

KOREA

Proxy Voting Guidelines Benchmark Policy Recommendations

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Overview

Proposals are always presented in a bundled manner. As such, in cases where the negative provisions proposed in a resolution outweigh any positive ones, vote against the whole resolution. Shareholders are advised to carefully scrutinize any changes to a company's articles as shareholders will not likely have any chance in the future to reverse the amendments once the amended articles are in place.

The following are frequently proposed amendments to the Article of Incorporation in Korea:

[Cumulative voting](#)

[Establishment of Audit Committee](#)

[Adjustment of Par Value](#)

[Issuance \(limit\) on new shares or convertible securities](#)

[Increase in authorized capital](#)

[Stock split](#)

[Reverse stock split](#)

[Preferred stock / Non-voting common shares](#)

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[Diversification / Expansion of Business Objectives](#)

[Amend Quorum Requirements](#)

[Authorizing board to approve financial statements and income allocation](#)

[Golden Parachute Clause](#)

1. Operational Items

Approval of financial statement

➤ **General Recommendation:** Generally vote for the approval of financial statements, unless:

- There are concerns about the accounts presented or audit procedures used; or
- The company is not responsive to shareholder questions about specific items that should be publicly disclosed.

Allocation of Income

➤ **General Recommendation:** Generally vote for the approval of allocation of income (and declaration of cash or stock dividends), unless:

- The dividend payout ratio has been consistently low without adequate justification;
- The payout is excessive given the company's financial position;

2. Board of Directors

Korean law imposes two different sets of corporate governance standards on listed companies – one for companies whose asset size is greater than KRW 2 trillion (large companies) and the other for companies whose asset size is below KRW 2 trillion (small companies). Under Korean law, large company boards must have a majority of outside directors, and small companies are required to have a board on which one-fourth of the directors are outsiders.

Four fundamental principles apply when determining votes on director nominees:


Independence: Boards should be sufficiently independent from management (and significant shareholders) to ensure that they are able and motivated to effectively supervise management's performance for the benefit of all shareholders, including in setting and monitoring the execution of corporate strategy, with appropriate use of shareholder capital, and in setting and monitoring executive compensation programs that support that strategy. The chair of the board should ideally be an independent director, and all boards should have an independent leadership position or a similar role in order to help provide appropriate counterbalance to executive management, as well as having sufficiently independent committees that focus on key governance concerns such as audit, compensation, and nomination of directors.

Composition: Companies should ensure that directors add value to the board through their specific skills and expertise and by having sufficient time and commitment to serve effectively. Boards should be of a size appropriate to accommodate diversity, expertise, and independence, while ensuring active and collaborative participation by all members. Boards should be sufficiently diverse to ensure consideration of a wide range of perspectives.

Responsiveness: Directors should respond to investor input, such as that expressed through significant opposition to management proposals, significant support for shareholder proposals (whether binding or non-binding), and tender offers where a majority of shares are tendered.

Accountability: Boards should be sufficiently accountable to shareholders, including through transparency of the company's governance practices and regular board elections, by the provision of sufficient information for shareholders to be able to assess directors and board composition, and through the ability of shareholders to remove directors.

Election of Director

 **General Recommendation:** Generally vote for re/election of directors, except under the following circumstances:

Independence

Vote against non-independent director nominees (Executive Directors and Non-Independent Non-Executive Directors per ISS Classification of Directors) when

- Independent directors comprise less than majority of the board (in the case of large companies), or less than 25 percent in the case of small companies.

Classification of Director

Executive Director

- Employee or executive of the company or a wholly-owned subsidiary of the company;
- Any director who is classified as a non-executive, but receives salary, fees, bonus, and/or other benefits that are in line with the highest-paid executives of the company.

