

GETTING THE DEAL THROUGH

# Corporate Governance

Board structures and directors' duties  
in 33 jurisdictions worldwide

# 2014



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**Getting the Deal Through**  
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**Corporate Governance 2014**

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*Getting the Deal Through* is delighted to publish the fully revised and updated thirteenth edition of *Corporate Governance*, a volume in our series of annual special reports providing comparative international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

*Corporate Governance 2014* addresses the most important issues facing corporations in relation to all their stakeholders. This publication examines various issues, including the rights of shareholders, corporate disclosure and transparency, responsibilities of the board and corporate control.

In the format adopted throughout the series, the same key questions are answered by leading practitioners in 33 jurisdictions worldwide. New jurisdictions this year include Argentina, China, Indonesia, Korea and South Africa.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually. Please ensure you are referring to the latest print edition or to the online version at [www.GettingTheDealThrough.com](http://www.GettingTheDealThrough.com).

*Getting the Deal Through* gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would like to thank Ira Millstein of Weil, Gotshal & Manges LLP for his stewardship of the title over the past twelve years and to acknowledge Rebecca Grapsas of Weil, Gotshal & Manges LLP for her kind assistance with this year's questionnaire. We would especially like to thank and acknowledge Holly Gregory of Sidley Austin LLP as contributing editor of this and future editions.

**Getting the Deal Through**

London  
June 2014

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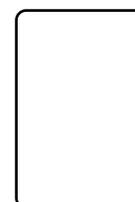
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Published by  
**Law Business Research Ltd**  
87 Lancaster Road  
London W11 1QQ, UK  
Tel: +44 20 7908 1188  
Fax: +44 20 7229 6910  
© Law Business Research Ltd 2014  
No photocopying: copyright licences do not apply.  
First published 2002  
Thirteenth edition 2014  
ISSN 1476-8127

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Printed and distributed by  
Encompass Print Solutions  
Tel: 0844 2480 112



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# Korea

## Philippe Shin and Byung Tae Kim

Shin & Kim

### Sources of corporate governance rules and practices

#### 1 Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance?

The Korean Commercial Code (the KCC), the Enforcement Decree of the KCC and the Financial Investment Services and Capital Markets Act (the Capital Markets Act) regulate publicly traded companies and financial investors. Other types of business organisations, including but not limited to banks, insurance companies and financial companies, have their own rules. In addition, the Monopoly Regulation and Fair Trade Act (the MRFTA) regulates large enterprise group companies whose total assets are above 5 trillion won as well as holding companies. Further, financial holding companies are governed by the Financial Holding Companies Act.

#### 2 Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder activist groups or proxy advisory firms whose views are often considered?

The KCC is enforced by the Ministry of Justice. The Financial Services Commission is responsible for the Capital Markets Act and the Financial Holding Companies Act. The Fair Trade Commission is responsible for the MRFTA. The views of shareholder rights protection groups, including but not limited to the People's Solidarity for Participatory Democracy and the Citizens' Coalition for Economic Justice, who have been active in initiating derivative suits, are often considered. Until now, there have not been any reliable proxy advisory firms.

### The rights and equitable treatment of shareholders

#### 3 Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect directors?

The appointment of a director of a stock corporation requires an ordinary resolution adopted at a general meeting of shareholders. An ordinary resolution requires the affirmative vote of at least the majority of the shares present at a general meeting of shareholders, which must also be at least one-quarter of the total issued and outstanding shares. However, dismissing a director requires a special resolution adopted at a general meeting of shareholders. A special resolution requires the affirmative vote of at least two-thirds of shares present at the meeting, which must also be at least one-third of the total issued and outstanding shares of the company.

Where a general meeting of shareholders of a company is convened to elect two or more directors, shareholders who hold no less than 3 per cent of the total shares, excluding non-voting shares, may request that the company elect by means of a cumulative voting.

Where a company issues different classes of shares, a shareholder of a certain class of shares having no voting rights or a shareholder with shares that are restricted from appointing and dismissing directors may not appoint or dismiss directors.

The KCC lists certain matters as being within the jurisdiction of the board of directors. However, the KCC also allows certain of these board matters to be determined by the shareholders at a general meeting if such board matters are specified in the articles of incorporation; provided, however, that an individual shareholder may not force the board of directors to engage in specific acts unless otherwise specified in the articles of incorporation. Nevertheless, any shareholder who holds no less than 3 per cent of the total issued and outstanding shares (in the case of a listed company, a shareholder who has held no less than 0.5 per cent (for a listed company with at least 1 billion won of total capital) or 1 per cent of the total issued and outstanding shares for at least six months), exclusive of non-voting shares, may propose an agenda item six weeks prior to the date of a general meeting of shareholders and such shareholder may explain the subject matters at the general meeting.

