

Korea



GLASS LEWIS

## 2024 Benchmark Policy Guidelines

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# About Glass Lewis

Glass Lewis is the world's choice for governance solutions. We enable institutional investors and publicly listed companies to make informed decisions based on research and data. We cover 30,000+ meetings each year, across approximately 100 global markets. Our team has been providing in-depth analysis of companies since 2003, relying solely on publicly available information to inform its policies, research, and voting recommendations.

Our customers include the majority of the world's largest pension plans, mutual funds, and asset managers, collectively managing over \$40 trillion in assets. We have teams located across the United States, Europe, and Asia-Pacific giving us global reach with a local perspective on the important governance issues.

Investors around the world depend on Glass Lewis' [Viewpoint](#) platform to manage their proxy voting, policy implementation, recordkeeping, and reporting. Our industry leading [Proxy Paper](#) product provides comprehensive environmental, social, and governance research and voting recommendations weeks ahead of voting deadlines. Public companies can also use our innovative [Report Feedback Statement](#) to deliver their opinion on our proxy research directly to the voting decision makers at every investor client in time for voting decisions to be made or changed.

The research team engages extensively with public companies, investors, regulators, and other industry stakeholders to gain relevant context into the realities surrounding companies, sectors, and the market in general. This enables us to provide the most comprehensive and pragmatic insights to our customers.

## Join the Conversation

Glass Lewis is committed to ongoing engagement with all market participants.

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# Guidelines Introduction

## Background and Stewardship Code

Despite that Korea has steadily made efforts to improve corporate governance since the 1997 Asia Financial Crisis, the overall evaluation on the market's corporate governance structure is that it has yet to reach a satisfactory level. Accordingly, Korea's government has progressed the recent years with stronger efforts to improve corporate governance and disclosure practices. The Principles on the Stewardship Responsibilities of Institutional Investors ("Stewardship Code") was published by the Korea Stewardship Code Council in December 2016 and was adopted by the Korea's National Pension Fund and many other investors in 2018. The Stewardship Code aims to enhance the mid- to long-term value and sustainable growth of investee companies and further the mid- to long-term interests of their clients and ultimate beneficiaries.

### Stewardship Code

In July 2018, Glass Lewis adopted the Stewardship Code, which we believe is consistent with our principles of assisting investors as a proxy research service provider. The following is the list of the seven stewardship principles:

1. Institutional investors, as a steward of assets entrusted by their clients, beneficiaries, etc., to take care of and manage, should formulate and publicly disclose a clear policy to faithfully implement their responsibilities.
2. Institutional investors should formulate and publicly disclose an effective and clear policy as to how to resolve actual or potential problems arising from conflicts of interest in the course of their stewardship activities.
3. Institutional investors should regularly monitor investee companies in order to enhance investee companies' mid- to long-term value and thereby protect and raise their investment value.
4. While institutional investors should aim to form a consensus with investee companies, where necessary, they should formulate internal guidelines on the timeline, procedures, and methods for stewardship activities.
5. Institutional investors should formulate and publicly disclose a voting policy that includes guidelines, procedures, and detailed standards for exercising votes in a faithful manner, and publicly disclose voting records and the reasons for each vote so as to allow the verification of the appropriateness of their voting activities.
6. Institutional investors should regularly report their voting and stewardship activities to their clients or beneficiaries.
7. Institutional investors should have the capabilities and expertise required to implement stewardship responsibilities in an active and effective manner.

# Regulatory Updates

## ESG Disclosure

Along with the growing emphasis on governance for Korean companies, environmental, social and governance (ESG) trends are also taking shape across the market. Inaugurated in May 2022, President YOON Suk-Yeol's cabinet has prioritized ESG management, impacting companies' disclosure practices. As of 2023, ESG disclosures under the Capital Market Act and Korea Exchange (KRX)'s disclosure regulations take the form of the following reports: Corporate Governance Report (CGR) and Sustainability Report.

### Corporate Governance Report

- The Corporate Governance Report (CGR) is a disclosure of governance information. On a “comply or explain” basis, companies report against fifteen key indicators, including shareholder rights, composition of board of directors, board independence, internal control measures, and others. This disclosure was implemented by KRX's disclosure regulations in March 2017 as a voluntary report. Then, in 2019, it became mandatory for Large Companies with assets totaling up to KRW 2 trillion and, in 2022, for companies with assets totaling up to KRW 1 trillion. Furthermore, the disclosure will become mandatory for all KOSPI-listed companies in 2026.
- Companies that fail to comply with these disclosure guidelines by either non-disclosure or false disclosure are subject to being designated as “unfaithful disclosure corporations” with penalty points under KRX. The current deadline for submitting corporate governance reports, which varies depending on each company's fiscal year-end, will be unified to May 31 of each year. The deadline for submitting English corporate governance reports will be extended to three months after the publication of Korean reports (previously one week after), in consideration of the vast amount of content to be translated.

### Sustainability Report

- The Financial Services Commission (FSC) encourages companies to voluntarily disclose ESG information through a Sustainability Report. The Sustainability Report aims to provide comprehensive information on ESG topics such as ecology, gender, labor, and other issues. As Sustainability Reports do not have specific criteria to follow, companies can select standards at will. As a result, most companies publishing Sustainability Reports choose international standards such as GRI, SASB, TCFD and UN SDGs.
- By mid-August 2023, the number of companies disclosing Sustainability Reports increased by 14.5% year-over-year, in accordance with the KRX. As such, there is a growing trend towards voluntary disclosure of Sustainability Reports by companies to match the demands of investors and markets. Aside from these reports, in accordance with the Capital Market Act, business reports can also contain ESG information, including ESG bonds, environment, labor and violations of ESG related laws and regulations.
- In addition, the FSC is preparing for the announcement of a K-ESG disclosure roadmap to integrate different ESG disclosure standards. The roadmap is expected to cover the scope of target companies, disclosure standards, a third-party verification system, and more. The FSC initially planned to mandate non-financial disclosures for Large Companies in 2025. However, in October 2023 the FSC decided to

delay the mandatory disclosure to 2026, due to global and domestic market conditions and demands from Korean companies.

## English Disclosures

The Korean market has been criticized for a lack of English disclosures, which led to an unequal access to information between foreign and domestic investors. To tackle this issue, the Financial Services Commission (FSC) and the Korea Exchange (KRX) announced to introduce the English disclosures requirement in 2024. Principal subjects for disclosures are major decisions by corporations, such as dividends, paid-in capital increase, etc.

KOSPI listed companies with over 10 trillion won in total assets will be required to publish English disclosures within three days from filing their regulatory disclosures in Korean. In addition, KOSPI listed companies with between KRW 2 trillion and KRW 10 trillion in total assets will be subject to the obligation if foreign investors hold more than a 30 % ownership. The regulation will be applied to listed companies with KRW 2 trillion in total assets in 2026, aiming to a broader application in the future.

## Gender Diversity

The gender quota law in Korea passed in 2020 became effective in August 2022 after a 2-year grace period. The law demands Korean large company boards (assets of KRW 2 trillion or more) to consist of more than one gender among board members. However, despite the quota being considered mandatory and a two-year grace period, 9% of Large Companies have failed to appoint any woman directors during the 2023 season.

## Virtual-Only Meeting

Digitalization is accelerating in shareholder meetings of the Korean market during the post-COVID 19 era. One of the examples is the introduction of virtual-only meetings in 2024. Current relevant laws do not allow companies to hold meetings exclusively online, but in August 2023, the Ministry of Justice pre-announced legislation that would allow the adoption of virtual-only meetings, enabling companies to conduct notification, voting and other proceedings exclusively through electronical methods. The Ministry is expected to present the amendment at the end of 2023 to implement the system in 2024, allowing companies to adopt both virtual-only meetings and hybrid meetings.

## Employee Representative in Government-Owned Companies

In accordance with the Act on the Management of Public Institutions, the employee representative (also known as “labor director” in Korean) system was introduced for government-owned companies in August 2022. The system requires them to elect an employee representative either upon the recommendation of the labor representative or with the majority approval of the employees. The employee representative is classified as a non-executive director, and no remuneration is paid for their performance of duties. Following the regulation, major listed government-owned corporations have been electing an employee representative.



## Summary of Changes for 2024

Glass Lewis evaluates these guidelines on an ongoing basis and formally updates them on an annual basis. This year we've made noteworthy revisions in the following area, which is summarized below but discussed in greater detail in the relevant section of this document:

### Classification of Employee Representative

The appointment of an employee representative in the government-owned companies board is mandated by the Act on the Management of Public Institutions. While the Act requires an employee representative to be appointed as non-executive director, the commercial law allows non-executive directors to be registered only as independent or non-independent, lacking a classification for employee representative. Consequently, this has led to confusion on their classification. As for GL classification, we will align it with the company classification, and given the characteristic of labor directors defined by the public institutional law, we do not vote against this candidate for board independence.