Non-Independent Non-Executive Director (NED)

- Any director who is attested by the board to be a non-independent NED;
- Any director specifically designated as a representative of a shareholder of the company;
- Any director who is also an employee or executive of a significant^[1] shareholder of the company;
- Any director who is also an employee or executive of a subsidiary, associate, joint venture, or company that is affiliated with a significant^[1] shareholder of the company;
- Any director who is nominated by a dissenting significant shareholder, unless there is a clear lack of material^[2] connection with the dissident, either currently or historically;
- Beneficial owner (direct or indirect) of at least 5 percent of the company's stock, either in economic terms or in voting rights (this may be aggregated if voting power is distributed among more than one member of a defined group, e.g., family members who beneficially own less than 5 percent individually, but collectively own more than 5 percent), unless market best practice dictates a lower ownership and/or disclosure threshold (and in other special market-specific circumstances);
- Government representative;
- Currently provides or has provided (or a relative^[3] provides) professional services^[4] to the company, to an affiliate of the company, or to an individual officer of the company or of one of its affiliates in the past three years in excess of USD 10,000 per year;
- Represents customer, supplier, creditor, banker, or other entity with which the company maintains transactional/commercial relationship (unless company discloses information to apply a materiality test^[5]);
- Any director who has a conflicting relationship with the company, including but not limited to cross-directorships with executive directors or the chairman of the company;
- Relative^[3] of a current employee or executive of the company or its affiliates;
- Relative^[3] of a former employee or executive of the company or its affiliates;
- A new appointee elected other than by a formal process through the General Meeting (such as a contractual appointment by a substantial shareholder);
- Founder/co-founder/member of founding family but not currently an employee or executive;
- Former employee or executive (five-year cooling off period);
- Years of service is generally not a determining factor unless it is recommended best practice in a market and/or in extreme circumstances, in which case it may be considered.^[6]
- Any additional relationship or principle considered to compromise independence under local corporate governance best practice guidance.

Independent NED

- No material^[2] connection, either directly or indirectly, to the company (other than a board seat) or the dissenting significant shareholder.

Employee Representative

- Represents employees or employee shareholders of the company (classified as “employee representative” but considered a non-independent NED).

Footnotes:

[1] At least 5 percent of the company's stock, unless market best practice dictates a lower ownership and/or disclosure threshold.

[2] For purposes of ISS' director independence classification, “material” will be defined as a standard of relationship financial, personal, or otherwise that a reasonable person might conclude could potentially influence one's objectivity in the boardroom in a manner that would have a meaningful impact on an individual's ability to satisfy requisite fiduciary standards on behalf of shareholders.

[3] “Relative” follows the definition of “immediate family members” which covers spouses, parents, children, stepparents, step-children, siblings, in-laws, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company.

[4] Professional services can be characterized as advisory in nature and generally include the following: investment banking/financial advisory services; commercial banking (beyond deposit services); investment services; insurance services; accounting/audit services; consulting services; marketing services; and legal services. The case of participation in a banking syndicate by a non-lead bank should be considered a transaction (and hence subject to the associated materiality test) rather than a professional relationship.

[5] A business relationship may be material if the transaction value (of all outstanding transactions) entered into between the company and the company or organization with which the director is associated is equivalent to either 1 percent of the company's turnover or 1 percent of the turnover of the company or organization with which the director is associated. OR, A business relationship may be material if the transaction value (of all outstanding financing operations) entered into between the company and the company or organization with which the director is associated is more than 10 percent of the company's shareholder equity or the transaction value, (of all outstanding financing operations), compared to the company's total assets, is more than 5 percent.

[6] For example, in Hong Kong, Singapore and Taiwan, directors with a tenure exceeding nine years will be considered non-independent, unless the company provides sufficient and clear justification that the director is independent despite his long tenure.

Composition

Attendance: Generally vote against an outside director who attended less than 75 percent of board and key committee meetings over the most recent fiscal year, without a satisfactory explanation. Acceptable reasons for director absences are generally limited to the following:

- Medical issues/illness;
- Family emergencies;
- The director has served on the board for less than a year; and
- Missing only one meeting (when the total of all meetings is three or fewer);

Overboarded Outside Directors: Generally vote against an outside director who sits on more than two public company boards, in violation of the Commercial Act and accompanying presidential decree;

Where adequate disclosure has been provided, generally vote for the election of a CEO, managing director, executive chairman, or founder whose removal from the board would be expected to have a material negative impact on shareholder value.