#### 4 Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

The shareholders have the power to pass resolutions concerning certain matters specified in the KCC or the articles of incorporation. The KCC lists matters that require a resolution at a shareholders meeting. Major matters that require a resolution at a shareholders meeting are as follows:

- transfer of all or a material part of its business;
- execution of agreements with another party relating to leasing all of the company's business, delegating management, or sharing all the profit, or execution, amendment or cancellation of similar agreements;
- acquisition of all or a material part of the business of a third party having a material effect on the business of the company;
- amendment of the articles of incorporation;
- capital reduction;
- merger, spin-off, comprehensive exchanges and transfers of shares;
- dissolution of the company and continuation of the company after dissolution;
- change of corporate type of the company;
- appointment and removal of directors, statutory auditors and liquidators;
- determination of the remuneration of directors, statutory auditors and liquidators;
- approval of financial statements;
- discharge of liabilities of directors, statutory auditors and liquidators; and
- granting of stock options.

## 5 Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

As a matter of principle, each share is entitled to one vote. Unequal treatment of shareholders in terms of interests given to shareholders is prohibited. The following limitations exist in relation to the exercise of a shareholder's voting right:

- A company may issue different classes of shares, shares with no voting rights or restricted voting rights.
- Treasury stocks acquired by the company have no voting rights.
- If the company, parent company or subsidiary holds in excess of 10 per cent of the total issued and outstanding shares of another company, the shares held by the other company or the parent company have no voting rights.
- A shareholder's exercise of his voting right is restricted if he has a special interest in the resolution to be adopted at a shareholders' meeting.
- When electing statutory auditors, any shareholder who holds more than 3 per cent of the total issued and outstanding shares, exclusive of non-voting shares, may not exercise his vote in respect to such shares exceeding the 3 per cent limit.

## 6 Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting?

To participate at a general meeting of shareholders, a shareholder must be registered as a holder of the company's shares on the register of shareholders to exercise his voting rights. A shareholder whose name is not registered on the register of shareholders may nevertheless be considered a shareholder by the company; provided, however, that if such shareholder is revealed not to be an actual shareholder, no indemnification is given to the company, but the resolutions adopted at the general meetings of shareholders may be cancelled. A shareholder may delegate authority to a third party to act as a proxy in exercising his voting rights, in which case, the proxy must submit to the general meeting a document evidencing the authority to act as a proxy. A small company whose total equity is less than 1 billion won may omit the procedures for convening a shareholders' meeting (eg, the sending of notices to shareholders) if all shareholders consent. General shareholders' meetings of companies, including small companies, may not adopt resolutions in writing without convening a meeting. However, the articles of incorporation may provide that decisions which are included into a general meeting of shareholders agenda may be voted in writing by completing the general ballot paper attached to the notice convening the general meeting. In such case, a general meeting of shareholders must physically be convened. However, a meeting of shareholders will be deemed to have been duly convened, without the convocation of an actual meeting, if all shareholders consent thereto. In such case, only the minutes of the meeting will be required to be drafted.

## 7 Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions to be put to shareholders against the wishes of the board or the board to circulate statements by dissident shareholders?

Any shareholder who holds no less than 3 per cent of the total issued and outstanding shares (in case of a listed company, a shareholder who has held no less than 0.15 per cent of the total issued and outstanding shares for at least six months) may demand the convocation of a general meeting of shareholders by filing with the board of directors a document stating the reasons for the convocation of the meeting. If a meeting of the board of directors is not convened

despite the demand, the shareholder may file a claim with the court to convene such meeting.

## 8 Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action against controlling shareholders for breach of these duties be brought?

The current KCC does not specifically provide for a duty of care or duty of loyalty that the controlling shareholders would owe the company or non-controlling shareholders. Controlling shareholders are under the obligation to indemnify for damage suffered by the company if such controlling shareholders, by using their influence, order directors to execute certain activities, directly execute certain activities in the name of a director or execute certain activities by using a title which is perceived as granting the authority to execute such activities; indeed, such activities by controlling shareholders would constitute a breach caused by negligence or wilful misconduct. In principle, damages in such cases are claimed by the company; provided that a shareholder holding a certain amount of shares as stated in question 18 may file a derivative lawsuit with a court.

