TWO STRIKES AND YOU MAY BE OUT

In chapter 5 we looked at the impact of non-binding shareholder votes on remuneration. We saw that they, together with the resulting media pressure can lead to change in companies' remuneration policies. The case study in that chapter focussed on the Australian telecommunications company, Telstra. The Australian government has recently enacted changes in corporate law, which could have a major impact on remuneration policy.

As of 1 July 2011 Australian companies are subject to what is popularly known as the 'two-strikes' policy. This means that if 25 per cent of shareholders vote against a company's remuneration report at consecutive AGMs the company has to call a vote on whether or not to retain its existing directors. A simple majority vote against retention would be sufficient to change the board.

In recent years there have been many votes against companies' remuneration reports. In a report[1] which led to the change in company law, the Australian Government Productivity Commission listed 27 'substantial', that is at least 25 per cent votes against remuneration reports issued in 2009. The average substantial vote against the report was 43 per cent and the highest was a stunning 81 per cent at Novogen. The Productivity Commission also reported that between 2007 and 2009 11 companies received two consecutive 'no' votes of at least 25 per cent. Not surprisingly, Australian companies have opposed this new legislation. Some commentators believe it puts too much emphasis on remuneration, ignoring other important aspects of board decision-making. Others fear that the size of the required 'no' vote will deter shareholders from protesting against remuneration reports because while they want to protest they do not want to trigger a vote that could result in the appointment of a new board. It will be interesting to see if recently vocal shareholders change their voting patterns in response to the new law, or indeed if other regulators follow the line introduced by the Australian government.

Putting yourself in the position of a shareholder:

1. Do you believe that directors are paid too much in total, or is it the composition of their payment a problem?
2. Would you welcome the chance to change the composition of the board in response to the remuneration report?
3. Are there other issues on which shareholders should be allowed to vote with a view to changing the board?

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[1] Australian Government Productivity Commission (2009) 'Executive Remuneration in Australia' Productivity Commission Inquiry Report No. 49, 19 December 2009