

SOUTH KOREA

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1. What are the main structures for mergers and acquisitions (M&A) transactions available under local law, and what are their key distinctions?

Share purchases are the most common structure for M&A transactions in South Korea. Business or asset purchases (transfers), mergers, tender offers, and share exchanges are also common. A scheme of arrangement is not available in South Korea.

Mergers are less common compared to other jurisdictions, mainly because South Korean companies typically have controlling shareholders and, therefore, share transfers are the easiest and most efficient way to transfer control of a company. Mergers are more often used among affiliates as part of corporate restructuring.

Tender offers are becoming more popular as taking public companies private has recently become more common.

Business or asset purchases are more often pursued as part of a particular business or asset from a proposed transaction, or as part of a corporate restructure.

2. How would you describe the current M&A market in South Korea?

2025 was slower than in previous years. A combination of economic factors, such as tariffs, interest rates, FX rates, and politics — such as a presidential transition — and global geopolitics, together with recent amendments to the Korean Commercial Act and the resulting uncertainty regarding their application and interpretation, have culminated in a slowdown in M&A activity.

Further, private equity funds (PEFs), which play a very significant role and hold considerable weight in the Korean M&A market, have been relatively cautious due to market sluggishness, regulatory reforms, and the government's strengthening of compliance requirements relating to leverage ratios and disclosure.

Inbound investment (from both strategic and financial investors) has also been relatively slow, except in industries such as renewable energy as well as semiconductors, pharmaceuticals/biotech, cosmetics, and blockchain/digital assets.

3. What major trends have you seen in the past 12–24 months?

Over the last 6–12 months, regulatory reform, including substantive reforms to the Korean Commercial Act, has contributed to reluctance in the market to engage in M&A activity. Limitations on IPOs of businesses carved out for that purpose have impacted financial investors in particular and have dampened the appetite for minority and mezzanine transactions.

While shareholder activism is trending upward, many of these cases are standalone and have not yet impacted the broader M&A market.

A specific issue that has been increasingly important concerns cross-border M&A transactions involving a Korean asset that is, or owns, any national core technology as set out in a whitelist. Offshoring such technology effectively requires prior approval from the Ministry of Trade, Industry and Resources.

4. What are your predictions for the M&A market in the next 12–24 months?

The consequences of the reform of the Korean Commercial Act require close monitoring. The market is expected to regain some momentum as the

interpretation and application of the amendments to the Act develop, and market practice becomes clearer. Interest rates remain on hold at the Bank of Korea, but a gradual easing, if implemented, would help reignite M&A activity. PEFs are expected to deploy the funds they have been holding back and, given the need to exit investments in their current portfolios, are expected to drive renewed activity over the next one or two years.

Sectors such as cosmetics, pharmaceuticals, semiconductors, and blockchain are expected to see continued M&A activity, and the venture capital industry is also anticipated to pick up. Activity in the secondary battery market and related sectors is also expected to rebound.

5. What are the key laws and regulations governing M&A?

Key laws governing M&As in South Korea include:

- the Korean Commercial Act;
- the Financial Investment Services and Capital Markets Act; and
- the Monopoly Regulation and Fair Trade Act, each as supplemented by their respective Enforcement Decrees and Enforcement Rules.

Key regulators include the Financial Services Commission (FSC) and the Korea Fair Trade Commission (KFTC). Depending on the specific industry, separate approvals from the Ministry of Trade, Industry and Resources (MOTIR) or other relevant ministries (e.g. the Ministry of Climate, Energy and Environment) may be required.

Merger filings (similar to HSR filings) and approvals for transactions with potential national security concerns (similar to CFIUS) are becoming increasingly important and less administrative in nature.

As foreign exchange is regulated in South Korea, cross-border transactions often require coordination with foreign exchange-related government agencies such as the Bank of Korea.

Notably, the Financial Supervisory Service's authority is expanding as public company M&A and tender offers increase.