## 9 Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

A shareholder may not be held responsible for the acts or omissions of the company, other than the obligation to contribute to the company in case of acquisition of shares, so long as a separate guarantee agreement has not been executed. However, a shareholder holding more than 50 per cent of the total issued and outstanding shares of a company other than a listed company may be subject to the secondary tax liability.

## Corporate control

### 10 Anti-takeover devices

Are anti-takeover devices permitted?

Poison pills referring to special rights of the target's shareholders to acquire additional shares at a low price or issuance of golden shares, which are shares with special voting rights that allow the holder to outvote other shareholders, are prohibited under the KCC.

### 11 Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

Unless otherwise specified in the articles of incorporation, matters relating to the issuance of new shares such as type and number of shares, par value per share and subscription payment date are determined by the board of directors, within the limit of the authorised capital. In principle, upon issuance of new shares, a shareholder has the right to be allocated shares in proportion to his shareholding percentage; provided, however, that as specifically provided for in the articles of incorporation, new shares may be allocated to parties other than the shareholders when deemed necessary to achieve the objectives of the company's management, including without limitation introduction of new technologies and improvement of the financial structure of the company.

### 12 Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted, and if so what restrictions are commonly adopted?

Transfer of shares may require a resolution of the board of directors as specifically provided for in the articles of incorporation. A

shareholder who intends to transfer his shares may request the company's approval by indicating the party to whom the shares will be transferred and the type and number of shares to be transferred. If a shareholder receives from the company a notice denying the approval of the transfer, such shareholder may request the company to designate the party to whom the shares will be transferred and the number of shares to be transferred. However, it should be noted that transfers of shares of listed companies may not be restricted. Devices restricting transfers of shares pursuant to shareholders' agreements are frequently used. Such restrictions may cause the parties in breach of the shareholders' agreements to be held liable for damages, but are not effective against the company even if the company is a party to the shareholders' agreements and such agreements are specifically provided for in the articles of incorporation.

### 13 Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

A joint-stock corporation is prohibited from forcing a shareholder to accept a refund of his capital contributions even if such refund is specifically provided for in its articles of incorporation. Unless explicitly provided for in the KCC or other relevant laws and regulations or as specified in question 12, a compulsory share repurchase by a company, in its discretion, from its shareholders is invalid.

### 14 Dissenters' rights

Do shareholders have appraisal rights?

A shareholder objecting to the company's resolutions to be adopted at a meeting of shareholders in relation to a business transfer, business acquisition, merger, spin-off followed by merger or comprehensive exchange and transfer of shares may force the company to buy his shares.

### The responsibilities of the board (supervisory)

#### 15 Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

In Korea, listed companies have adopted a single-tier board system where the governing body comprises a single board. Under Korean laws, the one-tier board combines both supervisory and monitoring functions and managerial functions, although some corporate governance models through various mechanisms could achieve a certain degree of separation of such functions.

#### 16 Board's legal responsibilities

What are the board's primary legal responsibilities?

A board resolution is required for the company to make decisions on corporate policy and business matters such as disposition and transfer of material assets of the company, borrowing of substantial amounts of money, appointment and dismissal of managers, and establishment, change and closure of branches. Matters that are specifically enumerated in the KCC as the powers of the board of directors are, among others, convocation of a general meeting of shareholders, approval of the director's competition with the company, usurpation of corporate opportunity and self-dealing transaction, approval of a transaction conducted by the largest shareholder of a listed company with the company, issuance of bonds and payment of interim dividends.

#### 17 Board obligees

Whom does the board represent and to whom does it owe legal duties?

A board of directors is a body of individuals to whom duties are delegated by the shareholders to perform activities for and on behalf of the company. A board of directors only owes duties to the company, and does not assume any obligations with respect to individual shareholders.

#### 18 Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf, of those to whom duties are owed?

When there are concerns that the company will suffer damage as a result of a director's breach of the laws and regulations or articles of incorporation, the auditor or a shareholder holding no less than 1 per cent of the total issued and outstanding shares of the company (for a listed company, a shareholder who has continuously held no less than 0.05 per cent of the total issued and outstanding shares of the company for six months, and for a company with at least 100 billion won of total capital, a shareholder holding no less than 0.025 per cent of the total issued and outstanding shares of the company) may, on behalf of the company, file a claim with a court demanding the suspension of the activities of such director. In addition, a shareholder holding no less than 1 per cent of the total issued and outstanding shares of the company (for a listed company, a shareholder who has continuously held no less than 0.01 per cent of the total issued and outstanding shares of the company for six months) may request the company to institute a lawsuit investigating the director's liability. If the company does not bring a lawsuit within 30 days, such shareholder may file a claim with a court on behalf of the company.

