

21 December 2022

ISS Corporate Solutions

Attention: Andrea Annergren, Oona Huttunen, Jeppe Skov-Andersen

Call for Finnish exceptions to the ISS EMEA Proxy Voting Guidelines for 2023

1 Introduction

In response to the ISS Corporate Solutions (“ISS”) EMEA Proxy Voting Guidelines for 2023 published on 2 December 2022, the Advisory Board of Finnish Listed Companies would like to draw ISS’s attention to two critical issues, i.e. the policy regarding virtual-only meetings and the policy on unequal voting rights.

We respectfully urge you to consider your policies in these matters for Continental Europe as regards Finnish companies, and make reasoned exceptions for Finland.

First, we ask you to take into account the exemplary features of the Finnish virtual general meetings in considering an exception for Finland in the proxy voting guidelines. With this letter we wish to assure you that the virtual-only meetings held under the Finnish legislation should be considered as a model example with regard to the stringent legal requirements for holding a virtual-only general meeting that ensure that the shareholders’ rights are well protected and placed in the center stage.

Second, we ask you to introduce a Finnish exception to the new policy on unequal voting rights. A decision to vote against (or to abstain from voting) a board member is normally (and, in the Advisory Board’s opinion, should be) based on matters related to that specific candidate and not on the constitutional structure of a company. A board of directors of a Finnish limited liability company does not have the authority to re-organise the company’s capital structure or articles of association. The proposed policy also conflicts with the objectives of the recently published proposal for a Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market.

2 Virtual Meetings

While the Advisory Board of Finnish Listed Companies acknowledges the ISS’ need for a Continental Europe wide voting policy, we strongly encourage you to support, in addition to the introduction of hybrid meetings, the proposals regarding virtual-only meetings when such meetings allow shareholders to use their rights in full (as is the case under the Finnish legislation).

In our view, an exception to the policy that is strictly limited to supporting virtual meetings that are stringently regulated to ensure full protection of shareholders’ rights, would aid to boost shareholders’ equal opportunity and ability to participate in the decision-making in the company, while simultaneously reduce the environmental footprint of a physical event.

2.1 Legal Framework for Virtual General Meetings in Finland

The Finnish Limited Liability Companies Act (624/2006 (the “Companies Act”) was amended on July 11, 2022, enabling limited liability companies to hold hybrid and fully virtual general meetings. A virtual general meeting, as defined by the Companies Act, is a meeting held without a physical meeting venue, where shareholders can fully use their decision-making powers, including the right to speak and make counter-

21 December 2022

proposals, in real-time with the help of a data communication connection and a technical aid, such as a computer.

In such a virtual general meeting, shareholder rights are not restricted and their exercise is well secured. The new legislation requires that all shareholders must be able to use their shareholder rights in full, including to be able to vote in real-time and comment and ask questions orally during the meeting, in addition to potential other means of participation, such as sending questions in advance of the meeting or through a chat function.

In accordance with the Companies Act, in order to arrange virtual general meetings, a company must have a specific provision in its articles of association allowing such. Therefore, as the legislation is new, companies wishing to introduce such provision will need to amend their articles of association to this effect, necessitating a 2/3 qualified majority of shares and votes at a general meeting.

2.2 A Comparison between Finnish Virtual and Physical Annual General Meeting Formats

With the following comparative table, we wish to point out that the legal requirements for holding a virtual general meeting are stringent in Finland and protect the shareholders' rights regardless of the meeting format.

Moreover, a virtual general meeting represents a significant improvement in the position of nominee-registered shareholders residing outside of Finland, who would otherwise be in practice unable to attend the meeting in person. A virtual general meeting allows for them to participate on the same footing as shareholders in Finland and to voice over their concerns in the meeting. In a virtual meeting format, shareholders registered to attend the meeting are afforded an equal opportunity to participate in the meeting from anywhere in the world. This will lower the threshold for shareholders to attend general meetings and engage with the management.

The clear benefits of the virtual meeting format to both physical and hybrid meetings also include a reduced environmental footprint resulting from a reduced cost and need for venue hire, catering and accommodation, as well as the impact of reduced travel.

	Virtual AGM	Physical AGM
Asking questions orally	✓	✓
Commenting on proposals orally	✓	✓
Voting in real time	✓	✓
Following speeches and presentations in real time	✓	✓
Company required to ascertain the correctness of the vote	✓	✓
Company required to sufficiently verify shareholder identities	✓	✓
Shareholder protections, such as bringing actions against the company for AGM decisions	✓	✓
AGM Chair is responsible for overseeing the legality of the meeting, including the protection of shareholder rights	✓	✓
Participation from anywhere in the world	✓	✗
Realistic participation for foreign shareholders	✓	✗

21 December 2022

2.3 A Summary of the Rights and Protections Offered by the Finnish Companies Act to Shareholders at a Virtual General Meeting

- The right to participate and the correctness of the vote count must be determined in a manner comparable to the procedures followed at a physical general meeting.
- Shareholders at a virtual general meeting must be allowed to exercise their rights fully, in a way consistent with how they would be able to exercise those same rights at a physical general meeting.
- Full participation rights include the right to attend and speak (the right to ask questions, comment and make proposals), the right to vote real time and all other shareholder rights that are exercised at a general meeting according to law and a company's articles.
- A resolution proposal that is subject to advance voting is considered to have been presented unchanged at a general meeting.
- In case of any technical issue which may affect the validity of the meeting's decisions, the chair of the virtual general meeting may decide to suspend and continue the meeting within four weeks.
- The rights of shareholders to contest decisions made at a virtual general meeting remain unchanged.