6. What forms of consideration are commonly used? Are there restrictions on non-cash consideration?

The most common form of consideration is cash, unless a share purchase is structured as a comprehensive share exchange, merger, or in-kind contribution in which the purchaser's shares are offered as consideration. More rarely, a buyer may offer shares, bonds, or promissory notes as an alternative to cash. The seller will generally require a guarantee of the liquidity of any such non-cash consideration.

7. What is the typical scope and focus of due diligence?

In South Korea, for M&A transactions above a certain size, legal, financial, and tax due diligence are standard, similar to practice in the United States and Europe. In addition, commercial, environmental, technological, and cybersecurity due

diligence may be conducted. Financial investors often conduct separate ESG and compliance due diligence as well.

Access to information is typically addressed through non-disclosure agreements (NDAs) or confidentiality agreements for private and public companies alike, and, as a result, there are typically no significant restrictions.

8. How common are warranty and indemnity (W&I) insurance policies, and how do they affect negotiations of representations and warranties?

The adoption of W&I insurance has increased rapidly in recent years. PEFs, in particular, have regularly taken out W&I insurance in M&A transactions in South Korea. In transactions where a reputable PEF is the buyer or seller, W&I insurance has almost become standard.

The existence of W&I insurance does not mean that negotiation of representations and warranties (R&Ws) is entirely eliminated. Recourse for fraud remains available under W&I insurance, and certain R&Ws, such as environmental matters, transfer pricing, and inventory, are generally excluded from coverage. Insurers typically require the R&W negotiation history (i.e. share purchase agreement (SPA) markups); accordingly, R&W negotiations should take insurer requirements into account.

9. Distinct from antitrust and competition law requirements, are there restrictions or review mechanisms for foreign buyers acquiring domestic businesses or assets?

Beyond antitrust/competition requirements, additional restrictions applicable to foreign buyers primarily include:

- national security reviews; and
- industries where foreign investment is prohibited or restricted, such as banking, finance, and media.

If it is determined that an acquisition of a Korean company by a foreign buyer poses a serious risk to national security, the Korean Government may take various measures to address the risk, such as issuing a suspension or prohibition order, and in some cases may even unwind the transaction. However, foreign investment is subject to special scrutiny on the grounds of national security in only a very limited number of industries; examples include situations in which the foreign investment could potentially impede the domestic defence industry. In addition, according to the Act on Prevention of Divulgence and Protection of Industrial Technology, foreign investment in entities that hold key national core technology and that have received government funding must be reported to the relevant government authorities. In the event that a foreign investment poses a serious risk to national core technology, the relevant government authorities may take various measures to address the risk.

For investments in certain industries such as banking and finance, separate supervision is conducted, particularly with respect to foreign controlling shareholders, including whether they or their ultimate holding companies have been sanctioned by financial regulators in their respective jurisdictions.

10. What are the major disclosure or announcement requirements for public M&A transactions?

Under the Financial Investment Services and Capital Markets Act, an investor, including “specially related persons” and other “persons acting in concert,” whether on or off the open market, is subject to the following disclosure and reporting requirements – a 5% Report and a 10% Report:

- **5% Report.** If an investor (including “specially related persons” and other “persons acting in concert”) acquires 5% or more of the voting shares or certain other equity securities issued by a listed Korean company, the investor must file a 5% Report regarding such acquisition within five business days of the date on which the investor signs a purchase agreement to acquire the shares. Furthermore, an addendum report must be filed each time there is a change of 1% or more thereafter in shareholding.
- **10% Report.** When the investor’s holdings reach 10% or more of the issued and outstanding voting shares of a listed Korean company, or the investor otherwise obtains the power to influence the management of the company (e.g. election of the majority of the board), a separate report called a 10% Report must be filed within five business days. Unlike the 5% Report, the 10% Report must be filed within five business days of the date on which the investor actually acquires the shares that increase the investor’s holdings to 10% or more, rather than the date of the relevant purchase agreement. Any subsequent change in shareholding must also be reported within five business days.

