

Advancing Corporate Climate Accountability through Shareholder Engagement:

A Guide to Filing Climate Shareholder Resolutions in South Korea



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1. Introduction

According to the World Meteorological Organization, the year 2023 was the warmest year ever recorded on Earth.¹ As UN Secretary General António Guterres has warned, “the era of global warming has ended, and the era of global boiling has arrived.”² The world has seen a series of extreme weather events and climate disasters in the recent years such as wildfires, heatwaves, and flash floods, and South Korea is no exception. In the summer of 2022, the heaviest rainfall in eighty years flooded the capital, Seoul, and surrounding areas, leaving at least nine people dead and causing significant property damage.³ Only a year after the 2022 flood, torrential rain swept the country during the monsoon season, especially the central and southern regions, resulting in devastating flooding and landslides and killing at least forty people.⁴

Climate change is no longer a subtle, intangible risk but has become an immediate and tangible threat with far-reaching physical and economic implications for both individuals and corporations alike. The illustrative case of the 2022 POSCO flooding incident serves as a stark reminder of how climate change can directly impact corporation’s financial health and operational stability. POSCO, the country’s largest steel producer, reportedly incurred losses of 2.4 trillion won (US\$1.89 billion) in revenue, which accounted for 2.7% of its annual earnings, due to the unprecedented scale of flooding caused by the Typhoon Hunnamnor at its primary steel mill facility in Pohang.⁵ The fact that POSCO holds the title of being the largest greenhouse gas emitter in South Korea adds gravity to this incident, serving as a potent warning to corporations—especially those with substantial carbon footprints—to reevaluate their climate resilience strategies.

1 (2024, November 30). *Provisional State of the Global Climate in 2023*. World Meteorological Organization. <https://wmo.int/publication-series/provisional-state-of-global-climate-2023>

2 (2023, July 27). *Hottest July ever signals ‘era of global boiling has arrived’ says UN chief*. United Nations. <https://news.un.org/en/story/2023/07/1139162>

3 (2022, August 9). *South Korea’s heaviest rainfall in 80 years leaves at least 9 dead in Seoul*. CBS News. <https://www.cbsnews.com/news/south-korea-rain-flooding-deaths/>

4 Yoon, J. & Young, J.Y. (2023, July 17). *South Korea’s Monsoon Rains Set Off Deadly Landslides and Flooding*. New York Times. <https://www.nytimes.com/2023/07/14/world/asia/south-korea-floods-rain.html>

5 Park, S.H. (2023, January 20). *POSCO’s typhoon-hit facilities fully restored, production normalized*. Yonhap News Agency. <https://en.yna.co.kr/view/AEN20230120001600320>

Investors who invest in South Korean corporations operating in high-emission sectors should also be vigilant in assessing the risks associated with climate change and the potential financial ramifications. Actively engaging with Korean companies that exhibit substantial greenhouse gas emissions is crucial not only for mitigating environmental impacts but also for safeguarding financial investments in this era dominated by the challenges of climate change.

2. Significant Greenhouse Gas Emissions and Energy Consumption by South Korean Companies.

South Korea is considered as one of the world’s largest economies with its GDP ranked thirteenth in the world.⁶ However, a less well-known and often overlooked fact is that South Korea’s remarkable economic growth has been primarily fueled by emitting significant amounts of carbon into the atmosphere as its manufacturing-driven growth model relied heavily on carbon-intensive industries such as steel, shipbuilding, petrochemicals, and automotive manufacturing. South Korea is frequently ranked among the world’s top ten leading contributors to greenhouse gas emissions and is also one of the biggest energy consumers in the world. A significant portion of the country’s energy supply comes from fossil fuels,⁷ and the country’s energy transition to renewables is being hindered by the rigid power market system dominated by state-owned utilities. The following tables show the country’s top fifteen greenhouse gas emitters and energy consumers as of 2022:

Table 1: Greenhouse Gas Emissions

Ranking	Company Name	Sector	Emissions (tCO2-eq)
1.	POSCO	Steel	70,185,587
2.	Korea South-East Power Co.	Electricity	35,384,901

⁶ Yoon, Y.S. (2023, July 13). *South Korea Slides by 3 Notches in World GDP Rankings*. Business Korea. <https://www.businesskorea.co.kr/news/articleView.html?idxno=118345>

⁷ According to the [Korea Energy Statistical Information System \(KESIS\)](#), as of 2022, more than half of all electric power generation in South Korea came from fossil fuel sources such as coal (32.5%) and liquid natural gas (27.5%) while only around 8.9% of electric power generation came from new and renewable sources.