### Enhancement of Gender Diversity

We have revised our approach to gender diversity in the Korea market. With increasing domestic and foreign investor demands for the board diversity, we have shifted from a fixed numerical approach to a percentage-based approach. At Large Companies which are subject to the mandatory gender quota, we will recommend voting against the nominating committee chair (or the board chair in the absence of nomination committee) if the board is not at least 10 percent gender diverse. However, for large companies already satisfying the one-female-director gender quota, we will carefully review their disclosures on diversity plans or considerations, and we may not recommend voting against the nominating committee chair, if a sufficient rationale or plan is provided.

### Cyber Risk Oversight

We have included a new discussion on our approach to cyber risk oversight. Given current regulatory focus on and the potential adverse outcomes from cyber-related issues, it is our view that cyber risk is material for all companies. We, therefore, believe that it is critical that companies evaluate and mitigate these risks to the greatest extent possible. With that view, we encourage all issuers to provide clear disclosure concerning the role of the board in overseeing issues related to cybersecurity. We also believe that disclosure concerning how companies are ensuring directors are fully versed on this rapidly evolving and dynamic issue can help shareholders understand the seriousness with which companies take this issue.

We will generally not make recommendations on the basis of a company's oversight or disclosure concerning cyber-related issues. However, we will closely evaluate a company's disclosure in this regard in instances where cyber-attacks have caused significant harm to shareholders and may recommend against appropriate directors should we find such disclosure or oversight to be insufficient.

## Amendments to the Articles: Virtual-Only Meeting

We expect companies proposing to amend their articles of incorporation to allow for virtual-only meetings to, at a minimum, include details on procedures, requirements and other necessary information in the proposed amendments or in the supporting documents. However, for companies incorporated in jurisdictions in which the aforementioned organizational and disclosure aspects are already required by applicable legislation, the burden to explain their approach is lower.

In the case of Korea, the Ministry of Justice pre-announced legislation on virtual-only meetings in August 2023, and the legislation is expected to be announced at the end of the year, including details on procedures and requirements. Therefore, if such details can be identified under the law, we will recommend that shareholders support amendments despite the absence of detailed information on their proposed amendments regarding virtual-only meetings. We will continue monitoring the ongoing introduction of the legislation.

## Approval of Annual Financial Statements

In Korea, the notice and circular for convocation of a general meeting are dispatched in writing or electronically to shareholders at least 14 days prior to the meeting date, as mandated by the Commercial Act. Separately, the Commercial Act states a listed company shall make public notice of its audited financial statements at least seven days prior to the annual general meeting.

In general, annual financial statements are not available when investors review the proposal regarding approval of financial statements due to the discrepancy in the timing of disclosures of meeting materials and an audit report in the Korean market. Given the importance of auditor's opinion in financial statements and the availability of financial statements, with respect to financial statements, we have recommended voting against financial statement proposals, if the audit opinion is not disclosed at the timing of our publication. However, after comprehensive research on market circumstances and data, along with discussions with investors and issuers, we are updating our policy to better align with market practices and regulations and to prevent unintentional preference to companies disclosing meeting materials at the last minute over companies disclosing materials early but without an audit report.

In 2024, we will review companies' past three years' financial statements and audit opinion when we review relevant proposals. If we do not identify any issues raised by independent auditors and/or accounting practices during the three-year period, we will recommend voting for the financial statement proposal. However, for companies receiving opinions other than "unqualified" in the last three years, we will advise shareholders to oppose the adoption of financial statements, unless the company discloses its auditor's report before our publication. Nonetheless, we strongly encourage companies to provide transparent and timely audit opinions on financial statements to shareholders.

# A Board of Directors that Serves the Interests of Shareholders

## Structure of the Board of Directors

Pursuant to the Commercial Act, Korean companies are required to, based on asset size, adopt either a two-tier board (i.e. a board of directors and a board of corporate auditors) or a one-tier board with an audit committee. Large listed companies (i.e., those with assets of more than KRW 2 trillion) are required to have the one-tier board and small listed companies (i.e. those with assets of less than KRW 2 trillion) are allowed to choose either of the two board structures. Companies with a one-tier board must establish an audit committee whose members are elected by shareholders.<sup>1</sup> The board of directors typically comprises executives and independent directors with some non-executive affiliates. Most chaebol<sup>2</sup> groups are family-controlled firms in a cross-shareholding structure, although the controlling family may hold just a fraction of shares.

## Bundled and De-Bundled Proposals

While Korean companies usually provide for the election of directors and audit committee members individually in separate proposals, non-Korean shareholders are sometimes only able to vote on director nominees and/or audit committee member nominees as a slate. This is a result of the extended delivery process of proxy forms from companies to shareholders through the Korea Securities Depository and local and global custodians. To accommodate these potential ballot differences, Glass Lewis provides both slate and individual recommendations for the election of directors and audit committee members. We may recommend voting against an entire slate, even though there are concerns with only one nominee, if the issues are significant enough.

In general, we recommend voting against as slate in the following cases based on our research: (i) if there is a lack of independent directors; (ii) if any of the audit committee members is not independent; (iii) if majority of the proposed nominees have issues applicable to our against voting recommendations; (iv) no attendance of all independent directors last two fiscal years; or (v) any conviction, breach of trust, or serious corporate or legal matters.

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<sup>1</sup> Article 415-2 of the Commercial Act.

<sup>2</sup> The Korean term for a conglomerate of many companies clustered beneath one parent firm.

# Elections for Government-Owned Companies

## Election of CEO/Directors

In accordance with applicable laws, listed government-owned companies are required to obtain shareholder approval to appoint: (i) a CEO from a selection of nominees; and/or (ii) a certain number of director nominees from a group of nominees.

In general, the disclosure of CEO or director nominee information is comprised of the following: (i) nationality; (ii) name of school they obtained their bachelor, master or doctorate degrees, with the major specified; (iii) their current job position with the name of the employer; and (iv) names of entities and titles they used to work with in the recent past.

We understand that this level of disclosure is common practice for Korean companies. However, when there are more director nominees than seats available on a board, we believe that there should be more information available regarding the proposed nominees. Such information may include but is not limited to: (i) an objective assessment of the nominees and their requisite background; and (ii) the nominees' concrete strategies and development plans for the company's growth and increasing shareholder value.

Despite the common disclosure practices in Korea, absent the additional above information, we do not believe there would be sufficient information on the CEO/director nominees for shareholders to make informed decisions. While we generally recommend that shareholders abstain from voting when the company has not provided sufficient information, since abstaining may not be a voting option for shareholders of Korean companies, we will usually recommend shareholders vote against all CEO/director nominees in the absence of the additional disclosures.

## Audit Committee

Under relevant Korean laws and regulations,<sup>3</sup> a government-owned company may appoint a standing director to become an audit committee member, who shall be appointed either by the President of South Korea or the Minister of Ministry of Strategy and Finance. Therefore, given the government-owned companies' unique position, we may refrain from withholding non-independent full-time audit committee members for independence reasons if the director meets the following criteria: (i) prior to the proposed appointment, he/she is considered independent from the Company and its related parties; (ii) there is at least one financial expert on the audit committee; and (iii) there is no significant concern regarding the director/nominee, the board and/or the audit committee.

## Employee Representative

In accordance with the Act on the Management of Public Institutions, the employee representative (also known as "labor director" in Korean) system was introduced for government-owned companies in August 2022. The system requires them to elect an employee representative either upon the recommendation of the labor

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<sup>3</sup> Articles 20 and 25 of the Act on the Management of Public Institutions.

representative or with the majority approval of the employees. The employee representative is classified as a non-executive director, and no remuneration is paid for their performance of duties. Following the regulation, major listed government-owned corporations have been electing an employee representative.

However, while the Act on the Management of Public Institutions requires employee representatives to be appointed as non-executive director, the current Commercial Law allows non-executive directors to be registered only as independent and non-independent, lacking a classification for employee representative. Among companies, this has led to confusion during their appointment. As for GL classification, we will align it with the company classification, and given the characteristic of labor directors defined by the public institutional law, we do not vote against this candidate for board independence.

## Voting Rights Regarding Directors

In accordance with the Commercial Act<sup>4</sup>, the appointment of a director shall be made effective by affirmative votes of a majority of the voting rights of shareholders present at a general meeting, which must equal at least one-fourth of the total outstanding shares, unless otherwise provided by a company's articles of incorporation. The removal of a director requires affirmative votes of at least two-thirds of the voting shares represented at the general meeting, which must equal at least one-third of the total outstanding shares.<sup>5</sup>

When voting to elect audit committee members, shareholders who own more than 3% of a company's voting rights are not entitled to voting rights of greater than 3%. The recently revised Commercial Act clarifies that the dismissal of audit committee members shall be determined by shareholders, and audit committee members shall be further approved by shareholders among the elected directors.

If a company convenes a general shareholder meeting to elect two or more directors, shareholders who hold no less than 3% of the total outstanding voting rights may ask the company to elect its directors through a cumulative vote, except as otherwise provided by a company's articles of incorporation.<sup>6</sup>

## Board of Directors

Glass Lewis looks for talented boards with a proven record of protecting shareholders and delivering value over the medium- and long-term. We believe that boards working to protect and enhance the best interests of shareholders typically possess the following three characteristics: (i) independence; (ii) a track record of performance; and (iii) a breadth and depth of experience.