2.4 Sentiments of the Finnish Widely Held Public Companies

A significant proportion of Finnish publicly listed companies' shares are owned by foreign shareholders. However, physical general meetings held in years prior to COVID-19 related restrictions were attended mainly by Finnish shareholders based in the Helsinki capital region with the ability and time to commute to the meeting venues during the weekday. Large institutional investors typically attended by proxy, which for its part limited active engagement through discussion. Foreign private shareholders were not able to attend in large numbers due to the location of the physical general meeting, and could thus only vote by instructing custodians attending the meeting on their behalf. Foreign shareholders' opportunities to attend the general meetings and ask questions from the management would be substantially better in a virtual meeting format.

With the new Finnish legislation in place enabling and promoting the use of virtual meetings, many publicly listed companies are considering proposing amendments to their articles in the annual general meetings to be held in the Spring 2023. Companies wish to ensure they have the opportunity to organize any of the meeting types prescribed in the law in the future in order to have the tools to organize general meetings in a predictable manner in various circumstances with equal means for shareholders to participate. In addition to allowing companies to assess their individual situation and shareholders' needs in ordinary circumstances, these proposals to allow virtual general meetings would also enable the companies to be prepared for any extraordinary events or circumstances, such as a new pandemic where companies need to be equipped to navigate restrictions on physical gatherings.

A negative voting recommendation from the ISS could prevent companies from taking advantage of the flexibility and opportunities for added shareholder engagement and equality afforded by the new legislation. We would highly regret this after having been closely involved in the preparation of the Finnish legal framework enabling virtual general meetings while securing and protecting shareholders' rights and equality in addition to such meetings' other benefits, such as a reduced environmental footprint.

3 The proposed policy on unequal voting rights

We express our strong concern over the new policy on unequal voting rights. In our view, such a policy aimed at removing differences in voting rights is counterproductive and harmful for the economy. For example, a study commissioned by the European Commission and carried out by ISS Europe, European Corporate Governance Institute and Shearman & Sterling LLP in 2007 has found that there is no conclusive evidence of a causal link between deviations from the proportionality principle and either the economic performance of listed companies or their governance.

21 December 2022

In our view, the policy where a decision to vote against (or to abstain from voting) a board member or against discharge of directors is based on the mere existence of shares with multiple voting rights constitutes poor governance. A decision to vote against a board member should be based on matters related to that specific candidate and not on the constitutional structure of a company. Similarly, a vote against discharge of directors should be based on actual violations or negligence by the directors rather than the mere existence of shares with different voting rights.

Further, the decision to re-organise the company's capital structure and articles of association in this manner is not under the authority of the board in a Finnish limited liability company. While the necessary amendment of the articles can be decided by a qualified majority of shareholders, there are no guarantees that such decision will not be found to be contrary to equal treatment of shareholders. Further, it is likely that any such weakening of shareholders' rights in a share class would need to be compensated, e.g. by a directed share issue free of charge. Accordingly, the policy to vote against (or to abstain from voting) a board member or against discharge of directors is not a correctly directed response to potential concerns related to unequal voting rights in a Finnish listed company.

Moreover, we wish to note that the policy unnecessarily limits the flexibility allowed by statutory legislation and is contrary to the current European trend to encourage share structures with different voting rights (cf. the recently published proposal for a Directive on multiple-vote share structures in companies that seek the admission to trading of their shares on an SME growth market).

4 Concluding remarks

In line with the ISS conclusions referenced in the EMEA Proxy Voting Guidelines 2023, the Advisory Board of Finnish Listed Companies is also aware that some investors in other countries have expressed concerns regarding fully virtual meetings and the weakened shareholder rights in such meetings as introduced in different countries. For all the more reason, we respectfully request you to consider the Finnish legislation as a model example to other jurisdictions and to issue a Finnish exception – the Finnish Companies Act not only secures shareholders' rights in virtual general meetings but improves many shareholders' possibilities to participate in general meetings regardless of the shareholders' location.

In light of the above, when it comes to virtual general meetings, we believe that the Finnish framework should be rather praised as a thoughtful example for shareholders and companies in other jurisdictions, than penalized with the generic negative voting recommendation in the ISS Proxy Voting Guidelines.

We also urge you to make a Finnish exception to the policy on unequal voting rights. The policy constitutes poor governance in the Finnish corporate framework and affects negatively listed companies' ability to attract directors that are best suited for the needs of the company.

We are grateful for your consideration in the matter at hand and are at your disposal for any questions or feedback.

Yours sincerely,

THE ADVISORY BOARD OF FINNISH LISTED COMPANIES

Mikko Korttila
Chair

In support of the concerns and views expressed above,

Johan Aalto, Partner, Hannes Snellman Attorneys Ltd

Mårten Knuts, Managing Partner, Krogerus Attorneys Ltd.

21 December 2022

Manne Airaksinen, Senior Advisor, Roschier, Attorneys Ltd.

Seppo Kymäläinen, Partner, Roschier, Attorneys Ltd.

The Advisory Board of Finnish Listed Companies is a cooperation body established by the Confederation of Finnish Industries EK and Finland Chamber of Commerce. The main objective of the Advisory Board is to improve the interaction between Finnish listed companies, particularly on matters related to securities market regulation.