#### 19 Care and prudence

Do the board's duties include a care or prudence element?

Directors as representatives of the company and as good managers owe an explicit fiduciary duty to the company. Directors must attend meetings of the board of directors and report material matters to the board, auditors or audit committee. In addition, directors have the obligation to supervise other directors' execution of businesses and owe a duty of confidentiality.

#### 20 Board member duties

To what extent do the duties of individual members of the board differ?

The scope of duties of directors under the KCC does not differ based on the qualifications and experience of the directors. However, pursuant to court precedents and certain legal scholars, outside directors are subject to a slightly less demanding duty of care in monitoring the employees of the company in light of the nature of their roles and functions.

#### 21 Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

The KCC prescribes that subcommittees may be established within the board of directors. Large listed companies with at least 2 trillion won of total capital are required to have a committee for recommending candidates for outside directors and an audit committee. A committee may exercise the rights of the board of directors on the matters, excluding the matters set forth below, delegated by the board of directors:

- proposal of any matter that requires approval from the general meeting of shareholders;

- appointment and dismissal of the representative director;
- establishment of a subcommittee, and appointment and dismissal of its members; or
- any other matters provided for in the articles of incorporation.

The board of directors may delegate the authority to make decisions on certain matters relating to the execution of activities of the company to the extent that the specific scope of the authority is determined; provided, however, that the following activities may not be delegated by the board:

- disposal and transfer of material assets;
- borrowing of large scale assets;
- appointment or dismissal of managers; and
- management of affairs, such as establishment, transfer or abolition of branch offices.

The representative director is delegated the authority to implement the day-to-day activities of the company.

## 22 Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

Under the KCC, the members of the board of directors must be listed as either: 'inside (standing) directors'; 'outside (independent) directors'; or 'other directors not directly engaged in the regular business of the company' who are similar to non-executive directors and whose responsibilities are almost the same as those of inside directors. Outside directors are directors who are not engaged in the regular business of the company. The appointment of outside directors and other directors not directly engaged in the regular business of the company is not generally mandatory. However, a company that has established an audit committee should have outside directors accounting for at least two-thirds of the members of the committee. In addition, listed companies should have outside directors accounting for at least one-fourth of the total number of directors. In case of a listed company, the total assets of which are at least 2 trillion won, at least three persons, representing the majority of the total number of directors of the company, must be appointed as outside directors. An outside director generally assumes the duties of a standard director. However, in connection with the duty to supervise, an outside director assumes the duty to supervise only to the extent that the director knew of or could have known of the illegal implementation of an activity by a director responsible for said activities. Liability of an outside director may be limited as mentioned in question 31.

## 23 Board composition

Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition? Are there minimum and maximum numbers of seats on the board? How is the size of the board determined? Who is authorised to make appointments to fill vacancies on the board?

No specific restrictions exist on the qualifications of a director. A corporation may not serve as a director of the company, and statutory auditors may not serve as directors of the company as well as directors of a subsidiary company.

No outside director of a listed company shall fall under any of the following subparagraphs:

- directors and employees who are engaged in regular business of the relevant company, or directors, auditors and employees who have been engaged in regular business of the relevant company within the previous two years;

- the principal, his spouse, lineal ascendants, and lineal descendants, in cases where the largest shareholder is a natural person;
- directors, auditors and employees of the corporation, in cases where the largest shareholder is a corporation;
- spouses, lineal ascendants, and lineal descendants of directors, auditors and executive officers;
- directors, auditors, executive officers and employees of a parent company or a subsidiary company of the relevant company;
- directors, auditors, executive officers and employees of a corporation that has a significant interest in the relevant company, such as business relations with the company; and
- directors, auditors, executive officers and employees of another corporation for which directors and employees of the relevant company work as directors, auditor, executive officers and employees.

