



Flexible Operation of the Board of Directors under the Amended Korean Commercial Code (KCC)

Under the current KCC, members of the board of directors must convene at a meeting to discuss and vote on resolutions concerning material affairs of the company. The physical presence of directors is not required so long as the members can see and hear each other simultaneously (e.g., video conference), unless the company's articles of incorporation provides otherwise.

I. Criticisms of the Current Law

Critics of the current law argue that business today has become increasingly global and fast paced and the current law does not accommodate modern advances. Directors are often required to make important commercial decisions with very little advance notice. Given the impracticality and high costs of travel, an increasing number of directors are unable to physically attend board meetings.

Directors who must travel to remote locations often experience limited access to facilities that are equipped with multi-way audio-video equipment as prescribed by the KCC. While most members have access to a telephone or teleconferencing, the current KCC does not permit such participation as the KCC also requires that the members be able to see each other (e.g., body language). The foregoing has been criticized as it restricts communication among members of the board and interferes with the efficient operation of business (i.e., important members are unable to participate or meeting is delayed until a majority of all members are able to participate). Therefore, critics have argued for a more flexible law that facilitates communication and business operations.

II. Expected Effect of the Amended KCC

Under the recently amended KCC, directors may now lawfully participate in board meetings and adopt resolutions thereat via "a communication system that can simultaneously transmit and receive sound." As a result, telephone conference will now suffice and simultaneous visual imagery (videoconference) is no longer required.

The above amendment to facilitate communications among management members, in addition to other revisions to the KCC, were adopted to provide companies with more flexibility to promote their businesses in and outside of Korea.

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