

Georgeson

KOREAN AGM

SEASON REVIEW 2023



Contents

Highlights > 3

1. Voting in Korea > 4

1.1 AGM Scheduling	4
1.2 Rejected Resolutions	5
1.3 Shareholder Proposals	6

2. Proxy Advisors > 12

2.1 KCGS	12
2.2 KRESG	13
2.3 Sustainvest	13

3. Corporate Governance Developments > 14

3.1 Improved protection for shareholders in IPOs of newly incorporated companies by division	14
3.2 Improved laws and practices regarding dividends	15

About Georgeson > 16

HIGHLIGHTS

99.7% of KRX-listed companies held their AGM in March, and especially, **72.4%** of the companies did in the last week of March.

Across the **KOSPI 100**, there was no company having board-proposed agenda items rejected by shareholders.

KT is expected to hold an EGM within a few months to **elect a new CEO** and its shareholders should actively exercise their shareholder rights in view of its recent controversial issues.

We observed **170 shareholder** proposal submissions, **increasing 31.8%** year on year, and **24** passing shareholder proposals, representing a **passage rate of 15.0%**.

Flashlight Capital Partners and ANDA Asset Management submitted a shareholder proposal to KT&G on **23 agenda items**, all of which failed to pass other than those regarding interim dividends.

HYBE submitted a shareholder proposal to SM Entertainment on **14 agenda items**, most of which were eventually withdrawn after **HYBE dropped** its plan to gain control over SM.

APG submitted a shareholder proposal to KT on **2 agenda items**, all of which were **accepted by the board** and were **approved** by shareholders.

KCGS, KRESG, and Sustinvest, major local proxy advisors in Korea, made voting recommendations on **2,484, 4,588, 1,496 agenda items**, respectively, and ratios of against recommendations by them are **14.7%, 12.1%, 10.5%**, respectively.

The Korean government announced measures to **improve the rights and interests of general shareholders** in IPOs of newly incorporated companies established by division (de-merger), and all of the measures have been **in effect since 2022**.

The Korean government announced measures to **improve laws regarding dividends**, in line with global standards, and some of the measures began to be **implemented in 2022**.

1. VOTING IN KOREA

1.1 AGM Scheduling

99.7% of KRX-listed companies held their AGM in March, and especially, 72.4% of the companies did in the last week of March. The dates when AGMs of the companies were most concentrated are 29, 31, 30 March 2023, on which 22.5%, 18.0%, 13.5% of the AGMs were held respectively. One notable feature is that there has been a growing number of companies which held their AGM in the last week of March during the past few years. The reason seems to be that listed companies have been required to disclose their annual report and audit report at least a week before their AGM date since the beginning of 2021 by the new enforcement decree of the Commercial Act of Korea.

Table 1: Number of AGMs of KRX-listed companies by day

Month	Week	Mon	Tue	Wed	Thu	Fri	Sat	Total
Feb	5 th		4					4
Mar	2 nd					1		1
	3 rd	2	3	7	17	35		64
	4 th	16	19	77	173	267	1	553
	5 th	141	276	510	307	408		1,642
Apr	2 nd		1					1
	3 rd		1					1
	4 th	1						1
Total								2,267

(Source: Korea Listed Companies Association, KOSDAQ Listed Companies Association)

Table 2: Number and proportion of AGMs of KRX-listed companies by week

Month	Week	2021	2022	2023	Total
Mar	2 nd	7	5	1	13
		0.3%	0.2%	0.0%	
	3 rd	141	85	64	290
		6.8%	3.9%	2.8%	
	4 th	1,013	717	553	2,283
		48.7%	32.9%	24.5%	
	5 th	921	1,374	1,642	3,937
		44.2%	63.0%	72.7%	
Total		2,033	2,082	2,181	6,523

(Source: Korea Listed Companies Association, KOSDAQ Listed Companies Association)

1.2 Rejected Resolutions

Among our sample of KOSPI 100 companies, no company had board-proposed agenda items rejected by shareholders during this AGM season. We should nonetheless take a close look at the case of KT (KOSPI: 030200), a major telecommunications company headquartered in Korea. KT's 2023 AGM has been embroiled in controversy because of all nominees having resigned from the candidacy right before the meeting.