### Independence of Directors

We look at each individual on the board and examine their relationships with the company, the company's executives and other board members. The purpose of this inquiry is to determine whether pre-existing personal, familial or financial relationships (apart from compensation as a director) are likely to impact a board member's

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<sup>4</sup> Article 368-1 of the Commercial Act.

<sup>5</sup> Articles 434 and 385 of the Commercial Act.

<sup>6</sup> Article 382-2 of the Commercial Act.

decisions. We believe the existence of these types of relationships make it difficult for a board member to put the interests of the shareholders whom he/she is elected to serve above their own interest, or those of the related party.

To that end, we classify directors in three categories based on the type of relationships they have with the company:

#### **Independent Director**

- A director who has no current or past (within past 3 years) material<sup>7</sup> financial, familial<sup>8</sup> or other relationships with the company, its executives or other board members, except for service on the board and the standard fees paid for that service. “Company” includes any parent or subsidiary in a consolidated group or any entity that merged with, was acquired by, or acquired the company.
- We will consider a five-year look-back period for all former employee relationships with the company and/or its affiliates (We believe that former employee directors are more likely to be relieved from conflicting relationships with the current management after five years).<sup>9</sup>

#### **Affiliated Director**

- A director who has material, financial, familial or other relationship with the company or its executives but is not an employee of the company.
- A director whose employer has a material financial relationship with the company.
- A director who owns or controls 10% or more of the company’s voting stock, or who has a special relationship with the largest shareholder.
- A director whose maximum term of office exceeds the legal thresholds of total six years at the company or total nine years within the Company and its affiliated companies.
- A director who is classified as “non-executive” by the company.

#### **Insider**

- A director who simultaneously serves as a director and employee of the company. This category may include a chair of the board who acts as an employee of the company or is paid as an employee of the company.

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<sup>7</sup> “Material” as used herein means a relationship for: (i) a service they have agreed to perform for the company or the group, outside their service as a director, including professional or other services; and (ii) those directors employed by a professional services firm, such as a law firm, investment bank, accounting firm or consulting firm and the company pays the firm, not the individual, for services.

<sup>8</sup> “Familial” as used herein includes a person’s spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces and nephews, in-laws, and anyone (other than domestic employees) who share such person’s home.

<sup>9</sup> The Company’s group or affiliated entity that disclosed in the Company’s disclosure reference.

## Korean Board Structures and Requirements under the Commercial Act

	One-Tier, Large Company	One-Tier, Small Company	Two-Tier, Small Company
Asset Size	Over KRW 2 trillion	Under KRW 2 trillion	Under KRW 2 trillion
Committee or Board of Corporate Auditors	Audit and nomination committee (mandatory)	Audit committee (voluntary)	Board of Corporate Auditors
Minimum Requirement for Board Independence by Commercial Act	At least 3 independent directors, representing a majority of the board	25% of the board	25% of the board
Minimum Requirement for Board Independence by Glass Lewis	At least 3 independent directors, representing a majority of the board	At least 2 independent directors, representing one-third of the board	At least 2 independent directors, representing one- third of the board

### Voting Recommendations on the Basis of Independence

Glass Lewis believes that a board will most effectively perform the oversight necessary to protect the interests of shareholders if it is independent. In accordance with the Commercial Act<sup>10</sup> and the Listing Regulations, the board of a listed corporation shall be composed of a number of independent directors equaling not less than 25% of all directors.<sup>11</sup> Further, large companies (with assets over KRW 2 trillion) shall have no less than majority of board independence and at least 3 independent directors on the board. As such, based upon the size of the company, we will evaluate board independence in the following manner: (i) for small companies, the board must have at least two independent directors that comprise a minimum of one-third of the board's membership; or (ii) for large companies, the board must have at least three independent directors that comprise a majority of the board's membership. If a board does not meet these independent thresholds, we typically recommend voting against some of the inside and/or affiliated directors in order to satisfy our independence recommendation.

In addition, we typically recommend that shareholders hold the nomination committee chair responsible for the lack of board independence. However, in cases where the nomination committee is not established, we will recommend voting against the chair of the board. In case the company disclosure does not indicate the board chair, we will recommend voting against the representative director for this matter.

<sup>10</sup> Article 542-8 of the Commercial Act.

<sup>11</sup> Pursuant to Article 383 of the Commercial Act, the board must consist of at least three directors. However, the number of directors at a company where the total capital is less than KRW 1 billion may be one or two.

For a board that has adopted a one-tier board with committees structure, in accordance with the Commercial Act,<sup>12</sup> the audit committee must consist of minimum three members and at least two-thirds independent directors including its chair.

Further, the Code of Best Practices for Corporate Governance (the Code)<sup>13</sup> recommends for both the audit and compensation committees to be composed entirely of independent directors. In line with the Code's recommendations, we strongly believe that both committees should consist solely of independent directors and will recommend shareholders vote against any affiliated or inside directors serving on these committees. In addition, we believe a majority of the nomination committee<sup>14</sup> should be independent.

## Performance of Directors

The purpose of Glass Lewis' proxy research and advice is to facilitate shareholder voting in favor of governance structures that will drive performance and create shareholder value. The most crucial test of a board's commitment to the company and its shareholders lies in the actions of the board and its members. The Code states that a board shall be operated efficiently and rationally so that the best course for management can be decided in the interests of the corporation and shareholders. We look at the performance of these individuals in their capacity as board members and executives of the company, and in their roles at other companies where they may have served.

### Voting Recommendations on the Basis of Performance

We disfavor directors who have a track record of poor performance in fulfilling their responsibilities to shareholders at any company where they have held a board or executive position.

We recommend voting against the following board members under the following circumstances:

- **Poor attendance:** We disfavor directors who have a record of not fulfilling their responsibilities to attend meetings held by the board or its committees and recommend voting against any director who fails to attend a minimum of 75% of the board meetings. In addition, where we find a nominee has failed to attend 75% of their applicable meetings in the past two consecutive fiscal years, we will hold the nomination committee chair or the board chair responsible for re-nominating the director. Likewise, where a nominee failed to attend any meetings in the past fiscal year, unless their attendance was inhibited by health-related matters, we will hold the nomination committee chair or the board chair responsible for renominating the director. We note that existing Korean laws and regulations only require companies to disclose board meeting attendance for independent directors, while companies are not obligated to report on the attendance of executive directors and non-independent non-executive directors. As such, given the lack of disclosure we generally are only able to make voting recommendations based on poor attendance for independent directors.
- **Number of board meetings:** We recommend voting against the chair of a board in case the board held less than four meetings during the last fiscal year. We believe that the board should be accountable for

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<sup>12</sup> Article 415-2 of the Commercial Act.

<sup>13</sup> Article 6.2 of the Code.

<sup>14</sup> The nomination committee in the guidelines refers to both independent director nomination committee and executive nomination committee.



holding board meetings frequently enough to review all essential matters and make well-informed decisions by the board members. While the appropriate number of board meetings necessary for a company may vary depending on the complexity of the company and other factors, we believe that four times a year should be the minimum.

- **Financial performance:** We recommend voting against certain members of the board, where a company's performance has been consistently lower than its peers and the board has not taken reasonable steps to address the poor performance.
- **Director misconduct:**<sup>15</sup> In case a director was convicted, depending on the type and level of issues, we will look into: (i) if the board has taken any action to remove such problematic director; (ii) if the board has re-nominated the director for re-election despite their wrongdoings; (iii) if the board has taken any steps to enhance its internal control regarding the issue; or (iv) if any of the incumbent directors has served on the board during the incidents. Based on our research, we may recommend voting against: (i) the problematic director if he/she is up for re-election; and/or (ii) other directors to be in question if the board fails to take appropriate steps to address the issue and prevent it from recurring.

## Experience of Directors

We believe that a director's past conduct is often indicative of future conduct and performance. We often find directors with a history of overpaying executives, or of serving on boards where avoidable disasters have occurred, serving at other companies with similar concerns. Glass Lewis has a proprietary database that tracks the performance of directors across companies worldwide. We also believe that the board shall include at least one non-executive director with core industry experience.

### Voting Recommendations on the Basis of Experience

We will typically recommend that shareholders vote against directors who have served on boards or as executives of companies with a track record of poor performance, over-compensation, audit- or accounting related issues and/or other indicators of mismanagement or other actions against the interests of shareholders.

Similarly, we carefully look at the backgrounds of those who serve on the key committees of boards to ensure that they have the required skills and diverse backgrounds to make informed and well-reasoned judgments about the subject matter for which the committee is responsible.

## Director Commitments

We believe that directors should have the necessary time to fulfill their duties to shareholders. In our view, an overcommitted director can pose a material risk to a company's shareholders, particularly during periods of crisis. We believe this limits the number of boards on which directors and statutory auditors can effectively serve, especially executives at other companies.

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<sup>15</sup> The Code recommends not to appoint a director who has damaged company value or infringed upon shareholder rights. For example, a director with a record of significant legal violation.

