

## Squeeze Out of Minority Shareholders under the Amended Korean Commercial Code

The Korean Commercial Code (“KCC”) has recently been amended. The amendments, which took effect on April 15, 2012, represent the most extensive revisions to the KCC since it was enacted in 1962 and contain far-reaching and significant changes in various aspects of company law encompassing incorporation, corporate governance, corporate finance and M&A.

Most notably, these amendments expressly permit a new squeeze-out mechanism through compulsory acquisition. The compulsory acquisition right allows a controlling shareholder holding for his or its account 95% or more of shares in a Korean target company to require minority shareholders to sell their shares to the controlling shareholder at an agreed price or a fair price determined by the court if no agreement is attainable.

Alongside the compulsory acquisition right, the amended KCC grants minority shareholders a sell-out right allowing minority shareholders to require the controlling shareholder at any time to buy out their shares at an agreed price or a fair price determined by the court.

### 1. Requirements

The amended KCC provides that the following requirements must be satisfied for a compulsory acquisition:

- (a) The controlling shareholder should hold at least 95% of the total issued and outstanding shares of the target company;
- (b) The proposed compulsory acquisition should be necessary to accomplish a “business purpose” of the target company;
- (c) The minority shareholders’ shares should be appraised by a certified appraiser and the

outcome of such appraisal (together with the purpose and other details of the compulsory acquisition) should be (i) disclosed in the notice sent to the shareholders to convene a general meeting of shareholders of the target company (“GMS”) to approve the proposed compulsory acquisition and (ii) explained by the controlling shareholder at the GMS;

- (d) The compulsory acquisition should be duly approved at the GSM; and
- (e) At least one month’s public and individual notice on the compulsory acquisition should be provided to the target company’s shareholders.

## 2. Procedures

The table below summarizes the major steps required and timeline for a compulsory acquisition. Without any unforeseen complications, it will take two to three months to complete those steps. The process may take much longer, however, if the controlling shareholder and the minority shareholders cannot reach agreement on the price to be paid for the minority shareholders’ target company shares. In case the controlling shareholder and a minority shareholder fail to agree on the purchase price, either the controlling shareholder or such minority shareholder may seek to obtain a Korean court’s decision on the purchase price, which may take a long time.

Date of Event	Required Procedure	Details and Notes
Prior to GMS	Appraisal by a certified appraiser	<ul style="list-style-type: none"> <li>• The price appraised by a certified appraiser is one of the items required to be included in the notice to convene GMS.</li> <li>• The appraisal report should set out the basis and fairness of the calculation of the purchase.</li> </ul>
	Guarantee to secure payment of the purchase price	<ul style="list-style-type: none"> <li>• The guarantee is one of the items required to be included in the notice of GMS.</li> </ul>
The date on which the meeting of the Board of Directors is to be held (“D-Day”)	Board of Directors (“BOD”) meeting to convene a GMS	<ul style="list-style-type: none"> <li>• A GMS is required to be convened to pass a shareholders resolution approving the controlling shareholder to compel the minority shareholders to sell their shares to the controlling shareholder.</li> </ul>
	Delivery of Notice of GMS	<ul style="list-style-type: none"> <li>• Notice of GMS shall include:                             <ul style="list-style-type: none"> <li>(i) the date and location of GMS;</li> <li>(ii) purpose of GMS (namely, to pass a shareholders resolution approving the compulsory acquisition);</li> <li>(iii) shareholding of the controlling shareholder ;</li> <li>(iv) purpose of the compulsory acquisition;</li> <li>(v) an appraisal report issued by a certified appraiser regarding the basis and fairness of the calculation of the price; and</li> <li>(vi) guarantee of the payment of the purchase price.</li> </ul> </li> </ul>

D-Day + 15	GMS	
D-Day + 16	Public notice by way of publishing the notice in a daily newspaper.  Separate notice of compulsory acquisition to minority shareholders and pledgees, if any	<ul style="list-style-type: none"> <li>The public notice to be published in a daily newspaper must include the following notification: (i) the minority shareholders are required to deliver the respective share certificates simultaneously upon receipt of the purchase price; and (ii) in case where any share certificate is not delivered, such share certificate will become null and void on the date when the purchase price is paid to, or received by, the minority shareholder or when the controlling shareholder deposits the purchase price with the court (gong-tak in Korean).</li> </ul>
D-Day + 47	Exercise by the controlling shareholder of the compulsory acquisition right	
	Compulsory acquisition right exercise becoming effective	
D-Day + 78	Decision of the purchase price (to be agreed between the parties)	<ul style="list-style-type: none"> <li>If the purchase price cannot be agreed between the controlling shareholders and the minority shareholders within 30 days from the exercise of the compulsory acquisition right, either the controlling shareholder or any minority shareholder may request the court to determine the purchase price.</li> </ul>
D-Day + 139	Obligation of the minority shareholders to compulsorily sell out their shares	<ul style="list-style-type: none"> <li>The minority shareholders are required to sell out the shares at the purchase price agreed with the controlling shareholders within 2 months from the exercise of the compulsory acquisition.</li> </ul>
Payment of the purchase price or deposited with the court	Transfer of shares of the minority shareholders	<ul style="list-style-type: none"> <li>The shares are deemed to have been transferred on the date when the purchase price is paid to the minority shareholder.</li> <li>If the controlling shareholder does not know who a minority shareholders is or a minority shareholder refuses to accept the payment of the purchase price, the controlling shareholder may deposit the purchase price with the court (gong-tak in Korean), in which event, the share is deemed to be transferred on the date of such deposit.</li> </ul>

### 3. Ambiguities and Legal Issues

Although quite straightforward at first glance, the compulsory acquisition entails many issues and uncertainties, as the relevant KCC provisions are unclear in some respects and there are no case precedents in Korea directly applicable to the compulsory acquisition. Complicated legal issue would arise as to, among others: (i) who should be viewed as the controlling shareholder; (ii) what constitutes a “business purpose”; (iii) when minority shareholders lose their status as shareholders if the purchase price for the compulsory acquisition cannot be agreed upon; and (iv) when interest on the purchase price starts to accrue.

The legislature may need to take a proactive approach in clarifying the ambiguities. Before such