KT

In November 2022, KT's CEO, Hyeon-mo Ku, expressed his wish to be re-elected for a second term of office and KT decided to nominate him as CEO again in the following month. National Pension Service (NPS), however, voiced publicly its opposition to KT's decision, raising doubts about the nomination process. In February 2023, KT announced that it would recruit candidates for CEO through open competition, withdrawing its nomination, and Mr. Ku gave up seeking a second term. KT finally disclosed its 7 nominees for directors, including the CEO nominee; however, all of them stepped down from the candidacy 4 days before the AGM date.

This series of incidents arose from an apparent failure in the supervisory functions of KT's board. Mr. Ku was facing trial on charges of occupational embezzlement and violating the Political Funds Act when nominated by the board and the trial is still underway. KT's board, in the first place, should have not nominated him as CEO again because he had yet to be found not guilty at court. In addition, the nomination process of the board should have been carried out in a transparent and fair way through open competition from the very beginning.

The election of KT's CEO requires approval from a shareholder meeting according to its articles of incorporation. KT held an EGM in June 2023 to elect 7 new outside directors and announced recently that it would convene another EGM on August 30 to elect a new CEO. There has been speculation in markets that the Korean government put pressure on KT through NPS with the goal of appointing a pro-government figure as CEO. In light of this recent history, it is especially important that KT's shareholders should actively exercise their shareholder rights to ensure that the new CEO is a candidate who is committed to protecting and maximizing shareholder value.

1.3 Shareholder Proposals

1.3.1 Overall Trends

We observed a total of 170 shareholder proposal submissions, increasing 26.9% year on year. In recent years, there has been a steady increase in submissions of proposals on outside directors, members of an audit committee, and internal auditors, which indicates rising awareness of the importance of supervising the directors and management. Submissions of proposals on shareholder return (allocation of income, stock repurchases, retirement of treasury stock) have also been on the rise and we see an increase in retail investors and relevant solidarities as the main reason for it. The number of retail investors in listed companies in Korea and shareholder return-related proposals submitted to the companies by them increased on average 25.2%, 51.6% every year respectively over the past 3 years.¹

Table 3: Number of shareholder proposal submissions and voting results

	2021	2022	2023	Total
Number of proposals (=A+B+C+D)	111	134	170	415
Passed (A)	13	13	24	50
Failed (B)	81	93	113	287
Automatically Lapsed (C)	11	22	23	56
Withdrawn (D)	6	6	10	22
Passage rate (=A/(A+B+C))	12.4%	10.2%	15.0%	12.7%

Table 4: Number of shareholder proposal submissions by category

Category	2021	2022	2023	Total
Election of Outside Directors	18	32	30	80
Election of Members of an Audit Committee	17	9	9	35
Election of Internal Auditors	6	10	15	31
Allocation of Income	13	13	27	53
Approval of Stock Repurchases	0	2	5	7
Approval of the Retirement of Treasury Stock	3	1	3	7
Election of Inside Directors	16	26	35	77
Amendments to Articles of Incorporation	26	15	28	69
Others	12	26	18	56
Total	111	134	170	415

¹ Source: Korea Securities Depository

We observed 24 shareholder proposals pass during this AGM season, representing a passage rate of 15.0%. The 3-year average passage rate of proposals for the election of members of an audit committee and internal auditors is 19.7%, which is higher than the overall average of 12.7% for all proposals. Such phenomenon results from the so-called 3% rule, whereby a shareholder holding more than 3% of the outstanding shares, exclusive of non-voting shares, is allowed to exercise his voting rights only up to 3% in the appointment of members of an audit committee and internal auditors (Commercial Act Article 542-12, Article 409). Few proposals on shareholder return have passed during the same period and it reflects the difference of views between companies and general shareholders on corporate capital allocation.

