

OPINION

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Examining the Status and Challenges of Shareholder Rights Protection Through the Analysis of 2024 Shareholder Meetings

Amid the growing interest of the government and capital market in enhancing corporate value and protecting shareholders, the 2024 regular shareholder meeting season has drawn to a close in Korea. Against this backdrop, this article analyzes disclosures related to shareholder meetings provided by 2,480 listed companies that convened regular shareholder meetings in February and March 2024. Through this analysis, it identifies challenges in protecting shareholders' interests and puts forth future considerations.

In terms of shareholder meeting dates, the analysis reveals that 97.2% of the listed companies hosting shareholder meetings between February and March 2024 convened them between March 20 and 29. Electronic voting serves as a beneficial system enabling shareholders to exercise their voting rights without the need to physically attend shareholder meetings. Of the companies analyzed, 586 KOSPI-listed companies (72.3%) and 931 KOSDAQ-listed companies (55.9%) implemented electronic voting systems. While it is not feasible to impose legal mandates on listed companies to space out meeting dates or adopt electronic voting, voluntary endeavors from these entities are crucial to safeguard shareholders' interests. In this respect, ensuring shareholders' voting rights through the dispersion of shareholder meetings and the adoption of electronic voting could be incorporated into corporate value enhancement guidelines or ESG evaluation criteria.

An examination of disclosures concerning agenda items and audit reports indicates that approximately 80% of listed companies adhere to legal deadlines for such disclosures. In this respect, there is a need to consider amending legal provisions

* All opinions expressed in this paper represent the author's personal views and thus should not be interpreted as Korea Capital Market Institute's official position.

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specifying disclosure deadlines for agenda items and audit reports, currently set at two weeks and one week, respectively, prior to the shareholder meeting date, thereby extending them to three weeks before the shareholder meeting. Additionally, it is essential to require companies to disclose dividend distribution information six weeks prior to the shareholder meeting, enabling shareholders to exercise their right to make a proposal. Following the conclusion of shareholder meetings, specific details regarding shareholder attendance rates and approval ratios for agenda items should be made public. This measure would increase shareholder participation in these meetings, providing an impetus for board directors to faithfully execute their duties in shareholders' best interests.

At the outset of 2024, “enhancing shareholders’ interests” has come to the fore as a pivotal policy issue in the Korean capital market. At the “2024 Securities and Derivatives Market Opening Ceremony” on January 2, the legal amendment aimed at bolstering the interests of small shareholders was discussed as the primary agenda. On February 6, the Financial Services Commission announced “capital market policies”, expressing its commitment to regulatory improvements to protect ordinary shareholders and enhance corporate value. As part of the ongoing “Corporate Value-Up Program”, corporate governance improvements and shareholder protection can serve as a catalyst for boosting corporate value.

Amid the growing interest of the government and capital market in enhancing corporate value and protecting shareholders, the 2024 regular shareholder meeting season has drawn to a close in Korea. A regular shareholder meeting serves as a pivotal venue where a company discloses its annual business performance, appoints executives, and determines their compensation, providing the shareholders with an important opportunity to exercise their rights. In Korea, the majority of listed companies operate on a December fiscal year-end, consequently scheduling their regular shareholder meetings in February and March. Typically, these meetings cover three to five agenda items, such as the ratification of financial statements, the election of executives, and the approval of executive compensation limits.

Against this backdrop, this article analyzes the disclosures related to shareholder meetings provided by 2,480 listed companies (810 on the KOSPI and 1,670 on the KOSDAQ)¹⁾ that convened regular shareholder meetings in February and March 2024. Through this analysis, it identifies challenges from the perspective of protecting shareholders' interests and puts forth future considerations.

Shareholder meeting dates and adoption of electronic voting

In Korea, the concentration of shareholder meetings on specific dates has been so pronounced that it led to the coining of the term “Super Shareholder Meeting Day”.²⁾ This phenomenon has long been criticized for limiting shareholders' voting rights.³⁾ Despite government policies to disperse these meetings and voluntary efforts by listed companies to stagger them, the analysis of regular shareholder meeting dates for the year 2024 reveals that concentration on specific dates persists.

