Norges Bank
Investment
Management

Board independence

Position paper

Norges Bank Investment Management position

1. The board should guide company strategy and monitor management performance without conflicts of interest. A majority of shareholder-elected board members should be independent of management, dominant shareholders, and business relationships. In majority-controlled companies, at least a third of board members should be independent.

2. Board decisions that are particularly vulnerable to conflicts of interest should have additional safeguards. The audit committee should have a majority of independent members, and management should not serve on the audit or remuneration committees.

3. Shareholders should be able to assess how the board avoids conflicts of interest. Companies should disclose which board members or candidates they consider to be independent, and how each of them was assessed against applicable criteria for independence.

Background

The board is responsible for guiding company strategy, monitoring management performance and providing accountability to shareholders. Ensuring that the board functions effectively is of fundamental importance to shareholders. This position paper considers the relevance of board independence for the overall effectiveness of the board.

Board independence is a core element of good corporate governance, as recognised by the G20/OECD Principles of Corporate Governance and guidance in most advanced markets. At the same time, we observe that definitions of independence and thresholds for the number of independent board members vary.

Arguments for the position

To be effective, the board must be independent
The board should be able to balance competing demands on the company. A well-qualified board with a high level of independence is better equipped to guide strategy, oversee management and be accountable to shareholders.

Board independence reduces the risk of abuse of minority shareholders
Safeguards are necessary to protect minority shareholders from potential abuse by dominant shareholders or other insiders. Independent board members are in a better position to scrutinise decisions for signs of inequitable treatment and request additional information.

Shareholders need clarity on board independence
Defining independence is a frequent source of contention between listed companies and shareholders. Shareholders need to understand how the board defines its criteria for assessing a candidate's independence.

Arguments against the position

Existing requirements reflect local circumstances and are stringent enough
Local practices balance the consideration of independence with business needs, ownership structure and law in each jurisdiction. Markets with fewer requirements for independence may have better investor protection in other respects.

Controlled and private companies fare well without independent boards
Controlled companies are often successful without majority independence on the board. At the same time, a board can be fully independent while its members lack knowledge and conviction. It is more important for the board to have the right skills and experience than to be independent.

Independence is difficult to measure and may be impractical
True independence is a mindset that cannot be captured completely by regulation. Following overly rigid criteria can lead to the exclusion of highly qualified candidates. Management should not spend significant time on educating independent board members who do not have previous knowledge of the company.

Norges Bank Investment Management's consideration

Weighing the arguments, we see a strong case for reasonable independence requirements for listed companies. A non-executive chairperson and independent board members are important safeguards for minority shareholders. A board acting independently is better equipped to guide and monitor management, and to protect the interests of all shareholders. At the same time, as a long-term investor we benefit from an active market for corporate control. We therefore recognise that a dominant shareholder may want to exercise control via the board.

We acknowledge that there is no uniform definition of independence across all markets, and we rely primarily on local standards to understand variations in individual markets. As a global investor, our concern is to avoid potential conflicts of interest, such as recent employment, significant payments, business relationships or affiliation with the auditor. When warranted, we may apply higher thresholds for independence than suggested by local practice.

Criteria for a lack of independence may provide useful flags but do not cover all cases where independence is impaired. The nomination committee and the board should therefore make a comprehensive assessment of independence, concentrating on the avoidance of conflicts of interest. Individual board members should recuse themselves if they see a potential conflict.

Independence should not outweigh all other qualifications on the board. As such, we recognise the need for industry expertise on the board. With industry experience, independent board members will be in a stronger position to form their own opinions, and to support and challenge management as needed.

This position will serve as a basis for our discussions with company boards.