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# Amendments to the Guidelines for Corporate Governance Reports and Implications for Companies

2022.03.25

In March 2022, the Financial Services Commission of the Republic of Korea (the "**FSC**") amended its guidelines for corporate governance reports (the "**Amended Guidelines**") to address the increasing need for shareholder protection measures in the event of a change in ownership structures of listed companies, as well as the expansion of the scope of companies subject to mandatory disclosure of corporate governance reports to listed companies with total assets of at least KRW 1 trillion on a consolidated basis.  The Amended Guidelines will be effective immediately with respect to corporate governance reports filed by this year's submission deadline, which is scheduled for the end of May 2022.  As regulatory inspections for proper disclosure will be carried out on the basis of the Amended Guidelines from the second half of 2022, an accurate understanding of the Amended Guidelines is essential for regulatory compliance.

## Key Changes to the Guidelines

### Introduction of Shareholder Protection Meausres in Connection with Changes in Corporate Ownership Structure

In light of recent incidents where the split-off and listing by certain companies of their key businesses were criticized for impairing the rights of minority shareholders of the parent companies by causing a drop in the share prices of such parent companies, the Amended Guidelines have introduced detailed standards for the reporting of shareholder protection measures that will be undertaken in the event of a split-off, merger or other change in a company's ownership structure.

According to these new standards, companies should establish and include in corporate governance reports shareholder protection measures which will be implemented in the event of a change in ownership structure, including the collection of comments from minority shareholders and conservation of the rights of dissenting shareholders.  If such measures have not been established, the report should set out the reason for the failure to establish such measures and plans to develop appropriate procedures.

The Amended Guidelines further require companies to engage in active communication with their minority shareholders.  Specifically, companies should hold meetings with minoriry shareholders prior to effecting any changes to ownership structure to obtain feedback from minority shareholders in relation to the relevant transaction.  Companies should also actively communicate with minority shareholders regarding plans for listing after such transaction, including in relation to the method of listing and distributions to shareholders through dividends or redemption of shares in connection with the listing.

## Enhanced Disclosure Requirements for Affiliate Transactions

Companies have often approved affiliate transactions or transactions with management or controlling shareholders under comprehensive resolutions providing for an aggregate amount threshold that applies during a certain time period, making it difficult for shareholders to identify the terms of individual transactions approved under such comprehensive resolutions.  The Amended Guidelines address this issue by requiring companies to explain the rationale for any such comprehensive resolution and the details of the relevant transactions in the corporate governance report.

## Succession of CEO and Audit Committee

Under the Amended Guidelines, companies should establish detailed written procedures and policies relating to the succession of their CEOs, including in relation to the selection of CEO candidates, administration and training programs and the person or persons responsible for the establishement and operation of the succession procedures and policies. The Amended Guidelines also require any company that becomes newly subject to public disclosure of its corporate governance report to include plans to set up an audit committee in the report, if applicable.

## Other Changes

The Amended Guidelines clarify a number of disclosure and reporting requirements by (i) requiring companies to disclose in the corporate governance report whether they have provided information to shareholders at least 4 weeks before a shareholder meeting regarding the date on which the decision to hold the shareholder meeting was made, the date on which the shareholder meeting was announced and the date and place of the shareholder meeting, (ii) acknowledging a company's completion of outside director activity assessment only to the extent that the details of such assessment are set out in the corporate governance report, (iii) requiring at least one in person or video meeting or conference to be held with outside auditors per quarter (without taking into account any written communication) and (iv) establishing standards for age and gender composition of the board with the aim of diversifying the boards of listed companies.

In addition, the Amended Guidelines require companies to disclose through their corporate governance reports improvements in 15 key indicators as compared to the previous year.  The 15 key indicators are evaluated on the basis of whether the company (i) announced the convening of a shareholders meeting at least 4 weeks prior to the date of the meeting, (ii) used electronic voting, (iii) held shareholder meetings outside the peak season for shareholder meetings, (iv) provided at least annual notice of dividend policies and distribution plans to shareholders, (v) established and implemented CEO succession policies, including policies for emergency appointments, (vi) established and implemented internal control policies, (vii) separated the chairman of the board of directors from the representative director, (viii) adopted cumulative voting, (ix) established policies to prevent the appointment of any person who is responsible for causing damage to company value or infringement of shareholder rights as an officer of the company, (x) kept the term of office of outside directors at less than 6 years, (xi) provided annual (or more frequent) training sessions to its internal audit organization, which includes the audit committee and internal audit division supporting the audit committee, (xii) established independent departments to support its internal audit organization, (xiii) ensured that its internal audit organization included accounting or finance professionals, (xiv) allowed its internal audit organization to hold meetings with outside auditors at least quarterly without the company's management being present and (xv) implemented procedures for its internal audit organization to access material information regarding the management of the company.

## Implications for Companies

The adoption of the Amended Guideines is significant in that it established clear disclosure standards for companies that are subject to mandatory disclosure of their corporate governance reports.  As the FSS has announced its plan to seek further regulatory improvements to deal with the issue of companies listing subsidiaries following a split-off of core businesses, we believe it would be necessary to continue monitoring regulatory developments in this area.

Shin & Kim's dedicated ESG Group consists of qualified professionals in the environmental, corporate, labor, finance and antitrust sectors who are able to provide effective and practical advice in response to the heightened interest in ESG matters.  These professionals include Kyung Don Lee, an honorary managing partner at the firm, Yong Kook Lee, a senior advisor at the firm who served as the vice presidet of the Korea Corporate Governance Service, the top authority for ESG matters in Korea, Gyu-Seok Baek, a senior advisor at the firm who served multiple important roles in the Ministry of Environment, Daeyong Baek, a partner at the firm who is a commissioner of the Personal Information Protection Commission, Chang-Weon Rhee, a partner at the firm who served as the general counsel of Citibank Korea, Byung Tae Kim and Jae Young Chang, partners specializing in corporate governance matters, Jong Soo Kim, a partner who specializes in labor matters, Seong Ik Hwang, a partner who specializes in environmental matters, Geun-Baek Seok, a partner who specializes in antitrust matters, Kyung Hwa Moon and Soo Young Song, partners specializing in finance matters and Hyun Mi Cho, a partner who specializes in renewable energy matters, each having at least 10 years of experience in their area of specialty.  Based on such diverse experience and expertise, the professionals in the ESG Group are able to provide comprehensive, customized solutions to clients, particularly in relation to important regulatory changes that affect ESG matters.

[Korean version] 기업지배구조보고서 가이드라인 개정의 내용 및 시사점

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