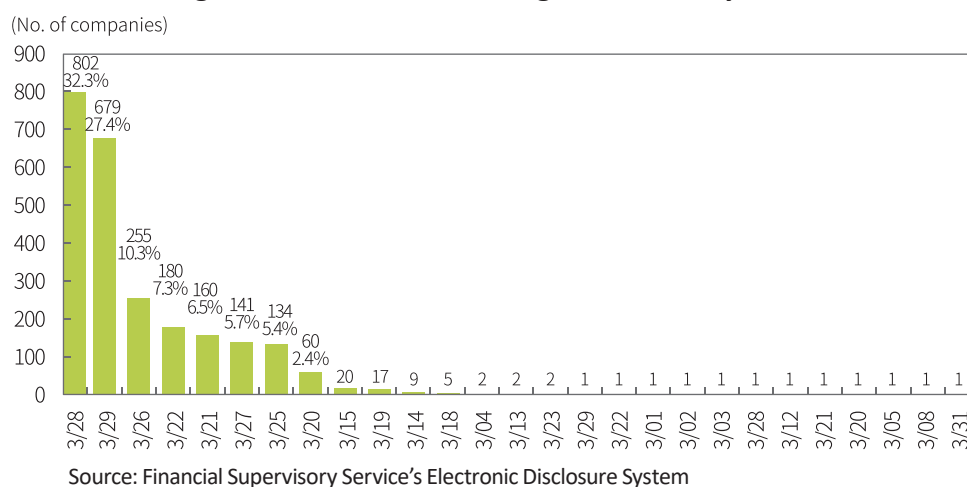
As illustrated in Figure 1, the most concentrated date for shareholder meetings is March 28, with 802 companies holding meetings on that date (217 listed on the KOSPI and 585 on the KOSDAQ), representing 32.3% of the 2,480 companies that held shareholder meetings between February and March. On March 29, 679 listed companies (27.4%) convened shareholder meetings, with 172 from the KOSPI market and 507 from the KOSDAQ market. On March 26, 255 listed companies (10.3%) held these meetings, consisting of 87 from the KOSPI market and 168 from the KOSDAQ market. Considering that 180 and 160 companies held their meetings on March 22 and 21, respectively, the shareholder meeting dates of 83.7% of listed companies are concentrated on five dates. If 141 companies convening these meetings on March 27, 134 on March 25, 60 on March 20 are added to this equation, 97.2% of the listed companies that held shareholder meetings between February and March convened their meetings between March 20 and 29. Compared to G7 countries or other Asian countries, Korea shows an excessively high concentration of shareholder meeting dates.⁴⁾

1) This analysis is based on the data disclosed on the Financial Supervisory Service's Electronic Disclosure System.

2) In 2017, 44.64% of listed companies with a December fiscal year-end held their shareholder meetings on a single day.

3) Financial Services Commission, February 1, 2018, Plan to facilitate regular shareholder meetings of listed companies, press release.

4) Hwang, H.Y., 2015, Current state and implications of regular shareholder meetings of listed companies, National Assembly Budget Office, Issues in Indicators 32.

Figure 1. Shareholder meeting dates for the year 2024

When shareholder meetings are concentrated on specific dates, it becomes challenging for shareholders who have investments in multiple companies to attend the meetings in person and thoroughly review agenda items. Although several amendments to relevant laws have eliminated the regulatory requirement for companies to hold regular shareholder meetings by the end of March, the practice of convening these meetings in late March remains unchanged.

Electronic voting represents a beneficial system enabling shareholders to exercise their voting rights without the need to physically attend shareholder meetings. However, to leverage the advantages of electronic voting, companies must first implement the system. Among the 2,480 companies that held shareholder meetings between February and March 2024, 586 companies listed on the KOSPI (72.3%) and 931 listed on the KOSDAQ (55.9%) have adopted electronic voting. While this adoption rate marks a significant increase compared to the past, there still exist companies that have not yet implemented electronic voting, accounting for 27.7% of KOSPI-listed companies and 77.1% of KOSDAQ-listed companies. As a result, the shareholders investing in these companies are unable to exercise their voting rights by electronic means.