Table 5: Number of passing shareholder proposals by category

Category	2021	2022	2023	Total
Election of Outside Directors	2	4	4	10
Election of Members of an Audit Committee	2	3	0	5
Election of Internal Auditors	2	1	5	8
Allocation of Income	1	0	0	1
Approval of Stock Repurchases	0	0	0	0
Approval of the Retirement of Treasury Stock	0	0	0	0
Election of Inside Directors	1	2	6	9
Amendments to Articles of Incorporation	5	1	7	13
Others	0	2	2	4
Total	13	13	24	50

The reason why all voted proposals are governance-focused ones is that the current Korean law does not acknowledge environmental or social issues as a matter that may be adopted at a shareholders' meeting. The Commercial Act prescribes that a shareholders' meeting may adopt resolutions as to matters provided for by the Act or the articles of incorporation (Commercial Act Article 361). It is a generally accepted interpretation that shareholders may also submit a proposal only as to matters provided for by the Act or the articles of incorporation, that is, financial or governance issues. The only available mechanism for addressing environmental or social issues in a shareholder proposal in Korea is to frame proposals as those on governance issues such as amendments to articles of incorporation, unless advisory proposals are allowed by the articles of incorporation.

1.3.2 Major Cases

1) KT&G

Flashlight Capital Partners and ANDA Asset Management between them submitted a shareholder proposal to tobacco and ginseng company KT&G (KOSPI: 033780) on 23 agenda items at its 2023 AGM, details of which are as below.

Agenda Number	Agenda Type	Voting Result	NPS	ISS	Glass Lewis
2-2	Allocation of Income (ANDA proposal)	Failed	Against	Against	Against
2-3	Allocation of Income (Flashlight proposal)	Failed	Against	For	Against
3-1	Amendments to Articles of Incorporation (Flashlight proposal)	Failed	Against	For	Against
3-2	Amendments to Articles of Incorporation (Flashlight proposal)	Failed	Against	For	Against
3-3	Amendments to Articles of Incorporation (Flashlight proposal)	Passed	For	For	Against
3-4	Amendments to Articles of Incorporation (Flashlight proposal)	Passed	For	For	Against
4	Approval of the Retirement of Treasury Stock (Flashlight proposal)	Lapsed	Against	For	Against
5	Approval of Share Repurchases (Flashlight proposal)	Failed	Against	For	Against
6-2	Others (ANDA proposal)	Failed	Against	For	Against
7-3	Election of Outside Directors (ANDA proposal)	Failed	Abstained	Against	Against
7-4	Election of Outside Directors (ANDA proposal)	Failed	Abstained	For	Against
7-5	Election of Outside Directors (ANDA proposal)	Failed	Abstained	Against	Against
7-6	Election of Outside Directors (Flashlight proposal)	Failed	Abstained	For	Against
7-7	Election of Outside Directors (Flashlight proposal)	Failed	Abstained	For	Against
8-4	Election of Outside Directors (ANDA proposal)	Lapsed	Abstained	Against	Against
8-5	Election of Outside Directors (ANDA proposal)	Lapsed	Abstained	For	Against
8-6	Election of Outside Directors (ANDA proposal)	Lapsed	Abstained	Against	Against
8-7	Election of Outside Directors (Flashlight proposal)	Lapsed	Abstained	For	Against
8-8	Election of Outside Directors (Flashlight proposal)	Lapsed	Abstained	For	Against
9-3	Election of Members of an Audit Committee (ANDA proposal)	Lapsed	Against	Against	Against
9-4	Election of Members of an Audit Committee (ANDA proposal)	Lapsed	Against	For	Against
9-5	Election of Members of an Audit Committee (Flashlight proposal)	Lapsed	Against	For	Against
9-6	Election of Members of an Audit Committee (Flashlight proposal)	Lapsed	Against	For	Against

* Agenda 4 was automatically lapsed because Agenda 3-2 failed to pass. Agenda 8-4, 8-5, 8-6, 8-7, 8-8 were automatically lapsed because Agenda 6-2 failed to pass. Agenda 9-3, 9-4, 9-5, 9-6 were automatically lapsed because Agenda 7-3, 7-4, 7-6, 7-7 failed to pass.

