SHIN&KIM
법무법인(유) 세종

Supreme Court Clarifies Korea's 5% Rule: Voting Proxies Alone Do Not Establish Joint-Holder Status

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(Supreme Court Decision No. 2026*Da*200657, dated September 10, 2026)

In management-control disputes involving competing proxy solicitations, a recurring question is whether proxy solicitors and shareholders who grant them voting proxies qualify as joint holders under the large shareholding reporting obligation (the "5% Reporting Rule"). If they do, their shareholdings would be aggregated for reporting purposes, and failure to file the required report could result in restrictions on voting rights attached to shares exceeding the 5% threshold.

This question was central to the case. The Supreme Court held that a shareholder granting a proxy for a specific general meeting, on a temporary and revocable basis, does not by itself establish an agreement with the solicitor to jointly exercise voting rights, including the authority to direct how votes are cast. The shareholder therefore is not a joint holder.

1. What Was the Dispute About?

At an extraordinary general meeting of MELFAS, a listed company (the "EGM"), shareholders passed resolutions that included replacing all of the company's sitting directors and its statutory auditor. Minority shareholders, including Company C, had called the meeting with court permission. Before the EGM, Company C and its allies had solicited proxies from MELFAS shareholders, and they voted those proxies at the meeting.

Some MELFAS shareholders (the "Plaintiffs") then sued for a declaration that the EGM resolutions did not exist. They argued that (a) the shareholders who granted proxies had agreed with Company C and its allies to vote together, which made all of them joint holders; (b) the joint holders together owned more than 5% of the shares but never filed a large shareholding report, so their voting rights should have been restricted for the shares above 5%; and (c) once those votes were excluded, the resolutions did not have enough votes to pass.

Shin & Kim represented MELFAS throughout the litigation, from the trial court through the Supreme Court.

2. How Did Shin & Kim Approach the Key Legal Issues?

The central issue was **whether shareholders who granted voting proxies in response to a proxy solicitation qualified as joint holders with the proxy solicitors under Article 141(2)(3) of the Enforcement Decree of the Financial Investment Services and Capital Markets Act (the "FSCMA")**.

Shin & Kim argued that an agreement to jointly exercise voting rights creates joint holder status under the Enforcement Decree provision above only if it is **mutually binding** on the solicitor and the shareholder being solicited. In counsel's view, **such an agreement must be comparable to the other agreements that create joint holder status, such as an agreement to acquire shares together or to transfer shares between the parties.** Counsel emphasized that **proxies granted through proxy solicitation are limited to a specific shareholders' meeting and may be revoked at any time before the meeting. Such temporary and revocable arrangements, the firm argued, do not establish the mutually binding agreement required for joint-holder status.**

Shin & Kim further argued that **treating shareholders as joint holders merely for granting voting proxies, and consequently restricting their voting rights, would undermine the purpose of the proxy solicitation regime.** To support its position, the firm submitted guidance from the Financial Supervisory Service indicating that obtaining voting proxies through solicitation does not, by itself, trigger a large shareholding reporting obligation.

The trial and appellate courts accepted Shin & Kim's arguments and rejected the Plaintiffs' claim that the shareholders qualified as joint holders. The Supreme Court upheld this interpretation, holding that **joint-holder status** under Article 141(2)(3) of the Enforcement Decree **requires more than the outward appearance of coordinated voting. Although an agreement to exercise voting rights jointly may be implied, there must be a meeting of minds to jointly exercise voting rights or jointly direct how those rights are exercised.**

The Supreme Court also considered the potential restrictions on voting rights arising from joint-holder status and held that:

"The mere fact that a shareholder grants a temporary, revocable proxy to a third party to exercise voting rights at a particular shareholders' meeting, or delegates voting rights to a proxy solicitor under Article 152 of the FSCMA, does not, by itself, establish an agreement to exercise voting rights jointly."

3. Why Does the Supreme Court's Decision Matter?

A. Supreme Court Clarifies the Requirements for Joint-Holder Status

The Supreme Court clarified the meaning of an agreement to exercise voting rights jointly which gives rise to joint-holder status under Article 141(2)(3) of the Enforcement Decree of the FSCMA. Consistent with the prevailing understanding that obtaining voting proxies through solicitation alone does not trigger a large shareholding reporting obligation, the Court held that joint-holder status requires more than the outward appearance of coordinated voting. There must be a meeting of minds to jointly exercise voting rights or jointly direct how those rights are exercised.

B. Temporary and Revocable Voting Proxies Generally Do Not Establish Joint-Holder Status

The decision confirms that a temporary, revocable voting proxy granted for a specific shareholders' meeting, including one obtained through proxy solicitation under the FSCMA, does not, by itself, establish an agreement to exercise voting rights jointly. However, in case the shareholder granting a proxy is subject to restrictions on revocation or contractual penalties, the arrangement may indicate a binding agreement and could give rise to joint-holder status.

C. Legislative discussions on Joint Holder Requirements Also Merit Close Attention

Several bills recently introduced in the National Assembly seek to ease large shareholding reporting obligations for institutional investors by excluding certain arrangements, including voting rights delegated through proxy solicitation, from the scope of joint holdings. The decision is consistent with these ongoing legislative discussions on the criteria for determining joint-holder status.

Shin & Kim's Role

By methodically setting out the fundamental differences between the proxy solicitation regime and joint holding, Shin & Kim obtained the Supreme Court ruling that granting a proxy in response to a solicitation does not, in itself, create joint holder status, and secured a final judgment in the client's favor on all claims.

[Korean version] 의결권 대리행사 권유에 따른 위임만으로는 '5% 룰'상 공동보유자가 되지 않는다는 대법원 판결을 이끌어내어 임시주주총회 결의 부존재확인 소송에서 전부 승소한 사례

Key Contacts

Yong Ho Kim
Partner

Sookmi Lee
Partner

+82-2-316-4029
yhkim@shinkim.com

+82-2-316-4016
smlee@shinkim.com

Young-Bin Kim
Associate

+82-2-316-7205
ybkim@shinkim.com

Jeong-Hyeon Seo
Associate

+82-2-316-1810
jhseo@shinkim.com

Daniel Woojin Chang
Senior Foreign Attorney

+82-2-316-7285
wjchang@shinkim.com

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