meeting, then 20% if a second meeting is needed) to approve resolutions at special meetings or extraordinary general meetings, including approval of a merger.
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Yes	A "fair price" is required by French law.
Are class action suits commonly used in this market?	No	Class action lawsuits are not allowed in France.
Are derivative suits commonly used in this market?	No	

Current Engagement Practices and Shareowner Rights Developments

Despite the resistance of some French companies, shareowner activism is gaining momentum in France. In particular, hedge funds and other activist investors have been winning seats on the boards of some of France's most prized companies, with the aim of influencing the direction of these companies and holding managers more accountable than in the past.

A few of the most noteworthy proxy battles took place between shareowners and big companies in 2007–2008. One such contest involved Pardus Capital and Centaurus Capital, activist hedge funds based in New York City and London, respectively. One of their targets, Atos Origin, yielded to the pressure by ousting its chairman, Didier Cherpitel, and granting the hedge funds two seats on its supervisory board. Pardus was locked in a protracted proxy battle with Valeo, an auto parts manufacturer. Behdad Alizadeh, Pardus's representative on the board of Atos Origin, won a seat on Valeo's board in May 2008. With his company's stake at nearly 20%, Alizadeh hoped to convince other board members of the need for restructuring. Other large French companies forced to surrender board seats to outside shareowners include Carrefour Group and Saint-Gobain.

Recent changes to European Union and French laws regarding takeovers have had an impact on the rights of minority shareowners in France. In May 2004, the European Parliament adopted the European Commission (EC) Takeovers Directive (Directive 2004/25/EC),

which was intended to establish a uniform set of rules governing the conduct of takeovers across the European Union. The ultimate agreement was a legislative compromise resulting in a diluted set of principles that fell short of creating a uniform code for the regulation of takeovers. For example, under the directive, member states are given the freedom to choose between implementing either of two takeover rules—namely, Article 9 or Article 11. Moreover, the directive contains a reciprocity provision (Article 12) that allows target companies to take defensive actions against bidders that do not abide by the same restrictions.

In April 2006, the French Parliament approved the implementation of the Takeovers Directive. Accordingly, legislators passed the Loi sur les Offres Publiques (Takeover Act), and the Autorité des Marchés Financiers (Financial Markets Authority) amended its general regulations to comply with the new directive. France adopted Article 9, which requires the board of a company targeted in a takeover bid to obtain shareowner approval to take action to deter or thwart the takeover bid.

As part of the implementation package, however, the French government legalized the use of poison pill warrants. These anti-takeover devices, which require the approval of a simple majority of shareowners, have been adopted by several French companies eager to limit their vulnerability to hostile bidders. These devices, known as *bons Breton*, enable boards to issue warrants convertible into shares at a discounted price in the event of an unsolicited or unwanted takeover attempt. The effect is to inflate the purchase price for any potential bidder.

Although stock ownership limitations are rarely found in listed companies in France, a few companies still impose restrictions on voting rights. Such restrictions are regarded as anti-takeover mechanisms; consequently, some of these companies have been targeted by shareowner activists.

Executive pay is another area in which shareowner pressure is beginning to show results. Specifically, shareowner activists appear to have successfully conveyed their concerns about exorbitant severance pay packages for company executives. Many companies have now reduced severance to two times an executive's total annual compensation.

In 2012, French president François Hollande's new government planned legislation to control executive pay and put employees on company boards and their compensation committees. This policy follows a cap on executive pay at state-owned firms that the administration put in place shortly after Hollande took office in May 2012. A market working group led by the French Institute of Directors published a guide to corporate governance in French listed companies. It draws on the three main French codes: the Afep-Medef code for large firms, the MiddleNext code for medium-sized firms, and recommendations of the French Asset Management Association (AFG).

Legal and Regulatory Framework

French securities market laws are contained in the Code de Commerce (Commercial Code) and the Code Monétaire et Financier (Monetary and Financial Code). La Loi de Sécurité Financière (the Financial Security Act) of August 2003 amended both of these codes and spawned a new stock market regulator, the Autorité des Marchés Financiers (Financial Markets Authority). Corporate governance standards in France are derived from the recommendations of this body and the standards issued by the AFEP-MEDEF Report (a consolidated version of reports on corporate governance issued over a number of years and last updated in 2010).[1] Most French companies observe the "comply or explain" principle with respect to the AFEP-MEDEF Report.

Listed companies in France do not have to meet any requirements in terms of board independence. Under French law, boards are not required to establish standing committees or to adopt formal written charters. Additionally, a listed company in France is not required by law to adopt or disclose an ethics/business conduct code for board members, officers, or employees.

However, the AFEP-MEDEF Report addresses most, if not all, of these issues. For example, the report recommends that no fewer than half the board members be independent for companies that do not have a controlling shareowner. According to the AFEP-MEDEF Report, the board should conduct a self-evaluation on an annual basis and hire an independent consultant to perform such evaluations once every three years. The report recommends that boards set up an audit committee, a nominating committee, and a compensation committee and recommends that at least a majority of these committees be independent board members.

Pursuant to the Financial Security Act, outside auditors are prohibited from rendering certain non-audit services. The law also lays out specific independence criteria that outside auditors must meet. The Haut Conseil du Commissariat aux Comptes (High Council for Statutory Auditors), an independent public body, also oversees the independence of outside auditors.

The Loi en Faveur du Travail, de l'Emploi et du Pouvoir d'Achat (TEPA, or the Law for the Promotion of Employment, Labor, and Purchasing Power), which went into effect in 2008, specifies that some executive compensation (including golden parachutes) must be based on performance and that performance targets must be submitted for approval by the board of directors and are subject to a shareholder vote at the annual general meeting.

[1]www.amf-france.org/documents/general/9743_1.pdf.

Sometimes, shares may acquire double voting rights after they have been fully paid and registered continuously in the name of the same shareowner for specified periods of time, usually two years. When the share is either converted into a bearer share[2] or transferred (except through an inheritance, division of property between spouses, or a donation by the shareowner to the benefit of a spouse or another eligible relative), the double voting right is automatically canceled.

Shareowners in France are typically allowed to vote in person or via proxy, and a few companies have begun to allow internet proxy voting. According to changes in French regulations during 2007, shares are no longer required to be deposited or blocked from trading in order to vote. This practice had previously been a significant deterrent to shareowner participation, particularly for institutional investors who did not want to tie up shares from trading for any significant period of time. Board members are generally elected by a majority of votes cast, and votes in abstention are counted as votes against the board member.

Key organizations with information relevant to shareowner rights in France include the following:

Autorité des Marchés Financiers (Financial Markets Authority) (www.amf-france.org)

European Stock Exchange (www.euronext.com)

Bulletin des Annonces Légales et Obligatoires (www.journal-officiel.gouv.fr)

French Association of Corporate Governance (www.afge-asso.org)

Ministère de l'Économie, de l'Industrie et de l'Emploi (Ministry of the Economy, Industry and Employment) (www.minefe.gouv.fr)

Association de Défense des Actionnaires Minoritaires (Minority Shareholder Defense Association)

[2]Bearer shares are equity securities not registered on the books of the issuing corporation. Such shares are transferred by physical delivery. The issuer disperses dividends to the bearer when a physical coupon is presented to the issuer.