Flashlight and ANDA asserted that Korea Ginseng Corporation, a KT&G's core subsidiary, should go public after a spin off to unlock shareholder value. Theoretically, all else being equal, the listing of the newly incorporated company by division would not impact on shareholder value where markets are efficient. Their proposals could nevertheless be viewed as reasonable in that shareholder value would increase should there be an enhancement in the governance structure of the newly incorporated company as compared to that of the company to be divided. The approval of spin-off, however, was not raised as an agenda item in the end as the court rejected the request of the activists.

Flashlight proposed that KT&G retire its treasury stock immediately and amend its articles of incorporation to grant its shareholder meeting the authority to do so. Although share repurchases have a positive effect on shareholder value in theory, augmenting EPS and ROE, the opposite phenomenon often occurs in the Korean market. Market participants see it as a result reflecting market concerns that treasury stock could be used as a means to protect management rights, and in actuality, large conglomerates in Korea have frequently capitalized on treasury stock to benefit management and controlling shareholders in the course of spin-offs, mergers, proxy fights, etc. As KT&G currently owns a large amount of treasury stock accounting for 15.3% of its outstanding shares, the retirement of its treasury stock would lead to value unlocking, addressing market concerns over the possible abuse of it.

Flashlight and ANDA also proposed that outside directors nominated by shareholders be elected and provisions regarding the compensation committee be laid down in the articles of incorporation. In the case of KT&G's executive remuneration, quantitative indicators are primarily aligned with sales revenue, rather than profitability, and qualitative indicators are vague and ambiguous. According to the proponents, outside directors nominated by shareholders appear to be necessary to counter agency costs, such as excessive compensation and overinvestment, thereby protecting shareholder value. As for the compensation committee, although KT&G has already established the committee, it would be beneficial to shareholders to stipulate it in the articles of incorporation because the board would not be able to abolish the committee at its discretion once it is provided for.

All agenda items, however, failed to pass other than those regarding interim dividends, which were supported by the board. The reasons for the failure seem to be that Flashlight and ANDA failed in unifying their solutions and candidates, and NPS recently began to take a conservative stance towards shareholder proposals. Be that as it may, the campaigns of Flashlight and ANDA seem to have achieved a certain amount of success in that KT&G's deep-seated problems have come to the fore and ISS as well as local proxy advisors supported the campaigns.

2) SM Entertainment

HYBE (KOSPI: 352820) submitted a shareholder proposal to SM Entertainment (KOSDAQ: 041510) on 14 agenda items at its 2023 AGM, details of which are as below.

Agenda Number	Agenda Type	Voting Result	NPS	ISS	Glass Lewis
2-2	Amendments to Articles of Incorporation	Passed	For	Against	Against
2-3	Amendments to Articles of Incorporation	Passed	For	Against	Against
2-4	Amendments to Articles of Incorporation	Passed	For	Against	Against
2-5-2	Amendments to Articles of Incorporation	Failed	Abstained	Against	Against
2-6-2	Amendments to Articles of Incorporation	Failed	Abstained	Against	Against
2-7	Amendments to Articles of Incorporation	Passed	For	Against	Against
3-4	Election of Inside Directors	Withdrawn	Abstained	Against	Against
3-5	Election of Inside Directors	Withdrawn	Abstained	Against	Against
3-6	Election of Inside Directors	Withdrawn	Abstained	Against	Against
4-7	Election of Outside Directors	Withdrawn	Abstained	Against	Against
4-8	Election of Outside Directors	Withdrawn	Abstained	Against	Against
4-9	Election of Outside Directors	Withdrawn	Abstained	Against	Against
5-3	Election of Non-Independent Non-Executive Director	Withdrawn	Abstained	Against	Against
6	Election of Internal Auditors	Withdrawn	Abstained	Against	Against