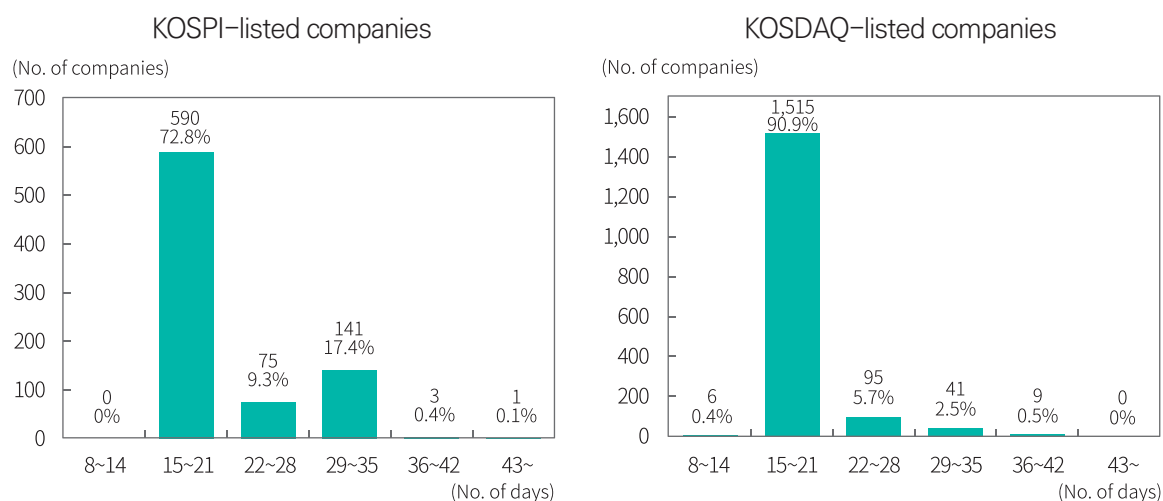
While it is not feasible to impose legal mandates on listed companies to space out shareholder meeting dates or implement electronic voting, voluntary endeavors from these entities are crucial to safeguard shareholders' interests. In this respect, ensuring shareholders' voting rights through the dispersion of shareholder meetings and the adoption of electronic voting could be incorporated into corporate value enhancement guidelines or ESG evaluation criteria.

Disclosure of shareholder meeting agenda items and audit reports

Shareholders should receive specific information well in advance to effectively exercise their voting rights. Given that shareholder meetings by 97.2% of listed companies are concentrated between March 20th and 29th, convocation notices should be issued in advance to allow for the review of agenda items. However, a considerable number of companies are sending such notices according to the schedule required by laws.

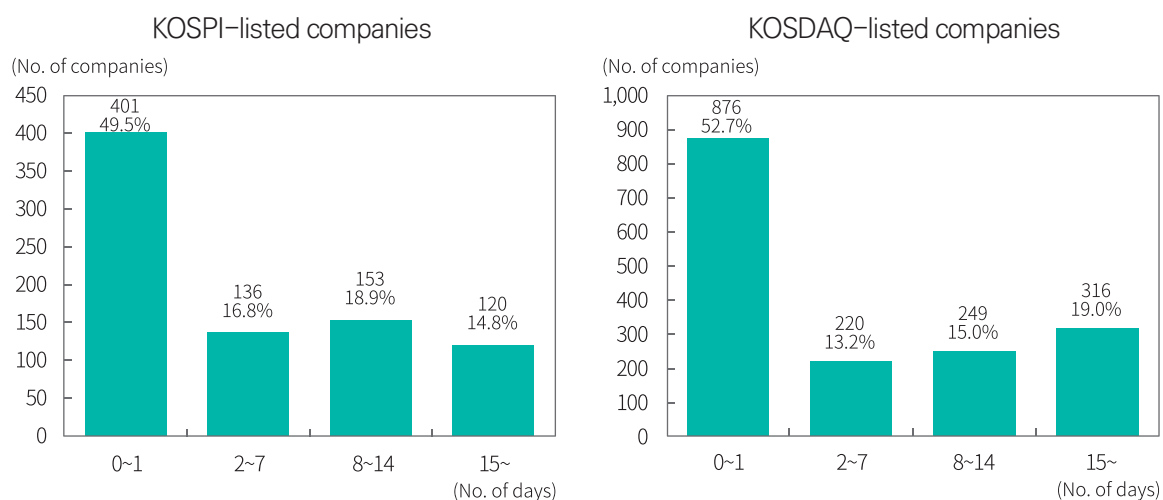
According to Article 363, Paragraph 1 of the Korean Commercial Act, a company is required to give a written notice to each shareholder for shareholder meeting convocation, or send an electronic notice after obtaining their consent, at least two weeks prior to the scheduled shareholder meeting. For shareholders who own one percent or less of the shares, public notification of the shareholder meeting can be substituted by disclosing relevant information on the website of the Financial Supervisory Services, as stipulated in Article 543-4, Paragraph 1 of the Commercial Act. In an analysis of disclosures pertaining to shareholder meetings in February and March 2024, as shown in Figure 2, 72.8% of KOSPI-listed companies and 90.9% of KOSDAQ-listed companies complied with the legal requirement by issuing a public notice two weeks before each shareholder meeting date. While some companies made public notification three or four weeks before the legal deadline,⁵⁾ the majority adhered to the legal requirement.