Accountability

Governance Failures:

Vote against the election of director if adequate disclosure has not been provided in a timely manner.


Under extraordinary circumstances, vote against individual directors, members of committees, or the entire board, due to:

- Material failure¹ of governance, stewardship, risk oversight, or fiduciary responsibilities at the company;
- Failure to replace management or directors as appropriate; or
- Egregious actions² related to a director's service on other boards that raise substantial doubt about his/her ability to effectively oversee management and serve the best interests of shareholders at any company.

Generally vote against directors from all boards on which the individual serves for failure to remove a director from the board who has demonstrated a serious failure of accountability due to his/her egregious actions.


For cases where the election of multiple directors are presented as a bundled item, vote against the entire slate of directors if one of the nominees presents any of the governance concerns highlighted above.

Discharge of Director

 **General Recommendation:** Generally vote for the discharge of directors, including members of the management board and/or supervisory board, unless there is reliable information about significant and compelling controversies as to whether the board is fulfilling its fiduciary duties, as evidenced by:

- A lack of oversight or actions by board members that invoke shareholder distrust related to malfeasance or poor supervision, such as operating in private or company interest rather than in shareholder interest; or
- Any legal proceedings (either civil or criminal) aiming to hold the board responsible for breach of trust in the past or related to currently alleged actions yet to be confirmed (and not only the fiscal year in question), such as price fixing, insider trading, bribery, fraud, and other illegal actions; or
- Other egregious governance issues where shareholders will bring legal action against the company or its directors.

Board Structure

 **General Recommendation:** Generally vote for proposals to fix board size:

- Vote against the introduction of classified boards and mandatory retirement ages for directors.
- Vote against proposals to alter board structure or size in the context of a fight for control of the company or the board.

¹ Examples of material failure of governance include but are not limited to: indictment or conviction for embezzlement; bribery; large or serial fines or sanctions from regulatory bodies; significant adverse legal judgments or settlement; or hedging of company stock.

² Egregious actions encompass broader situations that include but are not limited to material failures of governance, stewardship, risk oversight, or fiduciary responsibilities. Examples of egregious actions include felony-level offenses that called for indictment or conviction, and the failure to remove such problematic director from the board. Typically, an individual's action deemed egregious is viewed as a more severe case which prohibits the individual from assuming a director seat on the board of any company.

Cumulative Voting

- **General Recommendation:** Generally vote against proposals to introduce a provision that will prohibit the use of cumulative voting in director elections.

3. Audit-Related

Under Korean law, large companies are required to establish an audit committee comprising a minimum of three members, two-thirds of whom should be outside directors (including the chair). Korean law also requires that at least one audit committee member possess accounting or related financial management expertise or experience.

Election of Audit Committee Member(s)

- **General Recommendation:** Vote case-by-case on the election of audit committee members. Consider the history of a particular director when deciding whether to vote in favor of his/her (re)election.

Examples of circumstances where a vote against an audit committee member's (re)election should be considered include:

- There are serious concerns about the statutory reports presented or audit procedures used;
- A director has had significant involvement with a failed company;
- A director has in the past appeared not to have acted in the best interests of all shareholders;
- A director has breached fiduciary duties or engaged in willful misconduct or gross negligence in his/her capacity as a director (irrespective of whether such wrongdoing brings claims of losses and/or damages to the company);
- A director has been indicted by the Prosecutors' Office and there are pending investigations;
- An outside director has attended less than 75 percent of board meetings in the most recent financial year, without a satisfactory explanation;
- An outside director sits on more than two public company boards, in violation of the Commercial Act and accompanying presidential decree;
- A non-independent director (under ISS classification) seeks to become an audit committee member (for large companies);
- A non-independent director (under ISS classification) seeks to become an audit committee member and the audit committee is less than two-thirds independent (for small companies);
- A director has engaged in some significant transactions with the company and affiliates in the last three years and he/she cannot reasonably be seen to have the necessary objectivity and independence; or
- Other questions exist concerning any of the audit committee members being appointed.

Election of Internal Auditor(s)

Under Korean law, small companies are required to appoint at least one internal auditor. These companies may alternatively choose to establish an audit committee.