3.	Korea Southern Power Co., Ltd.	Electricity	35,330,479
4.	Korea Midland Power Co., Ltd.	Electricity	31,840,511
5.	Korea Western Power Co., Ltd.	Electricity	30,159,229
6.	Korea East-West Power Co., Ltd.	Electricity	29,155,613
7.	Hyundai Steel Co., Ltd.	Steel	28,500,741
8.	Samsung Electronics Co., Ltd.	Semiconductor	14,922,978
9.	SsangYong C&E Co., Ltd.	Cement	10,670,032
10.	Goseong Green Power Co., Ltd.	Power Generation	10,107,564
11.	S-Oil Corporation	Oil Refining	9,386,360
12.	GS Caltex Corporation	Oil Refining	8,870,672
13.	LG Chem Ltd.	Petrochemicals	8,616,934
14.	SK energy Co., Ltd.	Oil Refining	6,847,471
15.	HD Hyundai Oilbank Co.	Oil Refining	6,453,281

Table 2: Energy Consumption

Ranking	Company Name	Sector	Energy Consumption (TJ)
1.	Korea Southern Power Co., Ltd.	Electricity	445,782
2.	Korea South-East Power Co.	Electricity	420,229
3.	Korea Midland Power Co., Ltd.	Electricity	402,300
4.	Korea Western Power Co., Ltd.	Electricity	379,791
5.	POSCO	Steel	358,503
6.	Korea East-West Power Co., Ltd.	Electricity	352,837
7.	Samsung Electronics Co., Ltd.	Semiconductor	222,907
8.	LG Chem Ltd.	Petrochemicals	167,137
9.	Hyundai Steel Co., Ltd.	Steel	164,476
10.	GS Caltex Corporation	Oil Refining	126,292
11.	S-Oil Corporation	Oil Refining	126,117
12.	Korea District Heating Engineering Co. Ltd.	District Heating & Cooling / Electricity	123,067
13.	Lotte Chemical Corporation	Petrochemicals	109,579
14.	Hanwha TotalEnergies Petrochemical Co., Ltd.	Petrochemicals	108,568

15.	SK Hynix Inc.	Semiconductor	98,026
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*Companies highlighted in sky blue are power generation subsidiaries of a state-owned utility, Korea Electric Power Corporation (KEPCO).

Source: [National Greenhouse Gas Management System \(NGMS\)](#)