5) The listed companies with consolidated total assets of KRW 50 billion or more are required to submit a corporate governance report to the stock exchange by May 31 each year. The report specifies that if the period between the convocation “notification” and the shareholder meeting date does not exceed four weeks, the company should provide an explanation of the reason and outline plans (Specific Principle 1-1).

Figure 2. Difference between shareholder meeting dates and convocation notice dates

Source: Financial Supervisory Service's Electronic Disclosure System

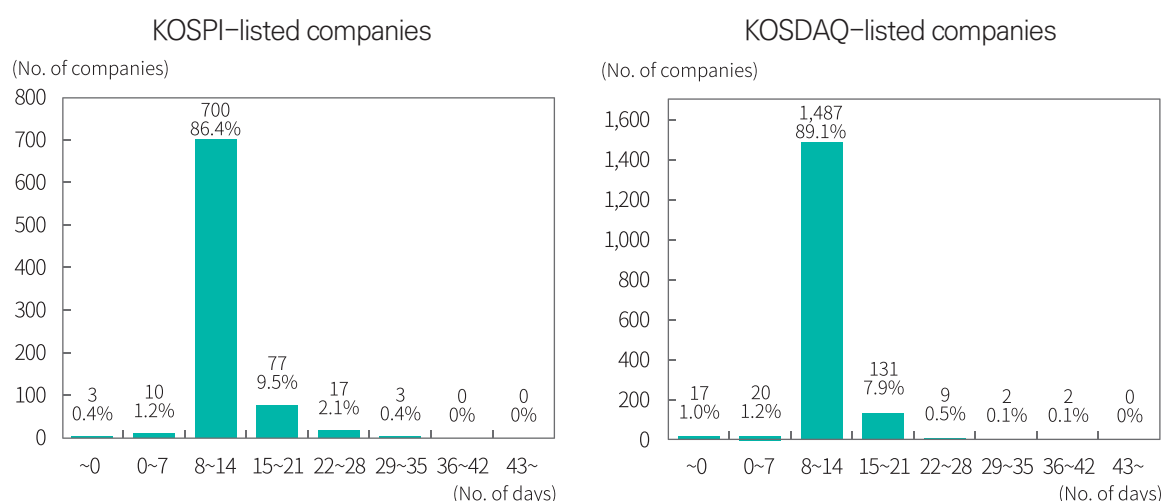
If public notification is based on the resolution date of the board of directors (BOD) for convening shareholder meetings rather than the date of issuing a convening notice, an earlier announcement could be made. However, in practice, public notification is typically issued according to the dates stipulated by relevant laws. In Figure 3, 33.7% of KOSPI-listed companies and 34% of KOSDAQ-listed companies exhibit a gap of one week or more between the BOD resolution date for convening the meeting and the public notification date.