* Agenda 2-2, 2-3, 2-4, 2-7 are those proposed by both the board and activist

The market consensus has had it that SM has historically been undervalued, displaying a lower ROE when compared with its peer companies, and, the overarching reason for this was the tunnelling of its founder and controlling shareholder, Soo-man Lee. Prior to the 2022 AGM, Mr. Lee had virtually incapacitated the board, utilizing his own power as a controlling shareholder, with the result that SM had paid approximately KRW150bn in royalties to his privately owned company over the prior 20 years.

Align Partners Capital Management, an activist hedge fund based in Korea, submitted a shareholder proposal for the appointment of an internal auditor at SM's 2022 AGM, and the proposal passed with overwhelming support from its general shareholders. Moreover, SM achieved a visible improvement in its governance practices, deciding to terminate the longstanding unjust related-party transactions as of the end of 2022 and to replace all previous directors who had approved the transactions with wholly new nominees at its 2023 AGM.

In February 2023, SM announced the introduction of Multi Production Center/Label System, aimed at the exclusion of Mr. Lee from producing, and in response, Mr. Lee sold his 14.8% stake in the company to HYBE. HYBE immediately announced a takeover of SM, launching a tender offer at KRW120,000 per share, and also submitted a shareholder proposal to the company. HYBE's offer, however, actually ended in failure, securing only an additional 1%, and then Kakao owning 4.9% of SM's shares commenced a tender offer at KRW150,000 per share. HYBE finally dropped its plan to gain control over SM, withdrawing its shareholder proposal, and Kakao eventually became the largest shareholder of the company with 40.3% of its shares.

After HYBE's withdrawal, all of the board-proposed agenda items were approved without any dissenting opinion from proxy advisors and NPS. It is likely that Chul-hyuk Jang, a newly appointed CEO, would continue his drive to enhance SM's ESG practices as he has done as CFO in 2022. The new board, chaired by corporate governance expert Kyu-Shik Kim, is expected to effectively perform its supervisory functions and fully support the company's ESG management.

3) KT

APG submitted a shareholder proposal to major telecommunications company KT (KOSPI: 030200) on 2 agenda items at its 2023 AGM, details of which are as below.

Agenda Number	Agenda Type	Voting Result	NPS	ISS	Glass Lewis
3-2	Amendments to Articles of Incorporation	Passed	For	For	For
3-3	Amendments to Articles of Incorporation	Passed	For	For	For

APG proposed amendments to the articles of incorporation to obligate the company to report purposes and plans in relation to its treasury stock at its AGM every year and to obtain approval from its shareholder meeting where it disposes of its treasury stock for mutual shareholding. Those amendments were raised in the form of board-proposed agenda items, albeit proposed by APG, as the board had accepted the proposal, and were approved with the support from proxy advisors and NPS. APG made the proposal in collaboration with Solidarity for Economic Reform and Economic Reform Research Institute this year again, as they did to HDC Hyundai Development (KOSPI: 294870) last year.²

The backdrop of the proposal is that KT sold its treasury stock representing 7.7% of its outstanding shares to Hyundai Motor and Hyundai Mobis in return for their treasury stock in September 2022. There has recently been a surge in the number of cases of mutual shareholding through the exchange of treasury stock, specifically, 12 out of 13 cases over the past decade have occurred during the past 3 years.³ The companies involved in such transactions have something in common – their executives were at risk of or facing management rights disputes owing to low ownership percentage, thereby seeking for friendly investors, so-called white knights. The disposal of treasury stock to white knights is problematic in that it amounts to using corporate assets to only benefit executives and controlling shareholders, and general shareholders should therefore push back on such transactions to protect shareholder value.