11. How are public takeovers regulated, and what are the main procedural requirements?

There are tender offer rules that apply to public takeovers. Other than the tender offer rules and the disclosure requirements described above, public takeover rules are, in essence, not very different from those governing private takeovers, including the handling of competing bids and deal-protection measures (e.g. break fees, exclusivity, no-shop clauses).

In South Korea, even for public takeovers, it is common practice to reach an agreement with the controlling shareholder regarding the sale of its stake through private negotiations. In most cases, an SPA is executed with the controlling shareholder (and in some cases, their affiliates and specially related persons) concerning the shares they hold. A tender offer is only initiated if the acquirer seeks to purchase additional shares beyond the controlling shareholder’s stake to acquire the public float.

The tender offer framework in South Korea differs from that in other jurisdictions. Under Korean law, there is no threshold that triggers a mandatory tender offer by an acquirer intending to acquire a significant percentage of shares (e.g. 20% or 30%). However, an amendment to the Korean Commercial Act is currently under discussion that would require acquirers to obtain 50% plus one share through a tender offer when acquiring 25% or more of a listed company’s shares (though specific shareholding thresholds vary across several proposed bills).

Currently, a tender offer is triggered only if an investor, together with any “specially related persons” and other “persons acting in concert,” intends to acquire off the open market (i.e. over-the-counter) 5% or more of the total issued and outstanding shares of a listed Korean company from 10 or more persons during a six-month period.

Regarding minority shareholder protection, as there is currently no mandatory tender offer, minority shareholders have no special rights in a public takeover via a share purchase, unless the acquirer voluntarily conducts a tender offer or a tender offer is statutorily triggered under the 5% and 10-or-more-persons requirement. Conversely, in M&A transactions involving mergers or comprehensive share exchanges, minority shareholders have the right to exit through appraisal rights.

12. How are M&A disputes commonly resolved? Are there preferred dispute resolution forums or governing laws?

For domestic M&A transactions between Korean companies, Korean law and Korean courts typically govern any disputes.

The governing law is determined on a case-by-case basis when one of the parties is a foreign company. Particularly for SPAs, laws other than Korean law (e.g. English law, New York law) may apply depending on factors like bargaining power; however, Korean law remains the law of choice in the majority of cases. Shareholders’ agreements are different. As they typically govern the corporate governance of Korean companies, Korean law is usually the governing law.

The dispute resolution forum is also determined on a case-by-case basis when one of the parties is a foreign company. Korean courts may be chosen, but international arbitration is often selected due to the foreign company’s institutional policies and bargaining power. In such cases, various international arbitration forums may be used, such as the International Chamber of Commerce (ICC) or Singapore International Arbitration Centre (SIAC).

13. What role are emerging technologies playing in shaping upcoming M&A opportunities or challenges locally?

Emerging technologies do not yet appear to have a significant impact on the M&A market. While law firms and accounting firms may use AI during their due diligence exercises, AI is not currently having a significant influence on M&A opportunities.

The AI used in M&A is no doubt being employed by potential buyers and their financial advisers. For lawyers in South Korea, AI-powered apps are being developed and tested to assist in legal due diligence investigations. As many of the documents are in Korean, and the adaptation of well-known existing due diligence apps in the United States and UK to Korean-language documents has been limited, the widespread use of these AI tools has therefore been slow. However, it is a matter of time before such tools are developed to have the same functionality for Korean-language documents.

14. Are there any other significant corporate M&A considerations in South Korea?

The number of tender offer transactions has been increasing as one of the methods of taking a listed company private. The success of these transactions has been patchy, as minority shareholders tend to hold out on accepting the tender offer in expectation of a higher-priced tender offer.

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Michael leads the Projects Team at Shin & Kim. He is a senior foreign attorney whose principal areas of practice are M&A, energy, project finance, and infrastructure. Michael has broad-ranging commercial law experience across a number of jurisdictions around the world.

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