Figure 3. Difference between the public notification date and the resolution date for convening shareholder meetings

Source: Financial Supervisory Service's Electronic Disclosure System

The disclosure of the external auditor's report, which facilitates an understanding of corporate financial status, was made later than the public notification date for the shareholder meeting. As per legal requirements (Article 31, Paragraph 4, Subparagraph 4 of the Enforcement Decree of the Commercial Act and Article 27, Paragraph 1, Subparagraph 1 of the Enforcement Decree of the Act on External Audit of Stock Companies), audit reports must be disclosed one week before the shareholder meeting. Accordingly, around 90% of listed companies comply with the legal standards for disclosure, as illustrated in Figure 4. This suggests that retail and institutional investors, who invest in multiple companies, are overwhelmed with audit reports, most of which are released in mid-March for the late March shareholder meetings.

Figure 4. Difference between the regular shareholder meeting date and the audit report disclosure date



Source: Financial Supervisory Service's Electronic Disclosure System

In the past, listed companies with a December fiscal year-end were required to hold regular shareholder meetings by the end of March. However, recent amendments to relevant laws have extended the timeline, allowing these meetings to take place in April. Therefore, it is not justifiable to argue that the challenges in finalizing financial statements lead to the delayed submission of audit reports. Nevertheless, in practice, companies continue to adhere to legal deadlines for issuing shareholder meeting notices and disclosing audit reports. This highlights the need for regulatory improvements rather than solely relying on voluntary efforts by companies to protect shareholders' interests. Among OECD member countries, 39% require a notification period of 22 days or more, while 51% have a period of 21 days. Only five countries

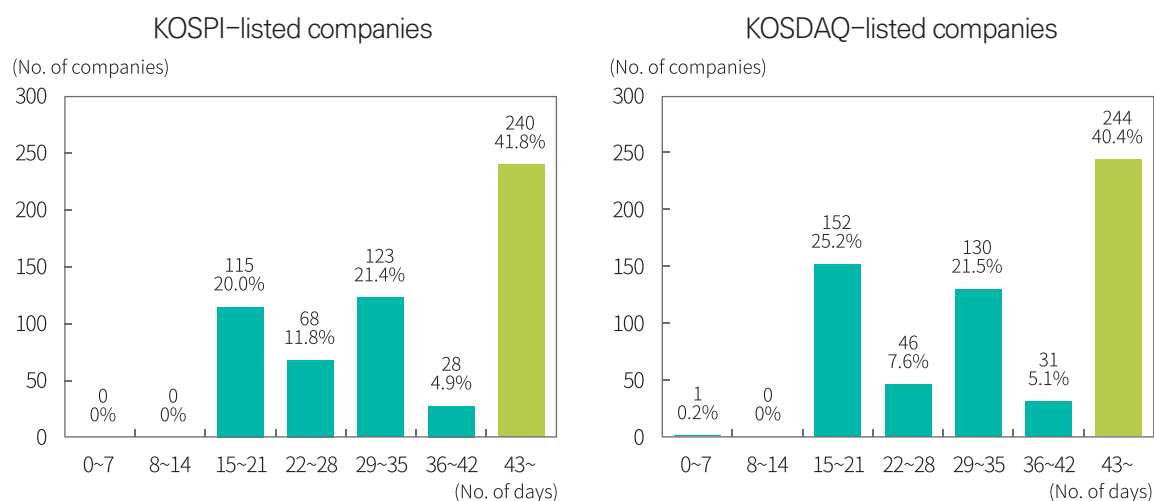
including Korea,⁶⁾ representing 10% of the OECD, have a period of less than 15 days.⁷⁾ This underscores the need to amend the Commercial Act and the Enforcement Decree of the Act on External Audit of Stock Companies to advance the timing of shareholder meeting notifications, disclosures, and audit report submissions to three weeks before the shareholder meeting date. This ensures that shareholders have sufficient time to review corporate financial statements and shareholder meeting agenda items in advance.