In addition to the matters set forth above, no outside director of a listed company shall fall under any of the following subparagraphs:

- a minor, a person of incompetence, or a person of quasi-incompetence;
- a person who has been adjudicated bankrupt and has not yet had his rights reinstated;
- a person in whose case not more than two years have elapsed since his imprisonment or a heavier punishment was completely executed or exempted;
- a person for whom two years have not elapsed since he was dismissed or removed from office after he violated acts, including but not limited to the Banking Act and the Insurance Business Act, relating to finance separately determined by Presidential Decree;
- a shareholder who owns more than 10 per cent of the total number of issued shares, other than non-voting shares, by his calculation regardless of the name of a shareholder, or exerts de facto influence on important matters related to the management of listed companies and his spouse, lineal ascendants and lineal descendants; and
- a person determined by Presidential Decree, who has difficulty in faithfully performing his duty as an outside director, or who may have an influence on the management of listed companies.

Information on directors, including the names and dates of birth of directors, and information on the representative director, including his or her name, date of birth and address, are provided for in the commercial registry. Directors shall be at least three in number. In the case of a company, the total capital of which is less than 1 billion won, the number of the directors may be one or two.

Directors are appointed at a shareholders' meeting. In case that the number of directors provided for in the articles of incorporation is not satisfied, a director whose term of office has expired or who has resigned owes duties as a director to the company until a new director is appointed. If the appointment of a temporary director is deemed necessary by a court as a result of a claim filed by a director, statutory auditor or other interested parties, a temporary director may be appointed.

## 24 Board leadership

Do law, regulation, listing rules or practice require separation of the functions of board chairman and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

The legal representative of a company is its representative director who has the authority to perform the internal activities of the company and the authority to represent the company. His role is similar to that of a CEO in a US or UK corporation. The representative director is appointed upon a resolution of the board of directors and plays the role of the chairman in most cases. Recently, it has been

recommended to differentiate the titles of a chairperson and representative director for the balance between the board of directors and the representative director. Meanwhile, under the recent amendment to the KCC, a company may adopt executive officer system to separate the managing body from the supervisory body. Under such system, the company cannot have a representative director, as an executive officer plays that role instead. Companies with executive officers must have a chairperson appointed pursuant to the articles of incorporation or upon a resolution of the board of directors if not provided for in the articles of incorporation. Although the KCC does not explicitly prohibit it, it would conform to the tenor of the KCC for directors not to concurrently serve as executive officers.

#### 25 Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

A company may elect to establish committees within the board of directors; provided that a listed company, the capital of which is at least 2 trillion won, must have outside directors representing at least half of the total number of members of the company's committees, and an audit committee with outside directors accounting for at least two-thirds of its members. A committee can be established within the board of directors pursuant to the articles of incorporation. Committees, excluding the committee for recommending candidates for outside directors and the audit committee, must appoint at least two directors. The audit committee of a listed company, the total assets of which is at least 2 trillion won, must comprise at least one member who is an accountant or a financial professional, and the head of the audit committee must be an outside director.

#### 26 Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

The representative director of a listed company is required to report at least once in a quarter to the board of directors the implementation of business activities. As such, the board of directors is required to be convened at least once per quarter.

#### 27 Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

The agenda items, summary of the progress and outcome thereof, and objectors and grounds for their objections must be entered in the minutes of a meeting of the board of directors. Any shareholder may, during office hours, request either to inspect the minutes of a meeting of the board of directors, or to copy them. Should the company decline to provide a copy of the minutes, the shareholder may inspect or copy the minutes by obtaining the court's approval. In addition, companies which are required to submit an annual report to the Financial Services Commission under the Capital Markets Act must disclose matters relating to the board of directors (composition of the board of directors, material resolutions, committees within the board of directors, etc).

#### 28 Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions between the company and any director?

Under the KCC, the remuneration of directors must each year be determined by separate resolutions of a general meeting of the shareholders or by specifying it in the articles of incorporation. In

practice, the remuneration amounts payable to all the directors are determined at a general meeting of shareholders, and the determination of the remuneration amount payable to each of the directors is delegated to the board of directors. Companies, including listed companies, which are required to submit an annual report to the Financial Services Commission under the Capital Markets Act, must disclose the total amount of remuneration payable to registered officers (including officers who have retired during the year in which the annual report is submitted), the remuneration payable to a director exceeding 500 million won and the calculation basis thereof. A director must obtain prior approval of the board of directors to engage in a transaction with the company, and the transaction and the procedures thereof must be fair. A listed company is prohibited from lending money or offering credit to a director, including without limitation guaranteeing performance of certain obligations and acquiring a security for funding purposes.