- **General Recommendation:** Vote case-by-case on the election of internal auditor(s). Consider the history of a particular internal auditor when deciding whether to vote in favor of his or her (re)election.

Examples of circumstances where a vote against an internal auditor's (re)appointment should be considered include:

- There are serious concerns about the statutory reports presented or audit procedures used;
- The internal auditor(s) has previously served the company in an executive capacity or can otherwise be considered affiliated with the company;
- A nominee has had significant involvement with a failed company;

- A nominee has breached fiduciary duties or engaged in willful misconduct or gross negligence in his/her capacity as an internal auditor (irrespective of whether such wrongdoing brings claims of losses and damages to the company);
- A nominee has been indicted by the Prosecutor's Office and there are pending investigations;
- A nominee has engaged in some significant transactions with the company **and affiliates** in the last three years and he/she cannot reasonably be seen to have the necessary objectivity and independence; or
- Other questions exist concerning any of the internal auditors being appointed.

For those small companies which choose to create an audit committee in place of the internal auditor system vote for the election of an inside director as an audit committee member only if the company's audit committee, after the election, satisfies the legal requirement.

Establishment of Audit Committee(s)

- ▷ **General Recommendation:** Generally vote for the establishment of an audit committee as a replacement for the internal auditor system.

4. Capital Structure

Capital

Adjustment of Par Value

- ▷ **General Recommendation:** Vote for requests to adjust the par value of common stock unless the action is being taken to facilitate an anti-takeover device or some other negative corporate governance action.

Issuance (limit) on new shares or convertible securities

- ▷ **General Recommendation:** Vote for issuance requests without preemptive rights to a maximum of 20 percent of currently issued capital.

The most contentious aspect in this proposal pertains to articles that permit companies to issue new shares, convertible bonds, and/or bonds with warrants without triggering existing shareholders' preemptive rights. Only vote for these article amendments if:

- The potential dilution ratio to existing shareholders does not exceed 20 percent; and
- The proposed issuance limit of new shares is set at no higher than 20 percent of issued shares.

Increase in authorized capital

- ▷ **General Recommendation:** Generally vote for increases in authorized capital, unless:
 - The increase in authorized capital exceeds 100 percent of the current authorized capital without any justification; or
 - The increase in the authorized capital results in less than 30 percent of the proposed authorized capital on issue.

Stock split

- ▷ **General Recommendation:** Generally vote for stock splits or reverse stock splits unless there is potential dilution impact on existing shareholders as a result of stock split and/or reverse stock split.

Reverse stock split

- ▷ **General Recommendation:** Vote for a reverse stock split if:
- The number of authorized shares will be proportionately reduced; or
 - The effective increase in authorized shares is equal to or less than the allowable increase calculated in accordance with Increase in Authorized Capital policy.
 -

Preferred stock / Non-voting common shares

- ▷ **General Recommendation:** Generally vote for the creation of a new class of preferred stock, or the issuance of preferred stock up to 50 percent of the issued capital, unless the terms of the preferred stock would adversely affect the rights of existing shareholders.

Restructuring

Spin-off agreement

- ▷ **General Recommendation:** Generally vote for the approval of a spinoff agreement, unless:
- The impact on earnings or voting rights for one class of shareholders is disproportionate to the relative contributions of the group;
 - The company's structure following the spinoff does not reflect good corporate governance;
 - There are concerns over the process of negotiation that may have had an adverse impact on the valuation of the terms of the offer; and/or
 - The company does not provide sufficient information upon request to make an informed voting decision.
 - There is an accompanying reduction in capital.

Reduction in capital

- ▷ **General Recommendation:** Generally vote for proposals to reduce capital for routine accounting purposes unless the terms are unfavorable to shareholders.

Reduction in capital accompanied by cash consideration

- ▷ **General Recommendation:** Generally vote for proposals to reduce a company's capital that accompany return of funds to shareholders and are part of a capital-management strategy and an alternative to a buyback or a special dividend. Such a resolution is normally implemented proportionately against all outstanding capital, and therefore do not involve any material change relative to shareholder value.

