

Occidental's Interesting Majority Vote Provision and Recent Governance Changes

May 13, 2013 | Client Update | 2-minute read

The resignation of Occidental's chairman at the company's annual meeting, which has been widely reported, was subject to an unusual majority vote provision. 76% of the votes cast opposed Mr. Irani's election to the board. As is fairly common with majority voting, the company's bylaws require any nominee who receives a greater number of votes against his election than in support of such election to tender his resignation. However, rather than having the board consider whether to accept the director's resignation and publicly announce its decision within 90 days, Occidental's bylaws provide that the resignation becomes effective upon the earlier of acceptance by the board or October 31 in the year of election. In other words, the bylaws do not allow the board to reject the resignation, for any reason.

The majority vote bylaw was adopted in 2011 following the outcry over the compensation paid to Mr. Irani, who was then CEO of the company. As a result of the most recent controversy, Occidental made additional governance changes. Some of the more unconventional reforms the board adopted include the rotation of the positions of independent chairman and committee chairs every five years, prohibiting former CEOs of the company from sitting on its board and having the mandatory retirement age for CEOs set at 68. Both executive and director compensation, which had been subject to criticism, were also decreased, with the CEO promising to forego any bonus and certain other compensation during his remaining tenure. In addition, the company pledged to have an independent chairman elected from among the independent directors and create a committee focused on management succession.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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