

Shin & Kim Successfully Completes Landmark Minority Shareholder Squeeze-outs

Shin & Kim has recently completed several squeeze-outs of minority shareholders, acting for both Korean and foreign controlling shareholders of Korean companies. These cases are the first known squeeze-outs in Korea utilizing the compulsory acquisition mechanism provided under the Korean Commercial Code (“KCC”).

The KCC, as amended as of April 15, 2012, introduced a new squeeze-out mechanism through compulsory acquisition. It provides that minority shareholders can be required to sell their shares at an agreed price to a controlling shareholder, and if no agreement is attained, the shares must be sold at a fair price as determined by the court.

Though straightforward at first glance, the compulsory acquisition process entails many legal and practical issues and uncertainties. This is because the relevant KCC provisions are unclear in some respects and there are no court precedents in Korea directly applicable to compulsory acquisition. For example, issues arise regarding, among others: (i) what constitutes a “business purpose” required by the KCC for a compulsory acquisition; (ii) how the purchase price can be decided fairly if the parties are unable to reach agreement; (iii) how notices should be given to minority shareholders; and (iv) what requirements should be satisfied in order for a court deposit to be made properly. Particularly, in cases where there are many minority shareholders and their whereabouts are not known, practical difficulties and complicated legal issues come up as to how purchase prices can be deposited with the court. Shin & Kim has resolved and addressed such difficulties and issues in recent cases, setting meaningful precedents that will have a significant impact on subsequent squeeze-out cases.

Compulsory acquisition may be a useful tool for listed companies going private following a tender offer and delisting, as well as for removing minority shareholders from a privately-held company.