## Voting Recommendations on the Basis of Director Commitments

We will generally recommend that shareholders vote against a director who serves as an executive officer of any public company while serving on more than two public company boards and any other director who serves on more than five public company boards. While pursuant to the Commercial Act,<sup>16</sup> independent directors are limited to serve two public company boards, the interpretation of the law is unclear as to whether this law is limited to Korean companies only or includes companies in other markets, and to the best of our knowledge, there is no clear explanation or previous judicial precedent. Investors are increasingly demanding Korean company boards of directors with diversity of gender, skills, thought and experience in addition to sufficient independence. As such, for independent directors we will apply a threshold of up to five public company board included up to two Korean company boards.<sup>17</sup> We will also count individuals who serve as board chair of companies listed in non-Asian markets, per our global policies, as two board seats given the time commitment of directorship in those markets.

Because we believe that executives will primarily devote their attention to executive duties, we generally will not recommend that shareholders vote against overcommitted directors at the companies where they serve as an executive.

When determining whether a director's service on an excessive number of boards may limit the ability of the director to devote sufficient time to board duties, we may consider relevant factors such as the size and location of the other companies where the director serves on the board, the director's board roles at the companies in question, whether the director serves on the board of any large privately-held companies, the director's tenure on the boards in question, and the director's attendance record at all companies.

We may also refrain from recommending against certain directors if the company provides sufficient rationale for their continued board service. The rationale should allow shareholders to evaluate the scope of the directors' other commitments as well as their contributions to the board, including specialized knowledge of the company's industry, strategy or key markets, the diversity of skills, perspective and background they provide, and other relevant factors.

We will also count boards within the group companies as one board membership. Therefore, we will generally refrain from recommending to vote against a director who serves on an excessive number of boards within the group. Furthermore, we will generally exempt directors that represents a firm whose sole purpose is to manage a portfolio of investments which include the company.

## Conflict of Interest

In addition to the key characteristics — independence, performance, experience and director commitments — which we use to evaluate board members, we consider conflict-of-interest issues in making voting recommendations.

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<sup>16</sup> Article 34 of the Enforcement Decree of the Commercial Act and Article 542-8 of the Commercial Act.

<sup>17</sup> As a condition of applying this policy, the applicable director must serve in a non-executive role in all listed companies.

Irrespective of the overall presence of independent directors on the board, we believe that a board should be wholly free of people who have identifiable conflicts of interest. Accordingly, we recommend shareholders vote against the following types of affiliated or inside directors in nearly all circumstances:

### Voting Recommendations on the Basis of Conflict of Interest

We recommend voting against the following board members under the following circumstances:

- **Professional Services and Business Transactions:** We do not believe that a director who has provided material professional services, or a director who is an immediate family member of whom has provided such services, at any time during the past three years, should serve on the board. Material professional services may include legal, consulting or financial services to the company. Also, a director who engages — or has a family member of whom engages — in business contracts with the company such as purchase or sales agreement will have to make unnecessarily complicated decisions that may pit their interests against those of the shareholders they serve. We will recommend voting against a director if their direct/indirect related party transactions exceed any of the following thresholds: (i) US\$50,000 or no disclosure for personal direct transactions; (ii) US\$120,000 for indirect transactions with an entity in which a director holds more than 50% interest; (iii) US\$120,000 for indirect professional services transactions with a professional services firm in which a director works for; or (iv) 2% of a company's consolidated gross revenue for indirect transactions with an entity in which a director serves as an executive.
- **Interlocking Directorship:** Chief executives who serve on each other's boards create an interlock that poses conflicts that should be avoided to ensure the promotion of shareholder interests above all else.<sup>18</sup>

### Board Size

While we do not believe there is a universally applicable optimum board size, we believe boards should have at least five directors to ensure sufficient diversity in decision-making and to enable the formation of key board committees with independent directors. Conversely, we believe that boards with more than 20 members will typically suffer under the weight of “too many cooks in the kitchen” and have difficulty reaching consensus and making timely decisions. Sometimes the presence of too many voices can make it difficult to draw on the wisdom and experience in the room by virtue of the need to limit the discussion so that each voice may be heard.

To that end, we typically recommend voting against the representative director if a board has: (i) fewer than five directors; or (ii) more than 20 directors.

### Separation of the Roles of Chair and Chief Executive

While the law is silent on the position and titles of the board chair, the Commercial Act recognizes the title and position of a representative director who is elected by the board among the directors and represents the company. A representative director implements the decisions of the board and/or shareholders and runs the company's day-to-day operations. Given these duties, the representative director can be a close equivalent to the position of CEO in other countries; however, in practice, the representative director usually serves as the

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<sup>18</sup> We do not apply a look-back period for this situation.

chair of the board. The law provides no clear separation or combination of the roles of board chair and representative director.

The functions of board chair and CEO/representative director are not separate at most Korean listed companies. The Code recommends the separation of CEO/representative director and a board chairperson or the appointment of a senior independent director in such cases where the roles are not separated. Glass Lewis believes that separating the roles of corporate officers and the chair of the board is typically a better governance structure than a combined executive/chair position. The role of executives is to manage the business on the basis of the course charted by the board. Executives should be in the position of reporting and answering to the board for their performance in achieving the goals set out by the directors. This task becomes much more complicated when a member of management chairs the board.

It can become difficult for a board to fulfill its role of overseer and policy-setter when the chief executive/ chair controls the agenda and discussion in the boardroom. This situation can engender chief executives with leverage to entrench their position, leading to longer-than-optimal terms, fewer checks on management, less scrutiny of business operations and more limitations on independent, shareholder focused goal-setting by the board.

We view an independent chair as better able to oversee the executives of the company and set a pro-shareholder agenda without the management conflicts that executive insiders often face. This, in turn, leads to a more proactive and effective board of directors that is looking out for the interests of shareholders above all else.

We do not recommend that shareholders vote against CEO/representative directors who serve as board chair. However, we do typically encourage our clients to support a separation between the roles of board chair and CEO/representative director, whenever that question is posed in a proxy.

## Declassified Boards

Glass Lewis favors the repeal of staggered boards and the annual election of directors. We believe staggered boards are less accountable to shareholders than boards that are elected annually. Furthermore, we feel an annual election of directors encourages board members to focus on shareholder interests. Moreover, empirical studies have shown: (i) staggered boards reduce a firm's value; and (ii) in the context of hostile takeovers, staggered boards operate as a takeover defense, which entrenches management, discourages potential acquirers and delivers a lower return to target shareholders.

Given the above empirical evidence against staggered boards and the increasing shareholder opposition to such a structure, Glass Lewis supports the declassification of boards and the annual election of directors.

## Board Diversity

Glass Lewis recognizes the importance of ensuring that the board is comprised of directors who have a diversity of skills, thought and experience, as such diversity benefits companies by providing a broad range of perspectives and insights.

Board diversity includes and does not place restrictions on various components such as gender, age, background, experience, etc. of directors. In a demographically and cognitively diverse board setting, each

director can fully utilize their own experience and capabilities to understand the market from various perspectives and contribute to improving corporate governance and enhancing corporate values by presenting new approaches to the board. Glass Lewis believes that diverse boards can benefit from directors bringing new insights to make more rational and groundbreaking decisions. We also generally support the periodic rotation of directors who have been serving on the same board for consecutive long years to encourage bringing fresh ideas and ensure long-term independence in board oversight.

## Gender Diversity on Boards

Recently, the Korea market has grown enthusiasm on the issue of extremely low rate and poor work/qualification conditions of female talent in Korea companies. Despite research and expert opinions that support that higher ratio of women on the board of directors yield more positive corporate performance, Korea has historically ranked the lowest among countries around the world when it comes to gender equality. To overcome adverse economic conditions such as low birth rate and the aging population in Korean society, and to form creative and innovative corporate cultures, the government decided to promote active recruiting of female talent by passing a legal requirement for appointing female directors. The gender quota law in Korea passed in 2020 became effective in August 2022 after a 2-year grace period. Now the law demands Korean large company boards (assets of KRW 2 trillion or more) to consist of more than one gender among board members.

While the gender quota law only requires the large companies to secure one woman director, we believe that at least large companies need to increase the board gender diversity beyond what is legally required to bring it closer to the global standard. With this belief, beginning in January 2024, the policy on board gender diversity for large companies will be changed from a fixed numerical approach to a percentage-based approach. We will thus generally recommend voting against the nominating committee chair (or the board chair in the absence of nomination committee) when the boards of large companies, does not have at least 10 percent gender diverse directors. However, we will carefully review their disclosure on diversity plans or considerations, and we may not recommend voting against the nominating committee chair, if a sufficient rationale or plan to improve its board gender diversity is provided.

## Board Refreshment

In our view, a director's experience can be a valuable asset to shareholders because of the complex, critical issues that boards face. This said, we recognize that in rare circumstances, a lack of refreshment can contribute to a lack of board responsiveness to poor company performance.

On occasion, age or term limits can be used as a means to remove a director for boards that are unwilling to police their membership and enforce turnover. Some shareholders support term limits as a way to force change in such circumstances.

While we understand that age limits can aid board succession planning, the long-term impact of age limits restricts experienced and potentially valuable board members from service through an arbitrary means. We believe that shareholders are better off monitoring the board's overall composition, including its diversity of skillsets, the alignment of the board's areas of expertise with a company's strategy, the board's approach to

corporate governance, and its stewardship of company performance, rather than imposing inflexible rules that don't necessarily correlate with returns or benefits for shareholders.

