

# Corporate Governance

*Contributing editor*  
**Holly J Gregory**



**2016**

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# Corporate Governance 2016

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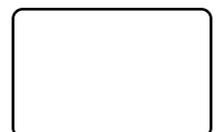


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# Korea

Philippe Shin and Byung Tae Kim

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## 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? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?**

The Korean Commercial Code (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 (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.

Listed companies must mandatorily comply with listing rules issued by the Financial Supervisory Service or the Korea Exchange.

It should be noted that the Act on the Corporate Governance of Financial Companies (the ACGFC) will come into effect on 1 August 2016 after its promulgation on 31 July 2015. The ACGFC was introduced in a bid to improve and strengthen the current financial corporate governance regime and provide for uniform and systematic standards for the corporate governance of Korean financial companies (both banks and non-banks). Once the ACGFC becomes effective, the current regulations on the corporate governance of financial companies under certain laws, such as the Capital Markets Act and the Financial Holding Companies Act, will be repealed and replaced by those under the ACGFC.

### 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 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 and will be responsible for the ACGFC. 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 firm established domestically. However, recently, with the increasing number of foreign investors and institutional investors in Korean stock market, foreign proxy advisory firms such as Institutional Shareholders Services Inc have become more vocal.

## 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 or remove 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, a director may be dismissed only through a special resolution adopted by the 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 or her voting right is restricted if he or she 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 or her 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? Are virtual meetings of shareholders permitted?

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 or her 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.

There is no law permitting virtual meeting of shareholders, but virtual 'voting' is allowed (KCC, article 368-4). A company may determine that a shareholder may exercise an absentee vote by electronic means. Where a company has determined the exercise of voting rights by electronic means, each shareholder shall exercise their voting rights, including procedures for identifying the shareholders. In such cases, the company shall provide each shareholder with documents and reference materials necessary

to exercise their voting rights by electronic means (KCC, article 368-4). Unlike written consent, electronic voting does not need to be specifically allowed by the articles of incorporation, only a resolution of directors is needed (KCC, article 368-4(4)).

## 7 Shareholders and the board

### Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

A shareholder or group of shareholders holding more than 3 per cent of the capital (lower percentages apply in the case of listed companies) may require a shareholders' meeting and require an item to be added to the agenda of the shareholders' meeting, including appointments of directors, except when such item would be in violation of statutes or the company's articles of incorporation. A shareholder may not, however, demand that the board circulate statements by dissident shareholders, regardless of the shareholder's shareholding percentage.

## 8 Controlling shareholders' duties

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

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. The directors, on the other hand, are bound by these duties. However, the KCC considers any of following as a 'director' for the purposes of duties and responsibilities (KCC, article 401-2):

- a person who instructs a director to conduct business by using his or her influence over the company;
- a person who conducts business in person under the name of a director; or
- a person other than a director who conducts the business of the company by using a title that may give the impression that he or she is authorised to conduct the business of the company, such as honorary chairman, chairman, president, vice president, executive director, managing director, director or other.

In such situation where a shareholder falls into one of the above categories, the shareholder may owe duty just as director. In case of breach of such duties, the auditor or a shareholder who holds no less than one per cent of the total issued and outstanding shares may demand, on behalf of the company, that the relevant controlling shareholder stop such act (KCC, article 402), and a lawsuit filed by the company or other shareholders is possible. The controlling shareholder in such case, by law, shall be jointly and severally liable for damage against the company (KCC, article 399) and this liability can be enforced via the Civil Execution Act.

## 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 or her 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 (KCC, article 418).

**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 (KCC, article 335(1) (2)). A shareholder who intends to transfer his or her 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 may not be 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 or her 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, at 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 or her shares. It should be noted that, under the recently amended Capital Markets Act, a lateral spin-off of a listed company may trigger dissenting shareholders' appraisal rights if shares in the company to be newly established as a result of the spin-off would not be listed.

**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-quarter 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.

Further, the ACGFC promotes greater management independence of Korean financial companies by requiring the board to comprise of three or more outside directors, a majority of the board members to be outside directors (with some exceptions) and the chairperson of the board to be an outside director.

