

If you were to set out to design a governance system that gave minimal power to the owners or citizens it would look a lot like the current governance structure of JSE-listed companies where ownership is dominated by faceless nominee shareholders. Remarkably although this governance structure is part of the reason the dangerous 'white monopoly capital' label sticks so firmly to JSE-listed companies, nobody is in a hurry to change it.

The reluctance to make control of our corporate sector more transparent and accountable inevitably prompts the suspicion that it suits those in power. It also explains why there is such a gulf between the millions of ordinary people of South Africa, who own these companies, and their boards and executives. This is not another grim tale peculiar to South Africa; it is a grim tale about the 'capture' of shareholder capitalism. The same lack of transparency is replicated across the globe and helps to explain why so much of the benefits of shareholder capitalism are captured by a relative handful of well-placed individuals. These well placed individuals are company executives and the fund managers behind nominee shareholders.

It is for these reasons that the Raith Foundation decided some time ago that it could no longer afford to focus only on the returns being generated by the professionals who managed our investments. We were the beneficial owners of a slew of equities and the professionals were the registered owners who voted on our behalf at shareholder meetings. Although these professionals generated attractive returns for us over the years we increasingly felt like absentee owners who avoided all the responsibility that comes with ownership.

This was unacceptable in South Africa's particular and urgent circumstances. The millions of ordinary share owners in this country need to sit up and take action if our economy is to be transformed. We can no longer assume an entrenched status quo will do anything more than what is familiar, namely chase short-term profits and accumulate private rewards in the process.

In appearance the system has all the attributes of a democracy with shareholders having the right to vote at general meetings, to decide on major issues and to demand accountability from executives acting on their behalf. In reality a powerful financial management industry causes the system to short circuit and the executives largely to escape anything but the most cursory level of accountability.

The nominee shareholder plays a central role in enabling this system. The nominee (or registered) shareholder is the person in whose name the share happens to be registered and the person who enjoys all the voting rights. This is distinct from the beneficial shareholder who has paid for the share but whose rights are limited to receipt of the dividends distributed by the company. In many cases the beneficial shareholder is an individual investor (such as the Raith Foundation) or a provident/pension fund member (of whom there are an estimated 13 million in the country) whose assets are overseen

by a large fund manager. These fund managers are the nominee shareholders.

By some estimates nominee shareholders hold as much as 90% of the JSE. Behind the nominee is one of the many banks or fund managers who pool the pensions and savings of millions of South Africans.

The nominee-based shareholder system is a reasonably efficient way of funneling funds into listed companies. It has allowed individuals with comparatively small sums of money to move in and out of shares while avoiding the friction (and expense) that comes with full beneficial ownership. In terms of the Companies Act the investee company is only required to engage with the registered owner of the shares. If the beneficial shareholder wants to attend meetings or vote s/he must make arrangements to exercise that right. The absurdity and danger of this situation became apparent when, a few years ago, Randgold minority shareholders tried to sue Investec for the recovery of R1.9 billion. Investec responded by arguing the minority shareholders were not the nominee shareholders and therefore had no authority to act.

The nominee system means that any responsibility that comes with share ownership is outsourced to professionals. The individual investor or provident fund member is able to sit back and benefit from dividends and share price hikes without having to trawl through annual reports and make decisions on issues that are often mind-numbingly complex. In an age when life just seems to be getting too complicated this does seem like an attractive option. Those who feel they should be more engaged probably take comfort from assurances that fund managers are signatories to the Code for Responsible Investing in SA or the UN Principles for Responsible Investing. If that's not comfort enough there's always the King Code of corporate governance. (In this way the financial services industry gets to control the implementation and oversight of corporate governance. A chilling unintended consequence of the nominee system.)

But let's stop and consider all of this. Place that thinking in a political context and realize how inappropriate it is. Would you hand over your right to vote at elections to an individual with a vested interest in the status quo? Would you believe this individual if s/he assured you they would act in your best interests? Almost certainly not. You might not always vote but you would always want to hold onto the right to vote.

It is time to start applying the same standards to our economic interests that we do to our politics.

This may be a complicated age but it is also an age when, thanks to the wonders of information technology, being an active shareowner doesn't have to be complex or expensive. Technology offers the scope for beneficial shareholders to enjoy more effective levels of engagement with their companies.

For too long we have accepted the bundling up of services and the relinquishing of authority and responsibility to layers of professionals including asset consultants, administrators and managers. With every layer comes additional cost and a diminished sense of ownership.

The professionals (the asset consultants, the administrators, the managers) acting as our agents, emerge as the dominant force in the entire system. And given the frequent inter-linking relationships between banks, fund managers and investee companies it is fraught with potential conflicts of interest. Is it possible for bank- controlled nominees to enforce independent oversight over company executives who are clients or potential clients of the bank?

On many occasions the prevalence of nominees doesn't even serve the investee companies well. Those who do want (or are required to in terms of a King Code recommendation) to get behind the nominee shareholders and engage with the real owners find it extremely difficult to peel away the many layers of nominees that have been put in place.

The Raith Foundation believes responsible ownership cannot ignore its obligations. A responsible investor is in no position to enforce environmental, social and governance issues if it cannot vote at shareholders' meetings. A responsible investor is obliged to monitor, engage and intervene – if appropriate – on matters that may affect long-term value. It is obliged to influence behavioural changes where it believes such changes are appropriate. It cannot hide from this responsibility behind nominee status. For this reason the Raith Foundation now insists on voting on every one of its beneficially owned shares. In many companies we have only a small voice, but it is a voice and it will be heard. In time, we hope the companies we own a stake in will listen and respond to us.