

# Public comments on the revised draft Corporate Governance Code

---

***[Principle 1-3: Company's Proposals Receiving Significant Opposition at Shareholder Meetings]***

*When the board recognizes that a considerable number of votes have been cast against a proposal by the company and the proposal was approved, it should analyse the reasons behind opposing votes and why many shareholders opposed and should respond appropriately in a manner that contributes to the protection of shareholders' rights.*

ClientEarth's public comments

The above Principle and its accompanying guidance remain insufficiently clear to ensure effective implementation. In order to ensure that shareholders are able to exercise their rights adequately at the following year's general meeting of shareholders, the Principle should be supplemented, or the guidance revised, to provide as follows:

"The board of directors should, by no later than three months prior to the next annual general meeting of shareholders, disclose in statutory or voluntary disclosure documents the results of its analysis of the causes of the opposition and the measures taken in response thereto. Where no action has been taken, the reasons for not taking such action should also be disclosed. The same approach should apply where a shareholder proposal, although not approved, received a considerable number of supporting votes."

In addition, with respect to the meaning of a “considerable number,” clarity would be enhanced by introducing a specific threshold—such as 20% adopted under the UK Corporate Governance Code.

***[Principle 4-5: Roles and Responsibilities of the Board (iv): Initiatives on Sustainability]***

*The board of directors should proactively and actively address sustainability-related challenges from the perspective of increasing mid- to long-term corporate value. It should formulate basic policies on the company’s sustainability initiatives and take appropriate measures accordingly.*

(Note: This draft new Principle was made by integrating 2-3, 2-3-1 and the first paragraph of 4-2 of the current CGC)

***[Guidance]***

Sustainability (mid- to long-term sustainability) is recognized as an important management issue. In addition, as the importance of sustainability-related information in assessing mid- to long-term corporate value is increasing globally, the International Sustainability Standards Board (ISSB) has established international disclosure standards (the ISSB Standards), and efforts to apply sustainability disclosure standards are advancing in various jurisdictions. In this context, it is important to promote proactive and active responses to sustainability-related challenges.

The board of directors should recognize that addressing sustainability-related issues —such as consideration for global environmental issues including climate change, respect for human rights, attention to employees’ health, working conditions and fair and appropriate treatment, crisis management for natural disasters and diversity — is an important management issue that contributes not only to risk mitigation but also to revenue opportunities. From the perspective of ensuring the company’s sustainable growth and enhancing its mid- to long-term corporate value, the board should take appropriate action with respect to these issues.

**ClientEarth’s public comments**

The following language should be added to the first paragraph of the Guidance:

“The International Sustainability Standards Board (ISSB) has established IFRS S2 (the climate-related standard), and, in response, the Sustainability Standards Board of Japan (SSBJ) has developed the Theme-based Sustainability Disclosure Standard No. 2 (the Climate-related Disclosures). In addressing climate-related issues, given that carbon emissions reduction targets and the transition plans to achieve them are essential, the board of directors should formulate a decarbonisation transition plan and ensure that it forms part of the company’s business plan.”

***[Principle 4-7: Use of Optional Mechanisms]***

*When selecting the most appropriate institutional structure under the Companies Act in light of the company's characteristics, listed companies should, where necessary, utilize optional mechanisms to further enhance their governance functions.*

*In particular, Companies with a board of company auditors or companies with an audit and supervisory committee, where independent outside directors do not constitute a majority of the board, should establish independent nomination and remuneration committees composed mainly of independent outside directors in order to obtain appropriate involvement and advice.*

*Prime Market listed companies should, as a general principle, ensure that a majority of the members of each committee are independent outside directors and should disclose their approach to the independence of the committee composition as well as the authority and roles of such committees.*

(Note: This draft new Principle was made by integrating 4-10 and the first paragraph of 4-10-1 of the current CGC)

**[Guidance]**

*The optimal structure of the board may vary depending on the characteristics of each company. Listed companies should adopt the most appropriate institutional structure in light of their specific circumstances, and, in order to further enhance their governance framework, should effectively utilize optional mechanisms such as nomination and remuneration committees.*

*The establishment of nomination and remuneration committees is important from the perspective of strengthening the independence, objectivity and accountability of the board's functions with respect to the nomination (including succession planning) and remuneration of management and directors. Nomination and remuneration committees should be responsible for providing appropriate involvement and advice when the board considers particularly important matters such as nominations and remuneration, including from the perspectives of gender and other forms of diversity as well as relevant skills.*

ClientEarth's public comments

Nomination and remuneration committees should not be the only optional committees within the board. The following should be added in the Principle 4-7:

"In order to ensure that decarbonisation transition plans are sufficiently deliberated at the board level, that appropriate advice is provided and that the implementation of such plans is supervised, companies should establish and utilise an optional sustainability committee at the board level, composed mainly of outside directors."

**[Principle 4-9: Ensuring the Quality of Independent Outside Directors]**

*The board of directors should nominate as candidates for independent outside directors individuals who possess the qualities necessary to fulfil their roles and responsibilities in a*

*manner that contributes to the company's sustainable growth and the enhancement of its mid- to long-term corporate value, including the ability to contribute to candid, active and constructive deliberations at the board.*

(Note: This draft new Principle was made by integrating part of 4-8 and 4-9 of the current CGC)

**[Guidance]**

*In order for independent outside directors to appropriately and effectively fulfil their roles and responsibilities, it is necessary that a sufficient number of individuals possessing the requisite qualities to perform such roles and responsibilities be appointed. Furthermore, the objective independence of such individuals underpins the credibility and fairness of their roles and responsibilities. This Principle focuses on the "quality" of individual independent outside directors and constitutes a prerequisite for the board to appropriately fulfil its roles and responsibilities.*

*The board should consider, in light of the company's objectives (including its management philosophy) and specific business strategies, what kind of individuals are capable of fulfilling their roles and responsibilities in a manner that contributes to the company's sustainable growth and the enhancement of its mid- to long-term corporate value. The board may also establish criteria concerning the knowledge, experience and capabilities required to appropriately select such individuals as independent outside directors.*

ClientEarth's public comments

In order for the board of directors to appropriately address sustainability-related issues, it should be expressly required that independent outside directors possess a sufficient understanding of such issues as part of their qualifications. In addition, it should be clearly stated that at least one independent outside director should have expertise in sustainability.

**[Principle 4-12: Effective Functioning of Independent Outside Directors]**

*Independent outside directors should seek to exchange information and share understanding with other independent outside directors on the basis of their independent and objective positions.*

*Independent outside directors should establish appropriate frameworks for communication and coordination with management, as well as for cooperation with corporate auditors or the board of corporate auditors.*

(Note: This draft new Principle was made by integrating 4-8-1 and 4-8-2 of the current CGC)

**[Guidance]**

*In order for independent outside directors to exchange information and share understanding based on their independent and objective positions and thereby actively contribute to*