However, if a board adopts term/age limits, it should follow through and not waive such limits. If the board waives its term/age limits, Glass Lewis will consider recommending shareholders vote against the nominating and/or governance committees, unless the rule was waived with sufficient explanation, such as consummation of a corporate transaction like a merger.

We note that in the context of Korea, the Commercial Act restricts directors' term to no longer than three years per election. In addition, pursuant to the recently revised Enforcement Decree of the Commercial Act, the maximum term of office of an independent director should not exceed total six years at the Company or total nine years within the Company and its affiliated companies. The vast majority of Korean companies disclose the term limit on each of their proposed nominees in meeting notices when submitting election of director proposals. While the vast majority of Korean companies have three-year terms for all directors, some companies provide different terms for directors. Where there is a difference, we usually find companies setting a shorter term period of one or two years for its non-executive directors.

## Board Committees

In accordance with the Commercial Act<sup>19</sup>, all large companies must establish both an audit committee and a nomination committee. If the board of a large company has not formed an audit and a nomination committee, we will generally recommend voting against the chair of the board on this basis.

With limited exceptions, Glass Lewis believes that both audit and compensation committees should consist solely of independent directors and at least three members should serve on these committees. Nomination committees should be comprised of a majority of independent directors.<sup>20</sup>

## Audit Committee Performance

In assessing an audit committee's performance, we are aware that an audit committee does not prepare financial statements, is not responsible for making the key judgments and assumptions that affect the financial statements, and does not audit the numbers or the disclosures provided to investors. Rather, an audit committee monitors and oversees the process and procedures that management and independent auditors perform. The audit committee should assist the board and the independent auditors to: (i) monitor the integrity of the financial information provided by the company; (ii) review annually and quarterly the internal control and risk management systems, with a view to ensuring that the main risks are properly identified, managed and disclosed; (iii) ensure the effectiveness of the internal audit function; (iv) monitor the external auditor's independence and objectivity; and (v) review the effectiveness of the external audit process<sup>21</sup>.

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<sup>19</sup> Articles 542-8 and 542-11 of the Commercial Act.

<sup>20</sup> Exception: Government-owned companies.

<sup>21</sup> Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board, Annex 1, article 4.

For an audit committee to function effectively on investors' behalf, it must include members with sufficient knowledge to diligently carry out their responsibilities. Taking into consideration the importance of the audit committee, we believe that the members of the audit committee should, collectively, have a recent and relevant background in and experience of finance and accounting for listed companies appropriate to the company's activities.

We are skeptical of audit committees that have members who lack expertise in finance and accounting or in other equivalent or similar areas of expertise. At least one of the members should have sufficient relevant expertise and experience in order to carry out their duties in a proper way under the Commercial Act.<sup>22</sup>

Glass Lewis generally assesses audit committees against the decisions they make with respect to their oversight and monitoring role. Shareholders should be provided with reasonable assurance that the financial statements are materially free from errors based on: (i) the quality and integrity of the financial statements and earnings reports; (ii) the completeness of disclosures necessary for investors to make informed decisions; and (iii) the effectiveness of the internal controls. The independence of the external auditors and the results of their work all provide useful information for assessing the audit committee.

When assessing the decisions and actions of the audit committee, we typically defer to its judgment and recommend voting in favor of its members; however, we will usually recommend voting against the following members under the following circumstances<sup>23</sup>:

- Any audit committee member who is not considered independent based on our research;<sup>24</sup>
- The audit committee chair, if the audit committee does not have a financial expert or the committee's financial expert does not have a demonstrable financial background sufficient to understand the financial issues unique to public companies;
- The audit committee chair, if the audit committee did not meet at least four times during the year;
- The audit committee chair, if the committee has less than three members;
- The audit committee chair, if we cannot confirm the unqualified audit opinions for the last three consecutive years, and the company has failed to disclose the auditor's report, with unqualified opinion on the previous fiscal year's financial statements, before the publication of our Proxy Report.
- All members of an audit committee who are up for election and who served on the committee at the time of the audit, if the company and the board failed to provide adequate financial information to the independent auditor;
- All members of an audit committee who served during the relevant time period, when material accounting fraud occurred at the company or annual financial statements had to be restated;
- All members of the audit committee who served during the relevant time period, when there is any disagreement with the auditor and the auditor resigns or is dismissed; or

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<sup>22</sup> Article 542-11 of the Commercial Act.

<sup>23</sup> If our recommendation is to vote against the committee chair and the chair is not up for election, we do not recommend voting against any members of the committee who are up for election; rather, we will simply express our concern regarding the committee chair. In the absence of an audit committee, we will recommend voting against the chair of the board.

<sup>24</sup> Exception: Government-owned companies.



- The chair of the board, if the company has not established an audit committee despite the legal requirement.

## Compensation Committee Performance

The majority of Korean companies do not have separate compensation committees; instead, this function is performed by the board as a whole. However, when compensation committees are established, they have the final say in determining the compensation of executives. This includes deciding the bases on which compensation is determined, as well as the amounts and types of compensation to be paid. This process begins with the hiring and initial establishment of employment agreements, including the terms for items such as pay, pensions and severance arrangements. It is important that, in establishing compensation arrangements, compensation be consistent with, and based on, the long-term performance of a business's shareholders returns.

Compensation committees are also responsible for the oversight of the transparency of compensation. This oversight includes the disclosure of compensation arrangements, the matrix used in assessing pay for performance and the use of pay consultants. It is important for investors to have clear and complete disclosure of all the significant terms of compensation arrangements.

Finally, compensation committees are responsible for the oversight of internal controls in the executive compensation process. This includes controls over gathering information used to determine compensation, the establishment of equity award plans and the granting of equity awards.

We evaluate compensation committee members on the basis of their performance while serving on the committee in question, not for actions taken by prior committee members who are no longer on the committee.

When assessing the performance of compensation committees, we will recommend voting against the following members under the following circumstances:<sup>25</sup>

- Any compensation committee member who is not considered independent based on our research;
- The compensation committee chair, if the compensation committee did not meet during the year;
- The compensation committee chair, if the committee has less than three members;
- All members of the compensation committee who served during the relevant time period, if: (i) the company entered into excessive employment agreements and/or severance agreements; (ii) performance goals were lowered when employees failed or were unlikely to meet original goals, or performance based compensation was paid despite goals not being attained; (iii) excessive employee perquisites and benefits were allowed; or (iv) we have identified other egregious policies or practices; or
- The chair of the board, if the company is a financial company and has not established a compensation.

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<sup>25</sup> If our recommendation is to vote against the committee chair and the chair is not up for election, we do not recommend voting against any members of the committee who are up for election; rather, we will simply express our concern regarding the committee chair. In the absence of an audit committee, we will recommend voting against the chair of the board.



## Nomination Committee Performance

The nomination committee, as an agent for shareholders, is responsible and accountable for the selection of objective and competent board members, especially independent directors. The nomination committee in this guideline refers to both independent director nomination committee and executive nomination committee.

In accordance with the applicable laws, all large companies must establish an independent director nomination committee and financial firms should establish an executive nomination committee. While an independent director nomination committee is only responsible for the nomination of independent directors, an executive nomination committee is in charge of the nomination of independent directors, representative director, representative executive director, and audit committee members. We note that all of our policies relevant to the independent director nomination committee for non-financial firms are equally applied to the executive nomination committee for financial companies.

We will recommend voting against the following members under the following circumstances:<sup>26</sup>

- The nomination committee chair, if the nomination committee did not meet during the year;
- The nomination committee chair, if the committee has less than three members;
- The nomination committee chair who is not considered independent based on our research;
- Any nomination committee member who is an insider;
- Any nomination committee member who is not considered independent based on our research, when the committee is not majority independent;
- All members responsible for nominating a candidate who had a significant conflict of interest or whose past actions demonstrated a lack of integrity or an inability to represent shareholder interests;
- The nomination committee chair (or the board chair in the absence of nomination committee), if the board fails any of the following independence thresholds: (i) at least two independent directors that comprise at least one-third of the board's membership for small companies; and (ii) at least three independent directors that comprise a majority of the board's membership for large companies; or
- The chair of the board, if the company has not established an applicable nomination committee despite the legal requirement.

## Environmental and Social Risk Oversight

### Board Oversight of Environmental and Social Issues

Glass Lewis recognizes the importance of ensuring the sustainability of companies' operations. We believe that insufficient oversight of material environmental and social issues can present direct legal, financial, regulatory and reputational risks that could serve to harm shareholder interests. Therefore, we believe that these issues should be carefully monitored and managed by companies, and that all companies should have an appropriate oversight structure in place to ensure that they are mitigating attendant risks and capitalizing on related opportunities to the best extent possible.

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<sup>26</sup> *Ibid.*

To that end, Glass Lewis believes that companies should ensure that boards maintain clear oversight of material risks to their operations, including those that are environmental and social in nature. These risks could include, but are not limited to matters related to climate change, human capital management, diversity, stakeholder relations, and health, safety & environment. For large-cap and in instances where we identify material oversight concerns, Glass Lewis will review a company's overall governance practices and identify which directors or board-level committees have been charged with oversight of environmental and/or social issues.