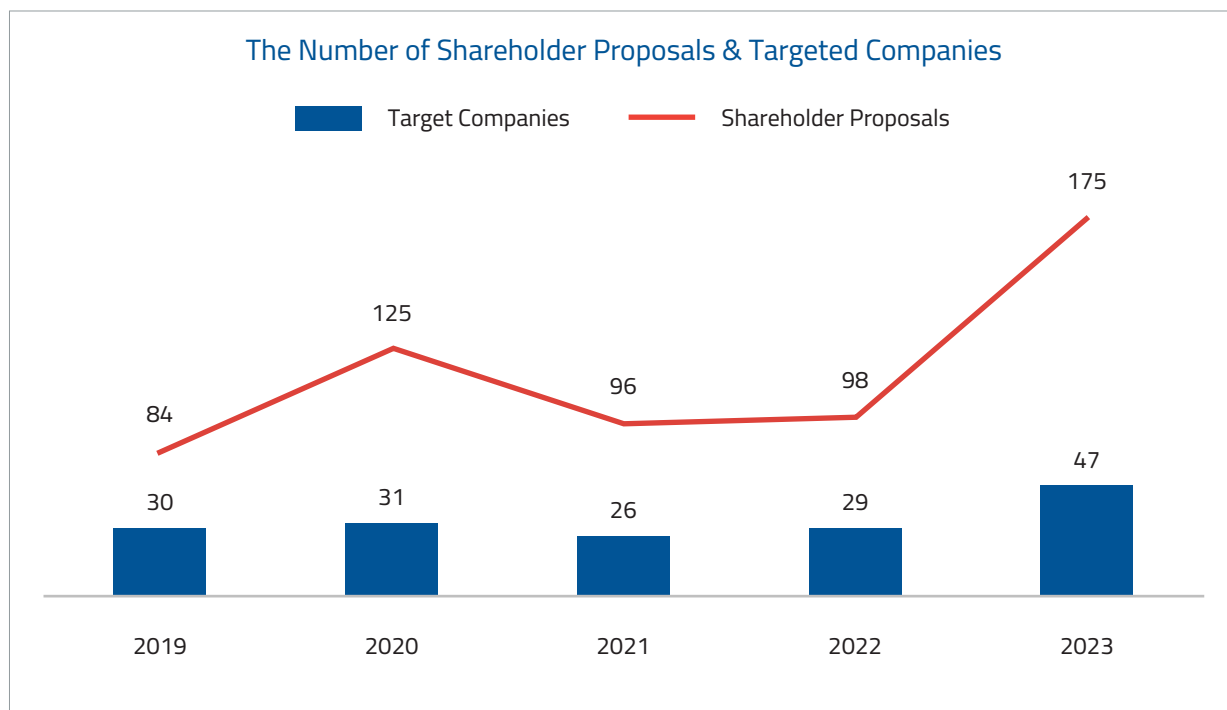
As shown in the above tables, sectors such as steel, electricity, oil refining, semiconductor, and petrochemicals consistently appear in the top rankings of both emissions and energy consumption in South Korea. Investors concerned about environmental sustainability and related financial risks and opportunities may consider actively engaging with companies that rank high in both emissions and energy consumption.

3. Legal Considerations in Filing Climate Shareholder Resolutions

Shareholder activism was once almost non-existent in South Korea due to the dominance of large family-owned conglomerates, known as *chaebols*, in the capital market. The concentration of corporate power within these conglomerates, coupled with complex ownership structures, limited transparency, and a traditionally hierarchical corporate culture created significant barriers for shareholders seeking to actively influence corporate decisions. However, there has been a noticeable shift in recent years. The year 2022 marked a significant turning point for shareholder activism in South Korea, with one of the most notable campaigns being led by a local activist fund, Align Partners, against a K-Pop entertainment company, SM Entertainment. Align Partners successfully challenged SM Entertainment’s poor corporate governance by appointing a statutory auditor at the 2022 annual general meeting of shareholders, ultimately leading to the termination of a controversial outsourcing contract between the company and the company founder’s wholly owned subsidiary.⁸

⁸ Seo, J., Ku, H.J., Lee, S.M., Kim, D.K. (2023, September 26). *The Rise of Shareholder Activism in South Korea*. Chambers and Partners. <https://practiceguides.chambers.com/practice-guides/shareholders-rights-shareholder-activism-2023/south-korea/trends-and-developments>

The chart below shows the rising trend in the number of shareholder proposals submitted and listed companies targeted at annual general meeting of shareholders in the past five years.



Source: [Korea Listed Companies Association](#) and [KOSDAQ Listed Companies Association](#)

While shareholder activism is certainly on the surge in South Korea, the predominant focus of shareholder proposals has been on shareholder returns and corporate governance issues, with limited engagement activities addressing climate change. In fact, no single climate-specific shareholder proposal has been successfully included in the agenda and voted upon by shareholders at a shareholders’ meeting in South Korea so far.⁹ This means that there is a pressing need for increased engagement in addressing climate change in the South Korean market, considering the nonnegligible impact that South Korean companies have in the global environment.

⁹ In March 2022, during the annual general meeting of shareholders for HDC Hyundai Development Company, a shareholder proposal was submitted to amend the company’s Articles of Incorporation. This proposed amendment sought to introduce a provision allowing for the consideration of non-binding shareholder resolutions related to ESG matters. However, the resolution did not pass.