#### 29 Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions between the company and senior managers?

There are no particular provisions under the KCC relating to the remuneration of the most senior management, and there are no particular differences in the remuneration of the most senior management and that of directors.

#### 30 D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

Directors' and officers' liability insurance is not prohibited under the KCC, and in practice, a number of companies are enrolled in directors' and officers' liability insurance. Insurance premiums are often paid by the companies; however, a considerable amount of the premiums is included in the remuneration of the directors.

#### 31 Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

There are no provisions forcing the company to indemnify directors and officers in respect of liabilities. A company may, in accordance with its articles of incorporation, release the liability of a director with respect to the amount exceeding six times (in the case of outside directors, three times) his or her remuneration for the previous year prior to the date of the act or misconduct of the director; provided, however, that this shall not apply when the director has caused any loss or damage to the company as a result of the director's wilful misconduct or gross negligence, engagement in competition with the company, usurpation of corporate opportunity or self-dealing transaction. Following the adoption of the restrictions on the liability of directors under the recent amendments to the KCC, a number of companies have established relevant regulations in their articles of incorporation. A director may be released from liability with the consent of all the shareholders.

#### 32 Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

As stated in question 31, a company may restrict the liability of a director if provided for in its articles of incorporation.

**Update and trends**

As explained in question 28, the current Capital Markets Act provides that certain companies are required to disclose the registered directors' remuneration. However, an amendment to the Capital Markets Act, which requires the disclosure of the non-registered directors' remuneration as well, has been proposed at the National Assembly. In addition, as the Korea Securities Depository will be prohibited from exercising shadow voting from 2015, companies may face difficulties in meeting the quorum at shareholders' meetings. Further, the National Assembly has also proposed an amendment relating to the corporate governance of financial institutions to uniformly regulate matters on corporate governance practices that differ from one financial business field to another. The proposed amendments include but are not limited to enhancement of the qualifications of outside directors and members of an audit committee and improvement of appointment procedures, increase in the number of outside directors sitting on the board of directors to at least the majority of the total number of directors, and improvement of the risk management system of financial institutions and the remuneration system.

**33 Employees**

What role do employees play in corporate governance?

Other than the exercise of voting rights by the Employee Stock Ownership Association comprising employees, as shareholders, after acquiring shares, Korean law does not provide for any matters by which employees may affect corporate governance. However, employees, through activist groups, may indirectly affect M&A transactions by conducting strikes and thus, in certain M&A transactions, collective agreements require prior negotiations with the employees' representatives.

**Disclosure and transparency****34 Corporate charter and by-laws**

Are the corporate charter and by-laws of companies publicly available? If so, where?

The articles of incorporation of a company must be kept at the head office, but are not made publicly available. Any shareholder or creditor of a company may, at any time during its business hours, inspect the articles of incorporation and request a copy thereof; provided that the articles of incorporation of a listed company are attached to the annual report and available on the website of the Data Analysis, Retrieval and Transfer System (DART) maintained by the Financial Supervisory Service.

**35 Company information**

What information must companies publicly disclose? How often must disclosure be made?

Listed companies or companies that are required to submit an annual report must submit to the Financial Services Commission and the Korea Exchange the report setting forth the information listed below on the company: overview of the company, corporate governance, board of directors, affiliates of the company, shareholders, directors and officers and employees, majority shareholders, transactions with officers and employees, financial information and ancillary information related thereto, audit opinion of the statutory auditor, etc. Also, such companies must submit a regular report each quarter in a fiscal year. The submitted reports are made available on the DART website. In addition, such companies must submit a timely report setting forth material information by the date following the day on which an event having a material adverse effect on the management or assets of the company occurs. Such event may include but not be limited to the following: application for commencement of a rehabilitation proceeding, merger, spin-off, comprehensive exchange of shares, transfer of a material business (assets), sale or transfer of treasury stocks and issuance of convertible bonds or bonds with warrants.

**Hot topics****36 Say-on-pay**

Do shareholders have an advisory or other vote regarding executive remuneration? How frequently may they vote?

See question 28.

**37 Proxy solicitation**

Do shareholders have the ability to nominate directors without incurring the expense of proxy solicitation?

Any shareholder with the qualification stated in question 3 may object to or propose agenda items six weeks prior to the date of a general meeting of shareholders, including suggesting the appointment of directors or candidates for directorship positions, in written or electronic form.

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