Given the importance of the board's role in overseeing environmental and social risks, Glass Lewis will generally recommend voting against the governance chair of a company who fails to provide explicit disclosure concerning the board's role in overseeing these issues.

While we believe that it is important that these issues are overseen at the board level and that shareholders are afforded meaningful disclosure of these oversight responsibilities, we believe that companies should determine the best structure for this oversight for themselves. In our view, this oversight can be effectively conducted by specific directors, the entire board, a separate committee, or combined with the responsibilities of a key committee.

When evaluating the board's role in overseeing environmental and/or social issues, we will examine a company's proxy statement and governing documents (such as committee charters) to determine if directors maintain a meaningful level of oversight of and accountability for a company's material environmental and/or socially-related impacts and risks.

## Board Accountability for Environmental and Social Performance

Glass Lewis carefully monitors companies' performance with respect to environmental and social issues, including those related to climate and human capital management. In situations where we believe that a company has not properly managed or mitigated material environmental or social risks to the detriment of shareholder value, or when such mismanagement has threatened shareholder value, Glass Lewis may recommend that shareholders vote against the members of the board who are responsible for oversight of environmental and social risks. In the absence of explicit board oversight of environmental and social issues, Glass Lewis may recommend that shareholders vote against members of the audit committee. In making these determinations, Glass Lewis will carefully review the situation, its effect on shareholder value, as well as any corrective action or other response made by the company.

For more information on how Glass Lewis evaluates environmental and social issues, please see the "Overall Approach to ESG" section of this document as well as our comprehensive *Proxy Paper Guidelines for Shareholder Proposals & ESG-Related Issues*, available at [www.glasslewis.com/voting-policies-current/](https://www.glasslewis.com/voting-policies-current/).

## Board Accountability for Climate-Related Issues

Given the exceptionally broad impacts of a changing climate on companies, the economy, and society more broadly, we view climate risk as a material risk for all companies. We therefore believe that boards should be considering and evaluating their operational resilience under lower-carbon scenarios. While all companies maintain exposure to climate-related risks, we believe that additional consideration should be given to, and that disclosure should be provided by, those companies whose own GHG emissions represent a financially material

risk. For companies with this increased risk exposure, we believe that companies should provide clear and comprehensive disclosure regarding these risks, including how they are being mitigated and overseen. We believe such information is crucial to allow investors to understand the company's management of this issue as well as the impact of a lower carbon future on the company's operations.

In line with this view, Glass Lewis will carefully assess whether climate-related disclosures are aligned with the recommendations of the Task Force on Climate-related Disclosures ("TCFD") at KOSPI 200 companies with material exposure to climate risk stemming from their own operations<sup>27</sup> as well as companies where we believe emissions or climate impacts, or stakeholder scrutiny thereof, represent an outsized, financially material risk. We will also assess whether these companies have disclosed explicit and clearly defined board-level oversight responsibilities for climate-related issues. In instances where we find either or both of these disclosures to be absent or significantly lacking, we may recommend against relevant directors.

## Cyber Risk Oversight

Companies and consumers are exposed to a growing risk of cyber-attacks. These attacks can result in customer or employee data breaches, harm to a company's reputation, significant fines or penalties, and interruption to a company's operations. Further, in some instances, cyber breaches can result in national security concerns, such as those impacting companies operating as utilities, defense contractors, and energy companies.

In response to these issues, regulators have increasingly been focused on ensuring companies are providing appropriate and timely disclosures and protections to stakeholders that could have been adversely impacted by a breach in a company's cyber infrastructure.

Under the Act on the Promotion of Information Security Industry in Korea, the Ministry of Science and ICT, along with the Korea Internet & Security Agency (KISA), introduced an information security disclosure regime. Initially voluntary in 2016 for companies in the information sector, it became mandatory in 2022 for companies meeting specific criteria, sales, and user counts. This disclosure system aims to allow consumers to choose companies with robust security measures and encourages companies to invest in information security plans. The disclosed items cover investment, personnel, certifications, assessments, and activities on cyber security. Both voluntary and mandatory disclosures should be submitted by June 30th each year through KISA's disclosure portal site. In addition, companies subject to the mandatory disclosure will be fined KRW 10 million in the case of non-compliance.

Given the regulatory focus on and the potential adverse outcomes from, cyber-related issues, it is our view that cyber risk is material for all companies. We therefore believe that it is critical that companies evaluate and mitigate these risks to the greatest extent possible. With that view, we encourage all issuers to provide clear disclosure concerning the role of the board in overseeing issues related to cybersecurity, including how

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<sup>27</sup> This policy will generally apply to companies in the following SASB-defined industries: agricultural products, air freight & logistics, airlines, chemicals, construction materials, containers & packaging, cruise lines, electric utilities & power generators, food retailers & distributors, health care distributors, iron & steel producers, marine transportation, meat, poultry & dairy, metals & mining, non-alcoholic beverages, oil & gas, pulp & paper products, rail transportation, road transportation, semiconductors, waste management.

companies are ensuring directors are fully versed on this rapidly evolving and dynamic issue. We believe such disclosures can help shareholders understand the seriousness with which companies take this issue.

In the absence of material cyber incidents, we will generally not make voting recommendations on the basis of a company's oversight or disclosure concerning cyber-related issues. However, in instances where cyber-attacks have caused significant harm to shareholders, we will closely evaluate the board's oversight of cybersecurity as well as the company's response and disclosures.

Moreover, in instances where a company has been materially impacted by a cyber-attack, we believe shareholders can reasonably expect periodic updates communicating the company's ongoing progress towards resolving and remediating the impact of the cyber-attack. We generally believe shareholders are best served when such updates include (but are not limited to) details such as when the company has fully restored its information systems, when the company has returned to normal operations, what resources the company is providing for affected stakeholders, and any other potentially relevant information, until the company considers the impact of the cyber-attack to be fully remediated. These disclosures should focus on the company's response to address the impacts to affected stakeholders and should not reveal specific and/or technical details that could impede the company's response or remediation of the incident or that could assist threat actors.

In instances where a company has been materially impacted by a cyber-attack, we may recommend against appropriate directors should we find the board's oversight and disclosures concerning cybersecurity-related issues to be insufficient, or are not provided to shareholders.

# Corporate Auditor that Serves Shareholder Interests

## Election of Corporate Auditors

As stated earlier, small companies – and certain other types of firms that also are exempt from committee requirements – are usually governed by two-tier boards. Pursuant to the law<sup>28</sup> any stock-listed corporation with assets of more than KRW 100 billion should appoint one or more full-time corporate auditors, or “standing auditor”. The function of corporate auditors is similar to that of the audit committee, in that they oversee the financial reporting of a company.

The Code states that corporate auditors should be independent from a company’s management and controlling shareholders. Under the Commercial Act, if a person falls within any of the following categories, he or she should not serve as a corporate auditor for a listed company: (i) a person who was discharged or dismissed from a stock-listed corporation, and two years has not elapsed since the date of such discharge or dismissal; (ii) a major stockholder of the company; (iii) a full-time officer or employee of the company, or a person who has been a full-time officer or employee thereof in the last two years; and (iv) a person who is capable of having influence on management, such as spouses and family members of major stockholders and executives of the company and former and current executives and employees of affiliated entities. Furthermore, for corporate auditor candidate, listed companies are required to disclose the following additional information in their AGM disclosures: (i) a candidate’s delinquency record in the last five years pursuant to the National Tax Collection Act and the Local Tax Collection Act; (ii) a candidate’s executive employment history at a company subject to bankruptcy or rehabilitation proceedings in the last five years pursuant to the Debtor Rehabilitation and Bankruptcy Act; and (iii) any reasons for restriction on employment or disqualification as corporate auditor under laws. When evaluating the independence of a corporate auditor, we will apply the same qualification of independent directors in our policy.

The current regulatory requirements are silent on the expertise and professional background requirements for corporate auditors. However, in the light of the oversight function and monitoring role of corporate auditors and taking into account the market practice in Korea that it is common for listed companies to have only one corporate auditor, we believe that the board of corporate auditors should include at least one member with sufficient knowledge and a recent and relevant background in finance and accounting.

We believe that maintaining strict standards of independence and professional qualifications for corporate auditors will provide shareholders with a reasonable assurance of the quality and effectiveness of the internal controls as well as the completeness of disclosures necessary for investors to make informed decisions.

We will recommend voting against the corporate auditors under the following circumstances:

- When none of the auditors are full-time corporate auditors;

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<sup>28</sup> Commercial Act and Capital Market and Financial Investment Business Act.

- When the proposed corporate auditors are not independent;
- When the proposed board of corporate auditors does not contain a financial expert with accounting expertise derived from either education or professional experiences, such as public accountant, auditor, principal financial, accounting officer, financial controller, or a position performing similar functions;
- When the company has repeatedly failed to file its financial reports in a timely fashion;
- When the company has failed to report or to have its auditors report material weaknesses in internal controls;
- When the company has aggressive accounting policies, as evidenced by restatements or other financial reporting problems;
- When the company has poor disclosure or a lack of transparency in financial statements; or
- When there are other relationships or issues of concern with the corporate auditor that might indicate a conflict between the interests of the corporate auditor and those of shareholders.