Reduction in capital not accompanied by cash consideration

- ▷ **General Recommendation:** Generally vote for proposals to reduce capital that do not involve any funds being returned to shareholders. A company may take this action if its net assets are in danger of falling below the aggregate of its liabilities and its stated capital. Such proposals are considered to be routine accounting measures.

Merger agreement, sales/acquisition of company assets, and formation of holding company

▷ **General Recommendation:** Generally vote for the approval of a sale of company assets, merger agreement, and/or formation of a holding company, unless:

- The impact on earnings or voting rights for one class of shareholders is disproportionate to the relative contributions of the group;
- The company's structure following such transactions does not reflect good corporate governance;
- There are concerns over the process of negotiation that may have had an adverse impact on the valuation of the terms of the offer;
- The company does not provide sufficient information upon request to make an informed voting decision; and/or
- The proposed buyback price carries a significant premium at the date of writing, conferring on shareholders a trading opportunity.

Discussion

The company-level transactions that require shareholders' approval include: sale/acquisition of a company's assets or business unit; merger agreements; and formation of a holding company. For every analysis, ISS reviews publicly available information as of the date of the report and evaluates the merits and drawbacks of the proposed transaction, balancing various and sometimes countervailing factors.

Valuation – Is the value to be received by the target shareholders (or paid by the acquirer) reasonable? While the fairness opinion may provide an initial starting point for assessing valuation reasonableness, ISS places emphasis on the offer premium, market reaction, and strategic rationale.

In Korea, under the Capital Market and Financial Investment Business Act (CMFIB), a fairness opinion is not required for companies with listed shares because the Act specifically sets out all relevant steps and the manner in which the proportion of shares should be divided between the acquirer and target. The CMFIB requires the stock swap ratio between listed companies to be determined by a specific formula which is based on the historical prices and trading volumes.

For transactions between an unlisted company and a listed company, a fairness opinion should be obtained from the independent advisers who review the fairness of the stock swap ratio and the compliance with the governing laws and regulations.

Market reaction – How has the market responded to the proposed deal? How did the company's stock price react following the announcement compared to those of its peers? A negative market reaction will cause ISS to scrutinize a deal more closely.

Strategic rationale – Does the deal make sense strategically? From where is the value derived? Cost and revenue synergies should not be overly aggressive or optimistic, but reasonably achievable. Management should also have a favorable track record of successful integration of historical acquisitions.

Conflicts of interest – Are insiders benefiting from the transaction disproportionately and inappropriately as compared to non-inside shareholders? ISS will consider whether any special interests may have influenced these directors and officers to support or recommend the merger.

Governance – Will the combined company have a better or worse governance profile than the current governance profiles of the respective parties to the transaction? If the governance profile is to change for the worse, the burden is on the company to prove that other issues (such as valuation) outweigh any deterioration in governance.

Trading opportunity from the dissident's right – Does the proposed buyback price carry a premium or confer on shareholders a trading opportunity?


In Korea, the Corporate Act entitles shareholders to exercise a dissident's right (also known as a right of withdrawal, appraisal right, or buyback right) when the company resolves to engage in such transactions as a sale/acquisition of business, merger, or formation of a holding company.

A dissident's right is the right of shareholders to have their shares bought back by the company at a pre-determined buyback price in the event that shareholders dissent with management on a proposed merger. The manner in which the share buyback price is determined is stipulated under Korean law.

ISS considers whether the proposed buyback price carries a significant premium as of the date of analysis and states in the analysis whether the proposed buyback price confers on shareholders a trading opportunity at the time of analysis. However, shareholders who are interested in exercising the right of withdrawal are advised to reevaluate the size of premium/discount attached to the proposed buyback price, if any, closer to the meeting date and ensure that a written notice of intention of dissent is submitted well in advance of the general meeting.


5. Compensation

Remuneration Cap for Directors

 **General Recommendation:** Generally vote for approval of the remuneration cap for directors, unless:


- The proposed cap on directors' remuneration is excessive relative to peer companies' remuneration without reasonable justification; or
- The company is asking for an increase in the remuneration cap where the company has not provided a reasonable justification for the proposed increase.