Another noteworthy thing is that APG, for 2 years in succession, proposed amendments to the articles of incorporation in a bid to enable advisory proposals. Advisory proposals in Korea, as mentioned in the previous section, become possible only when provided for in the articles of incorporation because the Commercial Act does not currently prescribe for it. APG proposed the amendments last year to HDC Hyundai Development which had suffered a significant decline in its market capitalization after two consecutive fatal workplace accidents. This year, APG initially proposed similar amendments to KT but in the event they were not raised as an agenda item because they were withdrawn by APG following rejection by KT.

² Solidarity for Economic Reform (SER) and Economic Reform Research Institute (ERRI) are independent economic think tanks based in Korea, specializing in corporate governance. While SER focuses on corporate engagement on behalf of the interests of companies and shareholders, ERRI does on issuing policy research reports. For more details, please visit their websites: www.ser.or.kr (SER), www.erri.or.kr (ERRI)

³ Source: Economic Reform Research Institute

2. PROXY ADVISORS

There are 3 major local proxy advisors based in Korea - KCGS, KRESG, Sustainvest. Local institutional investors mainly depend on the local proxy advisors in contrast to foreign institutional investors relying on ISS and Glass Lewis.

2.1 KCGS

Korea Institute of Corporate Governance and Sustainability (KCGS) is a non-profit incorporated association founded in 2002. KCGS establishes and revises important codes of best practice, and carries out ESG ratings, proxy analysis, and policy research. KCGS has been offering proxy advisory service since 2012.

KCGS made voting recommendations on a total of 2,484 agenda items of 368 KRX-listed companies during this AGM season. The number of against recommendations by KCGS is 364 and the ratio of against recommendations to total recommendations is 14.7%, marking a 2.7%p decrease on the previous year. Agenda items regarding the election of internal auditors recorded the highest ratio of against recommendations to total recommendations (40.0%) this year and agenda items regarding the election of outside directors showed the largest decrease in the ratio (-5.0%p) from the year before.

Table 6. Number and ratio of against recommendations by KCGS by type of agenda item

	2022			2023		
	Total Recs	Against Recs	Ratio	Total Recs	Against Recs	Ratio
Approval of F/S and Allocation of Income	397	46	11.6%	383	36	9.4%
Amendments to Articles of Incorporation	237	33	13.9%	246	35	14.2%
Election of Inside Directors	441	25	5.7%	407	18	4.4%
Election of Non-Independent Non-Executive Director	63	2	3.2%	71	3	4.2%
Election of Outside Directors	516	101	19.6%	480	70	14.6%
Election of Members of an Audit Committee	233	45	19.3%	241	35	14.5%
Election of Internal Auditors	52	21	40.4%	40	16	40.0%
Approval of Remuneration Cap for Directors	384	140	36.5%	367	118	32.2%
Approval of Remuneration Cap for Internal Auditors	156	0	0.0%	136	1	0.7%
Others	125	39	31.2%	113	32	28.3%
Total	2,604	452	17.4%	2,484	364	14.7%

(Source: KCGS)

2.2 KRESG

Korea ESG Research Institute (KRESG) had formerly been a part of Daishin Economic Research Institute, a subsidiary of Daishin Securities, until it was newly incorporated by division in 2021. KRESG provides various ESG-related services including ESG ratings, proxy analysis, and RI strategy consulting. KRESG has been offering proxy advisory service since 2014.