Dividend distribution and disclosure of shareholder meeting results

Despite the increasing interest in shareholder payouts, 28.8% of KOSPI-listed companies (234 companies) and 63.8% of KOSDAQ-listed companies (1,066 companies) did not distribute dividends at the 2024 regular shareholder meetings. When a company's BOD decides against dividend distribution, its shareholders are unable to demand dividend payments and gain insight into the reason behind the decision. Furthermore, existing laws require shareholders to propose dividend distribution to the company at least six weeks before the shareholder meeting. However, in 2024, less than half of the listed companies analyzed disclosed their dividend decisions within this timeframe, during which shareholders can exercise their rights to make a proposal at regular shareholder meetings. In Figure 5, only 41.8% of KOSPI-listed companies (240 companies) and 40.4% of KOSDAQ-listed companies (244 companies) publicly announced their dividend decisions six weeks prior to the shareholder meeting, thus enabling shareholders to make dividend proposals.

6) The five countries are Korea, Japan, Chile, New Zealand, and Singapore. Like Korea, Japan also has a two-week notification period for convocation notices but the two-week period is also applicable to the submission of audit reports in Japan.

7) OECD, 2023, OECD Corporate Governance Factbook 2023, p. 70.

Figure 5. Disclosure dates of dividend decisions

Source: Financial Supervisory Service's Electronic Disclosure System

In light of this, regulatory improvements are imperative to mandate separate disclosure of dividend-related information when financial statements, approved by BOD, are submitted to auditors six weeks prior to the shareholder meeting after the closing date. Such a measure will ensure that existing shareholders or prospective investors make informed decisions. This disclosure should include key information regarding dividends, such as the dividend policy, distribution decisions, the BOD's stance on dividend decisions, the limit of profits available for dividends, and the dividend amount. This would empower shareholders to propose dividend distribution and increase the predictability for dividend distribution, thereby safeguarding shareholders' interests and enhancing corporate value.

Moreover, it is essential to disclose the outcomes of shareholder meetings to accurately gauge shareholders' intentions. However, unlike global standards, Korean companies currently only disclose whether agenda items were "approved as proposed". The Financial Supervisory Service recently announced an improvement plan to ensure investors are promptly informed of shareholder meeting results.⁸⁾ But the plan merely necessitates disclosure of the approval status of agenda items and key discussion issues, rather than mandating specific disclosure of approval or dissent ratios. Given that disclosure of approval or dissent ratios is mandatory in major economies such as the US, Japan, Germany, and France,⁹⁾ it is worth considering

8) Financial Supervisory Service, April 11, 2024, Improvement for the timely and comprehensive provision of the exercise of shareholder proposals and shareholder meeting discussion results to investors, press release.

9) OECD, 2023, OECD Corporate Governance Factbook 2023, p. 98~99.

mandating companies in Korea to provide shareholders with such information. Article 41 of the Act on Corporate Governance of Financial Companies requires financial services companies to disclose shareholder attendance rates and approval ratios for agenda items with respect to shareholder meetings. Moreover, companies with consolidated total assets exceeding KRW 500 billion are obliged to specify approval ratios at shareholder meetings in their corporate governance reports to be filed with the stock exchange. To ensure that these regulations apply to all listed companies, it is necessary to amend the Commercial Act or corporate disclosure formats to mandate the disclosure of shareholder attendance rates and approval ratios for agenda items.

Future challenges

Currently, improving corporate governance and protecting shareholders' interests have emerged as crucial concerns. At this critical juncture, this article has assessed the current state of shareholder meetings, which serve as a significant opportunity for shareholders to engage in corporate management, and has presented forthcoming challenges. In this regard, it intends to propose incorporating shareholder meetings-related factors into corporate value enhancement guidelines and ESG evaluation criteria. This would encourage companies to voluntarily disperse shareholder meeting dates and implement electronic voting systems. In addition, there is a need to consider amending legal provisions that stipulate the disclosure deadlines for agenda items and audit reports as two weeks and one week, respectively, prior to the shareholder meeting date, thereby extending them to three weeks before the shareholder meeting. Lastly, it is essential to require companies to disclose dividend distribution information six weeks prior to the shareholder meeting, enabling shareholders to exercise their right to make a proposal. Following the conclusion of shareholder meetings, specific details regarding shareholder attendance rates and approval ratios for agenda items should be made public. This measure would increase shareholder participation in these meetings, providing an impetus for board directors to faithfully execute their duties in the interest of shareholders. Moreover, it would contribute to addressing the Korea discount issue and enhancing corporate value through corporate governance improvement.