# Transparency and Integrity in Financial Reporting

## Accounts and Allocation of Profits/Dividends

As a routine matter, Korean law typically requires that shareholders approve a company's annual financial statements. The financial statements proposed to shareholders at the annual general meetings consist of: (i) the balance sheet; (ii) a profit and loss statement; and (iii) the statements of appropriation of earned surplus, or statements of disposition of deficit (the "statement of appropriation").

The notice and circular for convocation of a general meeting are dispatched in writing or electronically to shareholder at least 14 days prior to the meeting date, as mandated by the Commercial Act.<sup>29</sup> Meanwhile, the Commercial Act<sup>30</sup> separately states a listed company shall make public notice of its audited financial statements at least seven days prior to the annual general meeting. The discrepancy of disclosure timing of meeting materials and audit report has been an ongoing concern for the Korean market. Due to a discrepancy between these two separate mandates regarding the disclosure period, in cases where the meeting disclosure does not include audited financial statements and the voting date is set earlier than a week before the annual meeting date, shareholders may not be able to review audited financial statements prior to exercising their voting rights for annual general meetings. Consequently, it is very common to see unaudited financial statements in Korean companies' meeting disclosures due to the aforementioned legal requirements.

Given the importance of the auditor's opinion on financial statements and the availability of financial statements, we have recommended voting against financial statement proposals if the audit opinion is not disclosed at the timing of our publication. However, after comprehensive research on market circumstances, along with discussions with investors and issuers, we are updating our policy to better align with market practices and regulations and to prevent giving unintentional preference to companies disclosing meeting materials at the last minute over companies disclosing materials early but without an audit report.

Beginning of January 2024, we will review companies' past three years' financial statements and audit opinion when we review relevant proposals. If we do not identify any issues raised by independent auditors and/or accounting practices during this period, we will recommend voting for the financial statement proposal. However, for companies receiving opinions other than "unqualified" in the last three years, we will advise shareholders to oppose the adoption of financial statements, unless the company discloses its auditor's report before our publication. Nonetheless, we strongly encourage companies to provide transparent and timely audit opinions on financial statements to shareholders.

When it comes to the payment of dividends (or the absence thereof), we generally recommend supporting a company's policy. We believe, in most cases, the board is in the best position to determine whether a company has sufficient resources to distribute a dividend or if the company would be better served by forgoing a dividend

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<sup>29</sup> Article 363 of the Commercial Act.

<sup>30</sup> Article 579-3 of the Commercial Act.

to conserve resources for future opportunities or needs. As such, we will only recommend that shareholders refrain from supporting dividend proposals in exceptional cases.

We support plans that provide shareholders with the choice of receiving dividends in shares instead of cash. Scrip dividends allow the company to retain cash that it would otherwise distribute as a normal dividend. For shareholders, a dividend reinvestment plan offers a less expensive way to acquire additional shares without paying brokers' commissions or potentially incurring unfavorable tax treatment.



# Compensation

## Director and Corporate Auditor Compensation

Glass Lewis believes that directors and corporate auditors should receive compensation for the time and effort they spend serving on a board and its committees. Director and corporate auditor fees should be reasonable in order to retain and attract qualified individuals. However, excessive fees represent a financial cost to the company and can threaten to compromise the objectivity and independence of non-employee directors and corporate auditors. Therefore, a balance is required.

In Korea, shareholders are allowed to approve the aggregate amount of fees to be granted to directors and corporate auditors as compensation for their services. The board then has full discretionary authority to allocate among the members within the approved limit approved by the shareholders. The proposed compensation may consist of annual fees and any other remuneration for executive directors, such as bonuses, performance incentives, equity-based compensation and other benefits.

It is common among Korean companies to provide limited disclosure as to the elements of compensation that may be paid to directors and/or corporate auditors. Instead, Korean companies are only required to disclose: (i) the proposed maximum amount of fees for all directors and all corporate auditors for the upcoming fiscal year; and (ii) the aggregate paid amount fees for all directors and all corporate auditors for the previous fiscal year. Due to the lack of complete disclosure surrounding the compensation of directors and/or corporate auditors, shareholders are unable to make a fully informed decision on one or more elements of a director's or corporate auditor's compensation.

In general, our standard seeks to determine whether the proposed compensation is within a reasonable range relative to a company's peers with similar asset size in the same country to help inform its judgments on this issue.

## Retirement Benefits for Directors

We will typically recommend voting against proposals to grant retirement benefits to non-executive directors. Such extended payments can impair the objectivity and independence of these board members. Directors should receive adequate compensation for their board service through initial and annual fees.

## Equity-Based Compensation Plans

Glass Lewis believes that equity compensation awards are a useful tool, when not abused, for retaining and incentivizing employees to engage in conduct that will improve the performance of the company.

Stock options are a common form of compensation for executives and employees in Korea.<sup>31</sup> Non-executives may also receive such benefits. The Commercial Act<sup>32</sup> allows for the exercise of options if the grantee has been in the service of the company for two years or more from the date when shareholders voted on the option grant. In general, stock options shall not be transferable to another person, provided that, in the case of the death of the grantees entitled to exercise the stock option, their heirs may exercise it.<sup>33</sup>

Options are an important component of compensation packages to attract and retain experienced executives and other key employees. Tying a portion of compensation to the performance of the company also provides executives and employees with an excellent incentive to maximize share value. We recognize that equity-based compensation programs have important differences from cash compensation plans and bonus programs. Accordingly, our analysis accounts for factors such as: (i) the administration of the plan; (ii) the method and terms of exercise; (iii) the company's re-pricing history and the express or implied rights to re-price; (iv) the presence of evergreen provisions; and (v) other factors that could allow for excessive compensation to be paid.

Our analysis is both quantitative and qualitative. In particular, we examine the potential dilution to shareholders, the company's grant history and compliance with best practice recommendations.

In general, we evaluate equity-based compensation plans and will make our voting recommendations based on these overarching principles:

- Companies should seek more shares only when necessary.
- Plans should not support the granting of stock options to those other than employees and/or executives of the company or its group.
- The annual net share count and voting power dilution should be limited.
- The annual cost of the plan should be reasonable as a percentage of financial results and in line with the peer group, especially if the cost is not shown on the income statement.
- The expected annual cost of the plan should be proportional to the value of the business.
- The intrinsic value received by option grantees in the past should be reasonable compared with the financial results of the business.
- The plan should deliver value on a per-employee basis when compared with programs at peer companies.
- Plans should not permit the re-pricing of stock options.
- Plans should not contain excessively liberal administrative or payment terms.
- The totality of the vesting period should not be less than two years.

The equity-based compensation plans should not include the acceleration of vesting of awards upon an offer being made on a company's shares without the transaction needing to be completed, along with a further event such as termination of employment of the grantee.

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<sup>31</sup> Pursuant to the Article 340-4 of the Commercial Act, a stock option may be exercised only when the option grantee has been in the service of the company for two years or more from the date when matters relating to the stock option were determined by the resolution of a general shareholders' meeting.

<sup>32</sup> Article 542-3 of the Commercial Act.

<sup>33</sup> Article 340-4 of the Commercial Act.

Furthermore, when evaluating equity-based compensation proposals, we will look for companies to provide complete disclosure surrounding the proposed equity grants. In the absence of complete disclosure, we may recommend shareholders oppose either the adoption of an equity-based compensation plan or the granting of equity grants where:

- The number of share options or shares to be granted has not been disclosed by the company.
- The exercise price or discount rate of stock options is not disclosed or is determined at the discretion of the plan administrator.

# Governance Structure and the Shareholder Franchise

## Amendments to the Articles of Incorporation

In Korea, amendments to a company's articles require affirmative votes of two-thirds of shares represented at the general meeting and of no less than one-third of the total outstanding shares as a special resolution<sup>34</sup>.

We will evaluate proposed amendments to a company's articles of incorporation on a case-by-case basis. We are opposed to the practice of bundling several amendments under a single proposal because such a method prevents shareholders from an independent determination on each amendment. In such cases, we will analyse each change separately and will usually recommend voting for the proposal only when we believe that all of the amendments are either in the best interests of shareholders or are inconsequential.

One of the provisions of the Commercial Act<sup>35</sup> allows a company to approve its financial statements by board resolution instead of shareholder resolution, if there is full consent by the audit committee (the corporate auditor in case of a two-tier board) and an unqualified opinion of an independent auditor of the company. We believe that the implementation of this particular provision in the company's article negatively limits shareholder rights. Thus, we recommend shareholders vote against the resolution of such amendments to articles as a whole.

## Capital Structure

Glass Lewis believes that adequate capital stock is important to a company's operation. When analyzing a request for additional shares, we typically review four common reasons why a company might need additional capital stock:

### Stock Split

We typically consider three metrics when evaluating whether we think a stock split is likely or necessary: (i) the historical stock pre-split price, if any; (ii) the current price relative to the company's most common trading price over the past 52 weeks; and (iii) some absolute limits on stock price that, in our view, either always make a stock split appropriate if desired by management or would almost never be a reasonable price at which to split a stock.