## 23 Board size and composition

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

Pursuant to the KCC, directors shall be appointed at a general meeting of shareholders (KCC, article 382(1)). Upon the appointment, the general meeting of shareholders can determine the size of the board. The minimum number of directors required for a company is three, except for companies

with total capital of less than 1 billion won, which may choose to have only one or two (KCC, article 383(1)). There is no maximum number of seats on the board, but the number can be fixed. There is a special requirement for listed company concerning the number of outside directors, that is: a listed company shall ensure that outside directors comprise no less than one-quarter of the total number of directors (except in cases determined by presidential decree); and listed companies whose total assets are valued at 2 trillion won or more, as at the end of the latest fiscal year, shall appoint three or more outside directors and the number of outside directors shall account for more than half of the total directors (KCC, article 542-8(1)).

In case of vacancies, the general meeting of shareholders shall appoint a new director. In cases where the number of outside directors does not meet the quorum required for the establishment of the board of directors due to any cause such as resignation or death of any outside director, a listed company shall appoint outside directors at the first general meeting of shareholders convened after such vacancy has occurred, to satisfy the requirements (KCC, article 542-8(3)). Also, 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.

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 or her 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 or her rights reinstated;
- a person in whose case not more than two years have elapsed since his or her imprisonment or a heavier punishment was completely executed or exempted;
- a person for whom two years have not elapsed since he or she was dismissed or removed from office after he or she 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 or her 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 or her spouse, lineal ascendants and lineal descendants; and
- a person determined by presidential decree, who has difficulty in faithfully performing his or her 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.

## 24 Board leadership

**Is there any law, regulation, listing requirement or practice that requires the 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. The 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. Further to a recent amendment to the KCC, a company may now adopt the 'executive officer' system to separate the management function from the supervisory. The company can choose between the traditional board system or the 'executive officer' system (KCC, articles 408-2(1) and 408-4). Under the 'executive officer' system, instead of the board appointing a representative director, the company will have, in addition to the board, a body of 'executive officers', each of whom will have the authority to represent the company. 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, has 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.

Under the ACGFC, a financial company is required to establish an executive candidate recommendation committee, an audit committee, a risk management committee and a remuneration committee.

## 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 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 a 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 that 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.

Under the ACGFC, the remuneration committee of a financial company should determine the amount and payment method of the remuneration of its executives and employees, and publicly disclose the remuneration of its key executives. Moreover, the ACGFC requires a certain portion of the remuneration to be a performance bonus, the payment of which would be deferred for a certain period of time in order to discourage executives and employees from making risky short-term investments.

## 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.

**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.

**34 Board and director evaluations**

**Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?**

Under the ACGFC, a financial company must establish internal corporate governance standards on matters relating to composition and operation of the board, board committee, expert qualifications for executives, evaluation of executive performance, CEO succession, etc, and publicly disclose the internal corporate governance standards and amendments thereto and the status of operation of the board in compliance with such standards on its website.

**Disclosure and transparency****35 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.

**Update and trends**

The current law requires listed companies to disclose compensation paid to registered officers and, under the recent amendment to the Capital Markets Act, from 30 March 2018, compensation paid to the top five highest-paid individuals belonging to a listed company (irrespective of whether they are registered officers), the amount of which would reach a certain level to be specified by presidential decree (not exceeding 500 million won), must also be disclosed.

As of January 2015, publicly traded companies can no longer use the shadow voting system. As a result, there may be difficulties in satisfying the quorum requirements for general meetings of shareholders. However, provided certain conditions (including implementation of electronic voting and proxy voting) are met, the shadow voting system will be allowed until 31 December 2017.

Owing to criticism that the transparency of ownership structure and corporate tax system may be hindered, the bearer share system has been abolished, and only registered shares are permitted.

**36 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 following information 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****37 Say-on-pay**

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

See question 28.

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**38 Shareholder-nominated directors****Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?**

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 (KCC, article 363-2(1)).

For non-listed companies, such shareholder's suggestion is non-binding for the company, that is, the general meeting can appoint a different candidate than the suggested candidate for director. However, for listed companies, the shareholder's suggestion for the appointment of a certain candidate for directorship is binding. In cases where a listed company announces or notifies convocation of a general meeting of shareholders, the purpose of which is to appoint directors, the listed company shall announce or notify the name, brief personal history and references of candidates for directors (KCC, article 542-4(2)), and the directors whose information is announced shall include those who were suggested by the shareholders qualified to propose agenda items.

## Getting the Deal Through

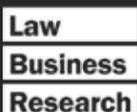
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