Shareholding Thresholds

South Korea recognizes shareholders' right to file shareholder proposals on certain matters if they meet relevant criteria. For private companies, shareholders who hold at least 3% of the total number of issued and outstanding shares are eligible to propose agenda items for a shareholders' meeting.¹⁰ In the case of listed companies, shareholders must hold either 1% or 0.5% (for companies with equity capital valued at KRW 100 billion or more at the end of the latest business year) of the shares continuously for at least 6 months.¹¹ Alternatively, shareholders of listed companies can hold 3% of such shares without any specific ownership period requirement.¹² In the case of financial companies as defined under the Act on Corporate Governance of Financial Companies, the shareholding threshold to file a shareholder proposal is continuous ownership of 0.1% shares for the preceding 6 months,¹³ so the threshold for financial companies is relatively lower than those of other listed companies.

The six-month period of continuous ownership is calculated retroactively from the date the resolution is proposed. The requisite shareholding threshold can be satisfied by a single shareholder or by aggregating shares held by multiple shareholders. Proposals should be made in writing at least 6 weeks prior to the scheduled meeting of shareholders. For an annual general meeting of shareholders ("AGM"), the date of the AGM of the preceding year is used for the ease of calculating the prior notice period requirement. However, the same method cannot be applied for an extraordinary meeting of shareholders ("EGM"), and this makes it more challenging to submit a shareholder resolution at an EGM as the company may not notify shareholders of the date of the EGM 6 weeks prior to the EGM.

Proving beneficial ownership of the shares is typically done through a 'certificate of beneficial ownership,' which can be usually obtained from the Korea Securities Depository. In the case of non-resident foreign investors, their local standing proxies can acquire this

10 Article 363-2 (1) of the Korean Commercial Code.

11 Article 542-6 (2) of the Korean Commercial Code.

12 Article 363-2 (1) of the Korean Commercial Code.

13 Article 33 (1) of the Act on Corporate Governance of Financial Companies

document on their behalf. When applying for a certificate, it is necessary to designate the number of shares and the exercise period for which the certificate is being issued, and once the certificate is issued for those shares for the specified period, they cannot be disposed of unless the certificate is returned.¹⁴ Therefore, it is recommended to issue certificates only for the number of shares necessary for filing shareholder proposals.

Eligible Agenda Items

Although there is no clear court precedent on this issue, the prevailing view is that shareholder proposals can be filed only with respect to the matters on which shareholders are entitled to vote at a shareholders' meeting (e.g., appointment/removal of directors, dividend payments, remuneration of directors, etc.) under the Korean Commercial Code ("KCC") or those explicitly provided for in the articles of incorporation ("AOI") of the company. The company must accept a proposal as an agenda item of a shareholders' meeting if the proposal meets the legal requirement. In certain situations, however, the company has a right to reject including the proposal as an agenda item. For example, if the proposal is about the same content as the one that was proposed within the past 3 years at a shareholders' meeting and was rejected because it had less than 10% of the votes, the company can exclude it.¹⁵ Also, in the case of a listed company, the company may reject the proposal that concerns the removal of an incumbent executive officer.¹⁶

Shareholder proposals on climate change-related issues is not among the matters prescribed for shareholder proposals under the KCC. Therefore, unless the company's AOI explicitly provides, amending the AOI is required. An amendment to the AOI is passed by a special resolution which requires at least two-thirds (2/3) of the voting rights of the shareholders present at an AGM and of at least one-third (1/3) of the total number of issued and outstanding shares.¹⁷ Since a climate shareholder proposal would need to be in the form of amending the AOI which requires a special resolution, it is realistically difficult for such

14 Article 32 (3) of the Enforcement Rule of the Capital Markets Act.

15 Subparagraph 1 of Article 12 of the Enforcement Decree of the Korean Commercial Code.

16 Subparagraph 4 of Article 12 of the Enforcement Decree of the Korean Commercial Code.

17 Article 434 of the Korean Commercial Code.

a proposal to be passed. However, if a climate proposal garners significant support from shareholders, it can influence the company's behavior and provide shareholders with leverage during engagements as engagement activities and private dialogues with the company generally precede or run in tandem with shareholder proposals.

