

March 02, 2020**Legal Update**

Legislative Development – Key Implications for Substantiating General Shareholders Meeting of Listed Companies

On January 29, 2020, the Enforcement Decree of the Korean Commercial Code (the “Amended EDCA”) was promulgated.¹

The Amended EDCA concerns improvements to corporate ownership and governance as a key challenge to be addressed as part of the “plan for rapid achievement of a fair economy,” which was announced by the ruling party and the Korean government after mutual consultation.

Generally, the Amended EDCA focuses on:

1. Strengthening outside director qualifications to ensure transparency and soundness of corporate management;
2. Strengthening the related disclosure system for officer candidates, and making it mandatory to provide business/audit reports when a general shareholders meeting is convened (to enable shareholders’ ability to exercise their rights based on sufficient

1. This follows the pre-announcement about this legislation by the Ministry of Justice in September 2019.

information); and

3. Supporting the participation of all shareholders in the general shareholders' meeting of listed companies by making electronic voting more convenient (discussed in further detail below).

Details & Key Takeaways:

Based on our review of the Amended EDCA, we bring to your attention the following key aspects:

1. Qualifications of outside directors of listed companies strengthened (Article 34(5) of the Amended EDCA)

- i. Existing ground for disqualification of the outside director – for a “person, who has been a director/executive, officer/auditor or employee of an affiliate of the relevant listed company within the last two years,” such two years are extended to three years; and
- ii. New ground for disqualification – a “person, who served as outside director of the relevant listed company for a period exceeding six years or as outside director of the relevant listed company or its affiliate for a period exceeding nine years in total,” is disqualified from serving as an outside director.

Since the above is similar to the qualifications for outside directors of financial companies², there is criticism that it is unreasonable or excessive to impose strict outside director qualification requirements for general listed companies as those on financial companies managing their clients' funds.

Moreover, some believe that the Amended EDCA will lead to the election of outside directors with limited expertise by shrinking the eligible pool, which goes against its purpose of strengthening outside directors' expertise and independence.

2. See Article 6(1).3 and 6(1).7 of the Act on Corporate Governance of Financial Companies.

Key Takeaways:

As the provision above applies to outside directors appointed after the enforcement of the Amended EDCA (Article 2 of the Addenda thereof), note that outside directors of some listed companies must be replaced by new directors upon the expiration of their term, because they cannot be reappointed.

Since the above qualifications are applicable to the appointment or reappointment of outside directors, incumbent outside directors do not forfeit their directorship upon enforcement of the Amended EDCA.

However, if any outside director of a listed company appointed after the enforcement of the Amended EDCA constitutes a person under the provision on the above grounds for disqualification during his/her term, then he/she must forfeit his/her directorship.

2. Disclosure system relating to listed company officer candidates strengthened (Article 31(3) of the Amended EDCA)

The Amended EDCA provides that the listed company, upon its notice/announcement of convening a general shareholders meeting to appoint directors/auditors, must provide – in addition to the existing information already required (e.g., names, profiles, recommenders of candidates) – its shareholders with information on:

- i. Whether the candidate received any default disposition in the last five years as of the date of the general shareholders meeting;
- ii. Whether a company for which the candidate served as officer commenced rehabilitation or bankruptcy procedures for the last five years as of the date of the meeting; and
- iii. Whether there is any legal employment restriction on the candidate.

Key Takeaways:

Please note that the provision above applies to this year's general shareholders' meeting, as it takes immediate effect upon the enforcement of the Amended EDCA.

After the Financial Services Commission (“FSC”) made an announcement on January 29, 2020, the amended Regulations on Issuance, Disclosure, etc. of Securities (the “Amended RIDS”) became effective on February 1, 2020.

The Amended RIDS provides that reference documents provided upon proxy solicitation or notice/announcement of convening general shareholders meeting of a listed company relating to the appointment of directors must include detailed information on candidates’ career, grounds for recommendation by the board of directors, and work performance plans (for outside director candidates).

As a result, all information required under both the Amended RIDS as well as that the Amended EDCA must be included in the notice/announcement of convening general shareholders meeting of this year.

3. Business/audit reports required upon notice/announcement of convening a listed company’s general shareholders meeting (Article 31(4).3 of the Amended EDCA)

The Amended EDCA aims to substantiate the general shareholders meetings by making it mandatory for a listed company to provide both business and audit reports along with the notice/announcement of convening a general shareholders meeting, so as to result in more information provided to shareholders.

However, given that it is practically difficult for a listed company to prepare business/audit reports two weeks before convening a general shareholders meeting, the Amended EDCA provides that such reports may be replaced by sending email along with or publication of the business/audit reports on the company website one week prior to the general shareholders meeting.

Key Takeaways:

The above provision (Article 1 of the Addenda of the Amended EDCA) will become effective on January 1, 2021, business/audit reports are not yet required to be provided together with the notice/announcement of convening this year’s general shareholders meeting.

However, advance preparations for next year’s annual general shareholders meeting

should be made, including adequately planning for the coordination and preparation period between the audit and business reports for 2020.

4. Electronic voting at general shareholders meetings enhanced (Article 13 of the Amended EDCA)

To make electronic voting at the general shareholders meeting more convenient, the Amended EDCA increases the means of verification by adding identification methods provided by identification service agencies under the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. Specifically, under the Amended EDCA, identification by authentication certificate is recognized as the sole method of identification.

Accordingly, it is now possible to vote electronically after identification through mobile carriers, credit card companies, among others, as designated by the Korea Communications Commission.

Also, the Amended EDCA allows a shareholder, who voted electronically, to withdraw or change his/her exercise of the voting right, and provides grounds for additional electronic notice (or telephone numbers, etc., with the consent of the shareholder) of matters on electronic voting, including the relevant web address (or telephone numbers, etc., with the consent of the shareholder) until three days prior to the end of the electronic voting period.

Overall Recommendations

Preparations to comply with the Amended EDCA should be made in advance, since the most requirements under the Amended EDCA is applied from this year's general shareholders' meeting, and such requirements necessitate the exercise of caution concerning the general shareholders meeting from a practical point of view.

Further, along with the Amended EDCA, amendments to other related laws should be carefully examined, including the Enforcement Decree of the Financial Investment Services and the Capital Markets Act to be amended as part of the "plan for the rapid achievement of a fair economy."

Questions/Comments:

Should you have any questions or comments about the contents of this newsletter, or if we can be otherwise helpful, please do not hesitate to contact us.

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