KRESG made voting recommendations on a total of 4,588 agenda items of 681 KRX-listed companies during this AGM season. The number of against recommendations by KRESG is 555 and the ratio of against recommendations to total recommendations is 12.1%, marking a 0.8%p increase on the previous year. Agenda items regarding the election of internal auditors recorded the highest ratio of against recommendations to total recommendations (33.0%) this year and agenda items regarding the approval of remuneration cap for directors showed the largest increase in the ratio (7.2%p) from the year before.

Table 7. Number and ratio of against recommendations by KRESG by type of agenda item

	2022			2023		
	Total Recs	Against Recs	Ratio	Total Recs	Against Recs	Ratio
Approval of F/S and Allocation of Income	732	42	5.7%	716	20	2.8%
Amendments to Articles of Incorporation	454	129	28.4%	451	98	21.7%
Election of Inside Directors	818	53	6.5%	773	56	7.2%
Election of Non-Independent Non-Executive Director	106	1	0.9%	123	9	7.3%
Election of Outside Directors	705	61	8.7%	677	70	10.3%
Election of Members of an Audit Committee	544	36	6.6%	542	44	8.1%
Election of Internal Auditors	118	32	27.1%	112	37	33.0%
Approval of Remuneration Cap for Directors	707	145	20.5%	678	188	27.7%
Approval of Remuneration Cap for Internal Auditors	333	10	3.0%	308	6	1.9%
Others	245	27	11.0%	208	27	13.0%
Total	4,762	536	11.3%	4,588	555	12.1%

(Source: KRESG)

2.3 Sustinvest

Sustinvest is an independent ESG data provider and also a licensed investment advisory firm founded in 2006. Sustinvest provides total ESG analytics and advisory, ranging from ESG ratings to RI strategy consulting. Sustinvest has been offering proxy advisory service since 2013.

Sustinvest made voting recommendations on a total of 1,496 agenda items of 211 KRX-listed companies during this AGM season. The number of against recommendations by Sustinvest is 157 and the ratio of against recommendations to total recommendations is 10.5%, marking a 1.5%p increase on the previous year. Sustinvest does not disclose the detailed number of against recommendations by type of agenda item.

3. CORPORATE GOVERNANCE DEVELOPMENTS

3.1 Improved protection for shareholders in IPOs of newly incorporated companies by division

In September 2022, the Korean government announced measures to improve the rights and interests of general shareholders in IPOs of newly incorporated companies that are established by division (or de-merger in the parlance used in many other markets). The measures consist of three major upgrades – strengthening of relevant disclosure, introduction of appraisal rights, and tightening of the listing review process.

According to the Commercial Act, companies should be divided in two ways. One is that total shares of a newly incorporated company by division are distributed to shareholders of the surviving company in proportion to the number of shares they hold – a so-called spin off. The other is that the surviving company acquires total shares of a newly incorporated company by division – a so-called physical division.

Theoretically, the listing of the newly incorporated company after a physical division per se does not have any influence on shareholder value where markets are efficient. It is often the case in Korea, however, that the market capitalization of the surviving company continues to decrease, as opposed to that of the newly incorporated company, and several empirical studies have also proven its statistical significance. Such phenomenon results from the peculiar market environment of Korea where both the parent company and its subsidiaries are allowed to list on the stock exchange at the same time even without shareholder protection methods.

Listed companies in Korea have frequently used the problematic avenue, the listing of the newly incorporated company after a physical division, for financing, even though this can bring general shareholders double damage – a fall in shareholder value and a loss of shareholder rights for the newly incorporated company. This is because the controlling shareholders have found it more advantageous, as compared to a spin off, as a means to gain control over the newly incorporated company via the parent (surviving) company without participating in its capital increase. For this reason, market participants have steadily raised the necessity of protection for general shareholders from the financing practice whereby listed companies divide their core business via physical division, rather than spin off, to make it public.

1) Strengthening of relevant disclosure

Under the new regulatory measures, companies planning a physical division should disclose a specific purpose of the division, its expected effects, and investor protection methods. If the purpose includes the IPO of newly incorporated companies by division, detailed disclosure on the division schedule should be made. The authorities have already distributed the revised version of corporate disclosure forms to listed companies, and the new disclosure policy has become effective since October 2022.