Amendment to AOI

Amending the AOI to include climate objectives in a shareholder proposal can take different forms, but it can generally be approached in two following ways: (1) The first approach involves directly amending the AOI to add a clause tailored to address specific climate-related concerns. When considering this approach, shareholders need to be wary of being overly specific and detailed in the content of the proposed amendment to avoid being construed as encroaching upon the authority of the board of directors. Proposed changes may not gain widespread support if they are considered as unduly restrictive. (2) Alternatively, two proposals may be submitted simultaneously. In this scenario, the first proposal seeks to amend the AOI to grant shareholders a right to submit a general proposal on climate-related issues, and the second proposal contains the actual proposal, the passing of which is contingent upon the approval of the first proposal. When amending the AOI to grant shareholders to bring climate proposals, it may be advisable to consider structuring it as an advisory proposal with non-binding effect, rather than a standard, binding proposal. This is because if binding proposals are permitted on broad climate-related grounds, they may be perceived as overly burdensome and prescriptive. Also, when contemplating this second approach, it needs to be noted that even if the first proposal is passed, the second proposal may not necessarily be deliberated in the same meeting and may be deferred to the subsequent shareholders' meeting, depending on the decision of the board of directors and the internal policies of the company.

When choosing between these two approaches, shareholders should carefully assess the corporate culture, the receptiveness of the board and other shareholders to climate-related initiatives, and the overall governance structure of the company.

Collaborative Engagement

① Acting in Concert

There appears to be a perception among institutional investors that there is a key regulatory barrier in collaborating with other investors with listed companies on climate-related topics, especially the one related to acting in concert. However, as explained below, the notion that there is a substantial legal obstacle may be somewhat overly cautious in the context of the South Korean market.

Under Korean law, persons acting in concert are referred to as “joint holders.” Joint holders are defined as those who have agreed to: (1) jointly acquire or dispose of stocks; (2) trade stocks among each other after jointly or solely acquiring such stocks; or (3) jointly exercise voting rights.¹⁸ When forming a collaborative engagement group to potentially bring up a shareholder resolution at the upcoming AGM, depending on specific circumstances, such a group of investors could be considered joint holders because it could be inferred that there is an implicit agreement to jointly exercise voting rights at the AGM. Thus, in such a case, each investor's shares in the collaborative engagement group would be aggregated for the purpose of disclosure rules. The Financial Investment Services And Capital Markets Act (the “Capital Markets Act”) requires to disclose when the aggregated stock ownership of the joint holders reaches or exceeds 5% of the total outstanding shares of an listed company (the “5% Reporting Rule”).¹⁹ The 5% Reporting Rule also requires shareholders who hold no less than 5% of a listed company to report to the Financial Services Commission (“FSC”) and to the Korea Exchange (“KRX”) within 5 days (i) when there is no less than 1% change in the shareholding, (ii) when there is a change in the purpose of holding, or (iii) when changing an essential term and condition of the contract related to the shares held.²⁰ While compliance

18 Article 141 (2) of the Enforcement Decree of the Capital Markets Act.

19 Article 147 (1) of the Capital Markets Act.

20 Article 147 (1) of the Capital Markets Act.

with this reporting rule is not necessarily complicated, investors, who are mindful about their shareholding being publicly disclosed and want to minimize regulatory oversight, may consider limiting the size of the collaborative engagement group to ensure that the aggregated shares remain below the 5% threshold.

② Proxy Solicitation

In the course of preparing shareholder resolutions against listed companies, investors may communicate with other shareholders to obtain support, and these interactions under certain circumstances may be deemed as proxy solicitation, potentially triggering filing requirements. The Capital Markets Act defines “an act of solicitation to exercise voting rights by proxy” broadly, and the term means any of the following acts performed by the proxy solicitor: (1) soliciting for the permission of himself or herself or a third party to exercise voting rights by proxy; (2) demanding the exercise or non-exercise of voting rights, or demanding the revocation of delegation of voting rights; or (3) sending a proxy form to a shareholder for the purpose of securing a voting right, persuading to revoke delegation of a voting right, etc. or presenting an opinion in any other way.²¹ The proxy solicitor must deliver to a proxy the relevant form and related documents before or simultaneously with its solicitation to the shareholders and submit the same to the FSC and the KRX within 2 business days prior to the solicitation.²² While a number of types of conducts can be construed as proxy solicitation, soliciting proxy to fewer than 10 persons is not regarded as proxy solicitation, so in such a case no filing requirement related to proxy solicitation is triggered.²³

4. Conclusion

In summary, if the combined shareholding of a collaborative engagement group, consisting of fewer than 10 members, is less than 5% of the total issued shares of the target company, collaborative interactions among these shareholders can generally occur without special

21 Article 152(2) of the Capital Markets Act.

22 Article 153 of the Capital Markets Act.

23 Subparagraph 1 of Article 161 of the Enforcement Decree of the Capital Markets Act.

regulatory restrictions, except for activities prohibited by law such as price fixing or those that may raise other antitrust concerns.

