Shareholder Activism and Corporate Governance in Korea

Since the financial crisis of 2008, shareholder activism has not only increased at a rapid pace but also diversified significantly across global markets. Typical targets of shareholder activism were seriously underperforming companies, but profitable companies with poor governance structures can be targets of activism. Moreover, shareholder activists start to assert their power not just to increase shareholder value through changes in corporate policy but to put pressure on management to force spin-off of business, increase dividends, block takeovers, limit directors' pay and dismiss certain directors.

Korea is no exception to these global trends. Until the mid-2000s, shareholder activism had been largely led by an activist group named People's Solidarity for Participatory Democracy, with the primary objective to reform the corporate governance of chaebols. A recent high-profile case involved a battle waged by Sovereign to force reform upon SK Corp.'s management and to remove the company's chairman from the board in 2004. Another well-known case of shareholder activism in Korea was the battle at KT&G waged by a group of investors led by Carl Icahn. The Icahn-led group succeeded in having one outside director elected to the company board in 2006 and persuaded KT&G to dispose of non-core businesses ranging from real estate to pharmaceuticals. Moreover, proxy advisory firms have started to wield influence on shareholder voting in Korea. In 2013, the International Shareholder Services recommended that the shareholders of KB Financial Group vote against the election of three individuals nominated by the company's board. The National Pension Service (NPS), holding approximately 5.8 percent of the entire listed shares in Korea, voted against 17 percent of the proposals in 2012. Over the past years, NPS has exercised its voting rights more actively and voted against agenda items more frequently than before. Some liberal scholars mindful of recent developments warned of the advent of "pension fund socialism," noting that the government may intervene in corporate governance matters through the NPS.

The 2012 Amendments to the Korean Commercial Code are expected to boost shareholder activism to a substantial extent. Notable changes include: (i) requiring the approval of at least two-thirds of the board members for self-dealing transactions, which apply to not just transactions between the company and its director but also those between the company and its major shareholder, certain relatives of such director or shareholder and (ii) making directors liable for using company information and other business opportunities for their benefit to the detriment of the company unless such use of information/opportunity is approved by two-thirds of the board members and lowering the burden of proof that a plaintiff/shareholder is required to bear to prove such case.

In addition, as of April 30, 2013, the Korean National Assembly passed a bill to make the following amendments to the Financial Services and Capital Markets Act, which are likely to significantly affect the practices of the annual general meetings of shareholders. First, the new law abandoned shadow-voting practice, which mandated that the managers of investment funds exercise their voting rights in the same proportion as the votes of other shareholders cast at the annual general meeting of a company, and explicitly imposed fiduciary duty on such managers to exercise their voting rights and to disclose how they exercised the voting rights and the reasons therefor. Second, the new law required a listed company to disclose in its annual report the pay packages for each of the directors and officers earning not less than KRW 500 million and detailed standards and methods of pay calculation.

Recent regulatory changes and increasing public demand for so-called "economic democracy" are also expected to greatly facilitate shareholder activism in Korea. However, the legal framework on shareholder rights should be smartly formulated to increase company value by enhancing the transparency and efficiency of corporate governance and not to assist short-term gain-seekers to extract value from the company.

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