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<sup>34</sup> Article 433-1 of the Commercial Act.

<sup>35</sup> Article 449-2 of the Commercial Act.

## Issuance of Shares and/or Convertible Securities

In Korea, the board has the authority to issue shares and other securities using its discretion, without shareholder approval. In general, we believe that the board is in the best position to determine the capital structure of the company within context of its business, absent a showing of egregious or illegal conduct that might threaten shareholder value. In addition, board authority to issue shares or other securities may benefit shareholders by providing the Company with the flexibility to finance operations and future business opportunities. However, issuing an excessive amount of additional shares and/or convertible securities can adversely affect voting power and financial interests of common shareholders. Further, the board's decision may not be in line with the best interests of shareholders. Accordingly, where we find any significant issues in the company's issuance practices, we may recommend voting against board members to be held accountable on the issues when they face reelection.

While we think that having adequate shares to allow management to make quick decisions and effectively operate the business is critical, we prefer that, for significant transactions, management come to shareholders to justify the use of additional shares rather than providing a blank check in the form of a large pool of unallocated shares available for any purpose.

In our view, any authorization to issue shares and/or convertible securities without preemptive rights should not exceed 20% of the company's total share capital. Likewise, we believe the discount rate for the new issue should not exceed 15% of the average market price.

## Issuance of Debt Instruments

In Korea, a board has the authority to issue and/or trade in non-convertible, convertible and/or exchangeable debt obligations, at any time, in accordance to the country's legal standards. Generally, the board is granted the authority to establish a fixed or variable interest rate, and more globally, to establish all other aspects of the debt instruments.

## Supermajority Vote Requirements

Glass Lewis believes that supermajority vote requirements act as impediments to shareholder action on ballot items that are critical to their interests. One key example is in the takeover context, where a supermajority vote requirement can strongly limit the voice of shareholders in deciding whether to sell the business. We will generally recommend shareholders reject the adoption or extension of supermajority voting provisions and support proposals to eliminate such provisions.

## Right of Shareholders to Call a Meeting

Pursuant to the Commercial Act<sup>36</sup>, shareholders who hold no less than 3% of the total outstanding voting shares may demand the convocation of a special meeting.

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<sup>36</sup> Article 363-2 of the Commercial Act.

Glass Lewis strongly supports the right of shareholders to call special meetings. However, in order to prevent abuse and waste of corporate resources by a very small minority of shareholders we believe that such rights should be limited to an appropriate ownership threshold of the shareholders requesting such a meeting. A low threshold may leave companies subject to meetings whose effect might be the disruption of normal business operations in order to focus on the interests of only a small minority of owners.

## Virtual-Only Meeting

In August 2023, the Ministry of Justice pre-announced legislation allowing the adoption of virtual-only meetings, enabling companies to conduct notification, voting and other proceedings through electronic methods. The Ministry is expected to present the amendment to the current relevant law at the end of 2023 and to implement the system in 2024. This will allow companies to adopt both virtual-only meetings and hybrid meetings.

We believe that virtual meeting technology can be a useful complement to a traditional and in-person shareholder meeting by expanding the participation of shareholders who are unable to attend a shareholder meeting in person (i.e. a hybrid meeting). However, without clear procedures on the ability for shareholders to participate in the meeting, virtual-only meetings can lead to a reduction in shareholder rights. As such, we expect companies proposing to amend their articles of incorporation to allow for virtual-only meetings to, at a minimum, include the following commitments in the proposed amendments or in the supporting documents:

- Conditions and requirements for the organization of the virtual only-meetings and procedures for preparations
- Safeguards to ensure shareholders rights in the participation of virtual-only meetings (accessibility, discussion facilitation, questions, etc.)

However, we note that the burden of disclosing this information is lower for companies incorporated in jurisdictions in which the aforementioned organizational and disclosure aspects are already required by applicable legislation. In the case of Korea, the Ministry pre-announced that the legislation would specify procedures and requirements regarding virtual-only meetings. Therefore, if such details can be identified under the relevant law, we will recommend that shareholders support amendments despite the absence of detailed disclosures on proposed amendments to allow virtual-only meetings. As for now, we continue to monitor the ongoing introduction of the legislation.

Nonetheless, even after the virtual-only meeting legislation is in place, we will recommend voting against the directors who are designated as the conveners of shareholders' meetings when we believe that shareholder rights are largely infringed due to the terms of a virtual-only meeting.

# Overall Approach to Environmental, Social & Governance

Glass Lewis evaluates all environmental and social issues through the lens of long-term shareholder value. We believe that companies should be considering material environmental and social factors in all aspects of their operations and that companies should provide shareholders with disclosures that allow them to understand how these factors are being considered and how attendant risks are being mitigated. We also are of the view that governance is a critical factor in how companies manage environmental and social risks and opportunities and that a well-governed company will be generally managing these issues better than one without a governance structure that promotes board independence and accountability.

We believe part of the board's role is to ensure that management conducts a complete risk analysis of company operations, including those that have material environmental and social implications. We believe that directors should monitor management's performance in both capitalizing on environmental and social opportunities and mitigating environmental and social risks related to operations in order to best serve the interests of shareholders. Companies face significant financial, legal and reputational risks resulting from poor environmental and social practices, or negligent oversight thereof. Therefore, in cases where the board or management has neglected to take action on a pressing issue that could negatively impact shareholder value, we believe that shareholders should take necessary action in order to effect changes that will safeguard their financial interests.

Given the importance of the role of the board in executing a sustainable business strategy that allows for the realization of environmental and social opportunities and the mitigation of related risks, relating to environmental risks and opportunities, we believe shareholders should seek to promote governance structures that protect shareholders and promote director accountability. When management and the board have displayed disregard for environmental or social risks, have engaged in egregious or illegal conduct, or have failed to adequately respond to current or imminent environmental and social risks that threaten shareholder value, we believe shareholders should consider holding directors accountable. In such instances, we will generally recommend against responsible members of the board that are specifically charged with oversight of the issue in question.

When evaluating environmental and social factors that may be relevant to a given company, Glass Lewis does so in the context of the financial materiality of the issue to the company's operations. We believe that all companies face risks associated with environmental and social issues. However, we recognize that these risks manifest themselves differently at each company as a result of a company's operations, workforce, structure, and geography, among other factors. Accordingly, we place a significant emphasis on the financial implications of a company's actions with regard to impacts on its stakeholders and the environment.

When evaluating environmental and social issues, Glass Lewis examines companies':

**Direct environmental and social risk** — Companies should evaluate financial exposure to direct environmental risks associated with their operations. Examples of direct environmental risks include those associated with oil or gas spills, contamination, hazardous leakages, explosions, or reduced water or air quality, among others. Social risks may include non-inclusive employment policies, inadequate human rights policies, or issues that

adversely affect the company's stakeholders. Further, we believe that firms should consider their exposure to risks emanating from a broad range of issues, over which they may have no or only limited control, such as insurance companies being affected by increased storm severity and frequency resulting from climate change.

**Risk due to legislation and regulation** — Companies should evaluate their exposure to changes or potential changes in regulation that affect current and planned operations. Regulation should be carefully monitored in all jurisdictions in which the company operates. We look closely at relevant and proposed legislation and evaluate whether the company has responded proactively.

**Legal and reputational risk** — Failure to take action on important environmental or social issues may carry the risk of inciting negative publicity and potentially costly litigation. While the effect of high-profile campaigns on shareholder value may not be directly measurable, we believe it is prudent for companies to carefully evaluate the potential impacts of the public perception of their impacts on stakeholders and the environment. When considering investigations and lawsuits, Glass Lewis is mindful that such matters may involve unadjudicated allegations or other charges that have not been resolved. Glass Lewis does not assume the truth of such allegations or charges or that the law has been violated. Instead, Glass Lewis focuses more broadly on whether, under the particular facts and circumstances presented, the nature and number of such concerns, lawsuits or investigations reflects on the risk profile of the company or suggests that appropriate risk mitigation measures may be warranted.

**Governance risk** — Inadequate oversight of environmental and social issues carries significant risks to companies. When leadership is ineffective or fails to thoroughly consider potential risks, such risks are likely unmitigated and could thus present substantial risks to the company, ultimately leading to loss of shareholder value.

Glass Lewis believes that one of the most crucial factors in analyzing the risks presented to companies in the form of environmental and social issues is the level and quality of oversight over such issues. When management and the board have displayed disregard for environmental risks, have engaged in egregious or illegal conduct, or have failed to adequately respond to current or imminent environmental risks that threaten shareholder value, we believe shareholders should consider holding directors accountable. When companies have not provided for explicit, board-level oversight of environmental and social matters and/or when a substantial environmental or social risk has been ignored or inadequately addressed, we may recommend voting against members of the board. In addition, or alternatively, depending on the proposals presented, we may also consider recommending voting in favor of relevant shareholder proposals or against other relevant management-proposed items, such as the ratification of auditor, a company's accounts and reports, or ratification of management and board acts.



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