5. Key Developments

Some key developments and activities that took place in South Korea during 2023 that responsible investors may find relevant are as follows:

1) Increasing Efforts to Legislate Advisory Shareholder Proposals

A legislative bill to amend the KCC to allow shareholder proposals to be filed in an advisory manner is pending in the National Assembly of South Korea. To facilitate the passage of the bill, Dutch Investment giant APG engaged with South Korean lawmakers on providing shareholders the right for shareholders to file non-binding proposals without having to amend the company's AOI.²⁴

2) Abolishment of the Foreign Investor Registration Requirement

The foreign investor registration requirement, which had been in place for more than three decades, has been abolished. Starting December 14, 2023, foreigners can acquire Korean listed securities without pre-registering.²⁵ This is expected to create a more favorable environment for foreign investors to invest in the Korean market.

3) Strengthening of Greenwashing Regulations

The Korea Fair Trade Commission ("KFTC") has amended its Guidelines for Review of Environment-Related Labeling and Advertising, effective as of September 1, 2023, with the aim of intensifying scrutiny over greenwashing. Shortly thereafter, on October 31, 2023, the Ministry of Environment ("MOE") released the Guidelines for Label-

24 Verney, P. (2023, July 10). *APG engages South Korean lawmakers on right to file advisory proposals*. Responsible Investor. <https://www.responsible-investor.com/apg-engages-south-korean-lawmakers-on-right-to-file-advisory-proposals/>

25 Shim, W.T. (2023, June 5). *Foreign investor registration system abolished after 30 years*. Financial Services Commission <https://www.fsc.go.kr/po010106/80128?srchCtgrY=6&curPage=&srchKey=&srchText=&srchBeginDt=&srchEndDt=>

ing and Advertising of Eco-friendly Business Activities, providing corporations with guidance on adhering to greenwashing regulations. Against the backdrop of these significant developments in greenwashing regulations, Solutions for Our Climate (“SFOC”) took legal action on December 18, 2023, against POSCO, the country’s largest steel producer, and reported POSCO for greenwashing to the KFTC and the MOE. The legal claim revolves around POSCO’s “carbon neutral” master brand Greenate, which SFOC contends exaggerates the sustainability of its steel products.²⁶

4) Delay of Mandatory ESG Disclosure

The FSC had previously outlined its intention to enforce mandatory ESG disclosures. The original plan involved a phased implementation, commencing in 2025 with Korea Composite Stock Price Index (KOSPI)-listed companies with assets exceeding KRW 2 trillion. By 2030, this requirement was expected to extend to all other KOSPI-listed companies. However, faced with resistance from corporations, in October 2023, the FSC announced to postpone the mandatory disclosure “until after 2026.”²⁷ The specific details regarding the extent of required ESG disclosures are yet to be revealed, but it is expected to draw largely upon the standards of the International Sustainability Standards Board (ISSB).

26 Kim, E.J. (2023, December 18). South Korea’s biggest steelmaker legally challenged for “carbon neutral” branding. Solutions for Our Climate. <https://forourclimate.org/en/sub/news/press-release-south-koreas-biggest-steelmaker-legally-challenged-for-carbon-neutral-branding>

27 Azizuddin, K. (2023, October 17). *Korea delays corporate sustainability disclosure rule to ‘after 2026’*. Responsible Investor. <https://www.responsible-investor.com/korea-delays-corporate-sustainability-disclosure-rules-to-after-2026/>



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Solutions for Our Climate (SFOC) is an independent policy research and advocacy group that aims to make emissions trajectories across Asia compatible with the Paris Agreement 1.5°C warming target.