Improved Merger Rules in Korea

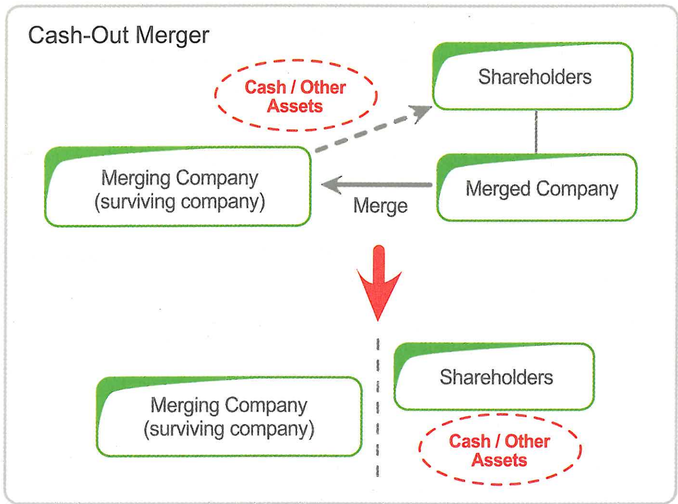
The Korean Commercial Code (KCC) underwent major amendments effective as of April 15, 2012, bringing much-needed reform to Korea's corporate laws. Most important among them are the improved merger rules.

In the past, mergers of Korean companies were in most cases driven by the purpose of consolidating subsidiaries of a conglomerate typically engaged in the same or similar businesses. Occasionally, mergers involving two non-affiliated companies took place by way of a back-door listing of a non-listed company (which failed to meet the criteria for listing on a stock exchange) through a merger into a listed company.

The amended KCC now provides for an improved merger regime that allows mergers to be used as a way to expand or change the corporate structure for effective management control. Two key improvements are the introduction of new forms of merger consideration and simplified procedures for small-scale mergers.

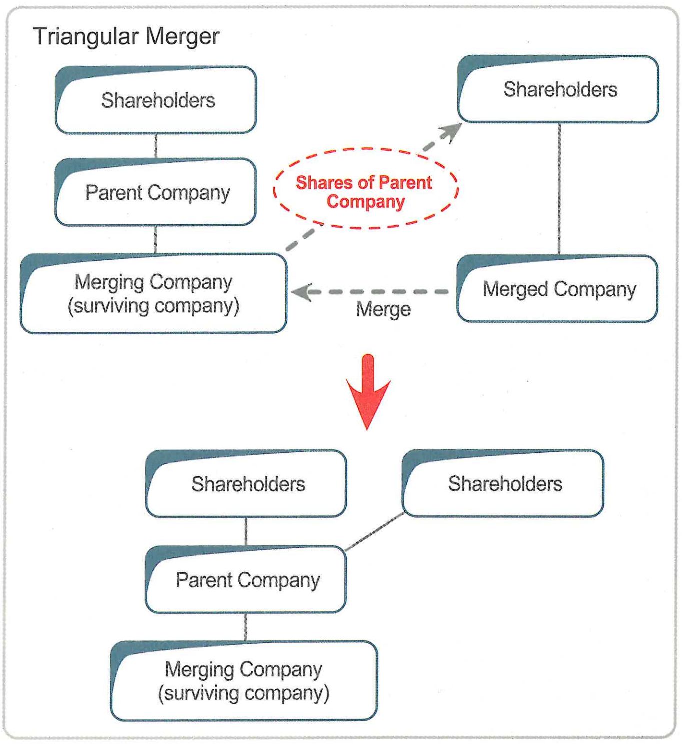
1. New Forms of Merger Consideration

The previous KCC required a merging company to distribute its shares to the shareholders of a merged company as consideration for their shares of the merged company. The amended KCC makes it possible to distribute cash or other assets as merger consideration, which is similar to cash-out mergers available in other countries.



In other words, if the merging company pays 100 percent cash for the shares of the merged company, the shareholders of the merged company will not become shareholders of the merging company. Cash-out mergers under the amended KCC can be used in situations where the merging company intends to squeeze out minority shareholders of the merged company or the minority shareholders are incapable of acquiring or maintaining shares of the merging company.

Another welcome change is that under the amended KCC, shares of a parent company of a merging company may be used as consideration for shares of the merged company. Also, the amended KCC allows a merging company to acquire its parent company's shares but only for the purpose of distributing such newly acquired shares to shareholders of a merged company.



2. Simplified Procedures for Small-Scale Mergers

Under the previous KCC, there were not many opportunities for Korean companies to consummate small-scale mergers without the approval of shareholders. As the exception to this general rule under the previous KCC, a board resolution could be used instead of a resolution of shareholders to approve a merger only if (i) shares of the merging company to be issued to shareholders of the merged company did not exceed 5 percent of the total issued and outstanding shares of the merging company and (ii) total value of consideration to be paid to the shareholders of the merged company did not exceed 2 percent of the total net assets of the merging company.

The amended KCC has raised the 5 percent threshold to 10 percent and the 2 percent threshold to 5 percent so that a board resolution is sufficient if (i) shares of the merging company to be issued to shareholders of the merged company do not exceed 10 percent of the total issued and outstanding shares of the merging company and (ii) the total value of consideration to be paid to the shareholders of the merged company does not exceed 5 percent of the total net assets of the merging company. With this change, we can expect to see more small-scale mergers in the market.

In light of these relaxed merger rules under the amended KCC, more acquisition transactions are expected to be consummated by way of a merger as opposed to an acquisition of shares as commonly used in the past. It will be interesting to see how the improved merger rules under the amended KCC will be put into practice in the coming years.

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