Remuneration Cap for Auditors

 **General Recommendation:** Generally vote for the remuneration cap for internal auditors, unless:


- The proposed remuneration cap for internal auditors is excessive relative to peer companies' remuneration caps without reasonable justification; or
- The company is asking for an increase in the remuneration cap where the company has not provided a reasonable justification for the proposed increase; or
- There are serious concerns about the statutory reports presented or audit procedures used.

Stock Option Grants

 **General Recommendation:** Generally vote for a proposed stock option grant, unless:

- The maximum dilution level under the plan exceeds 5 percent of issued capital for a mature company; or
- The maximum dilution level under the plan exceeds 10 percent for a growth company.

Amendments to Terms of Severance Payments to Executives

 **General Recommendation:** Generally vote for the establishment of, or amendments, to executives' severance payment terms, unless:

- The company fails to provide any information in regard to the changes to the terms of severance payments to executives;
- The negative provisions proposed in a resolution outweigh any positive ones; and/or
- The company proposes to introduce a new clause that is effectively a golden parachute clause.

Stock Option Programs for the Employee Stock Ownership Plan

- **General Recommendation:** Generally vote for article amendments to establish stock option programs for the Employee Stock Ownership Plan if:
- The company explicitly states that shareholders' approval will be required for the board to grant stock options to individual members of the employee stock ownership plan pursuant to the Framework Act on Labor Welfare, either prior to the grant or retrospectively at the earliest general meeting; and
 - The maximum dilution level under the program does not exceed 5 percent of issued capital for a mature company and 10 percent for a growth company.

Golden Parachute Clause

- **General Recommendation:** Generally vote against proposals to introduce a provision that entitles the company's directors to an excessive level of remuneration in the event that they are dismissed or terminated.

6. Routine / Miscellaneous

Diversification / Expansion of Business Objectives

- **General Recommendation:** Generally vote for proposals to expand business objectives unless the new business takes the company into risky areas.

Amend Quorum Requirements

- **General Recommendation:** Vote case-by-case on proposals to amend quorum requirements. Vote against proposals to adopt a supermajority voting requirement for the removal of directors or internal auditors.

Authorizing Board to Approve Financial Statements and Income Allocation

- **General Recommendation:** Generally vote against proposals to introduce a provision that gives the board of directors the authority to approve financial statements and income allocation (including dividend payout). Insertion of such a clause would potentially take away shareholders' right to approve the company's dividend payment decision without any countervailing benefits.

7. Shareholder Proposals


- **General Recommendation:** Generally vote for shareholder proposals that would improve the company's corporate governance or business profile at a reasonable cost.

Generally vote against proposals that potentially limit the company's business activities or capabilities or result in significant costs being incurred with little or no benefit.

Generally vote against shareholder-nominated candidates who lack board endorsement, unless they demonstrate a clear ability to contribute positively to board deliberations.

8. Social/Environmental Issues

Issues covered under the policy include a wide range of topics, including consumer and product safety, environment and energy, labor covered standards and human rights, workplace and board diversity, and corporate political issues. While a variety of factors goes into each analysis, the overall principle guiding all vote recommendations focuses on how the proposal may enhance or protect shareholder value in either the short term or long term.

 **General Recommendation:** Generally vote case-by-case, taking into consideration whether implementation of the proposal is likely to enhance or protect shareholder value, and in addition the following will be considered:

- If the issues presented in the proposal are more appropriately or effectively dealt with through legislation or government regulation;
- If the company has already responded in an appropriate and sufficient manner to the issue(s) raised in the proposal;
- Whether the proposal's request is unduly burdensome (scope, timeframe, or cost) or overly prescriptive;
- The company's approach compared with any industry standard practices for addressing the issue(s) raised by the proposal;
- If the proposal requests increased disclosure or greater transparency, whether or not reasonable and sufficient information is currently available to shareholders from the company or from other publicly available sources; and
- If the proposal requests increased disclosure or greater transparency, whether or not implementation would reveal proprietary or confidential information that could place the company at a competitive disadvantage.

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