2) Introduction of appraisal rights

It became possible for shareholders of a listed company who dissent from a resolution of the board concerning a physical division to request the company to purchase the shares they own. The Commercial Act has hitherto acknowledged appraisal rights of dissenting shareholders only in the case of merger, all-inclusive share swap, and transfer, takeover or lease of business, etc. The relevant amendment has already been made and the appraisal rights have taken effect since December 2022.

3) Tightening of listing review process

The Korea Exchange (KRX) started to review the parent (surviving) company's efforts to protect general investors, in addition to its current listing review process, where the company plans to make the newly incorporated company public within 5 years after a physical division. Of note is that the tightened listing review process also applies to companies that have already completed a physical division even before the implementation of the process. The KRX has already amended Enforcement Rules of Market Listing Regulation and the new listing review process has been put into effect since October 2022.

3.2 Improved laws and practices regarding dividends

In January 2023, the Korean government announced measures to improve laws regarding dividends, in line with global standards. The measures branch off into two main improvements – improvements in laws regarding dividends and dividend distribution practices.

Almost all companies in Korea designate shareholders who will receive dividends at the end of the settlement period first, and determine dividend amounts at the following general meeting. In consequence, investors in the companies have no choice but to make investment decisions without knowing information on dividends they may receive. Such practices, inconsistent with global standards, have been pointed out as one of the factors discouraging dividend investing and contributing to the so-called Korea discount.

1) Improvement in laws regarding dividends

For the improvement in laws regarding final dividends, the authorities have issued an authoritative interpretation on the Commercial Act immediately after the announcement. The authoritative interpretation, provided for Article 354 of the Commercial Act, allows companies to select a dividend record date (date to designate the person receiving dividends) separate from a voting right record date (date to designate the person exercising the voting right). 28.5% of KRX-listed companies have accordingly amended their articles of incorporation during this AGM season in order to enable themselves to set a day after the AGM, where final dividend amounts are decided, as their dividend record date.⁴

As regards interim dividends, there would be an amendment to the Financial Investment Services and Capital Markets Act (FSCMA). The current FSCMA prescribes that when a listed company adopting a fiscal year pays interim dividends, its dividend record dates should be the last days of the third month, sixth month and ninth month, and its quarterly dividend amounts should be decided at the board meeting following the dividend record date (FSCMA Article 165-12). The authorities said that FSCMA would be amended in order that listed companies could determine their quarterly dividend amounts before their dividend record dates, and its revision bill would be introduced by the end of 2Q23.

2) Improvement in dividend distribution practices

The authorities presented 3 additional measures in an attempt to induce listed companies to enhance their dividend distribution practices. First, the authorities have already distributed the revised version of the model articles of incorporation to listed companies in February 2023, considering that an amendment to articles of incorporation is required for them to separate the two dates (dividend record date, voting right record date). Second, In the case of listed companies under an obligation to issue the annual corporate governance report, information on whether the amendment has been made has to be included in the report from 2024. Lastly, an integrated website is going to be set up by January 2024 to provide information on listed companies' dividend record dates.

⁴ Source: Korea Listed Companies Association, KOSDAQ Listed Companies Association

ABOUT GEORGESON

Established in 1935, Georgeson is the world's original and foremost provider of strategic services to corporations and investors working to influence corporate strategy. We offer unsurpassed advice and representation for annual meetings, mergers and acquisitions, proxy contests and other extraordinary transactions. Our core proxy expertise is enhanced with and complemented by our strategic consulting services, including solicitation strategy, investor identification, corporate governance analysis, vote projections and insight into investor ownership and voting profiles. Our local presence and global footprint allow us to analyse and mitigate operational risk associated with various corporate actions worldwide. For more information, visit www.georgeson.com

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