



“Stronger” Amendments to the Korean Commercial Code –Golden Time to Assess Corporate Governance Related Risks

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1. Introduction

The amendments to the Korean Commercial Code (the “KCC”) promoted by the Lee Jae-Myung administration (the “Amendments”) have cleared the final legislative hurdle, having recently been passed by the National Assembly of Korea (the “National Assembly”). The amendments, championed by the Democratic Party of Korea since the 21st presidential election cycle, have now become law by virtue of bipartisan agreement, marking a rare instance of cross-party consensus in the current Korean political environment. The newly enacted provisions introduce several sweeping reforms: they expressly codify directors’ fiduciary duty of loyalty as also being owed to shareholders; redesignate outside directors of listed companies as “independent directors,” thereby tightening independence requirements; strengthen the so-called “3% rule” by capping the voting rights of controlling shareholders and their specially related parties in the aggregate at three percent when electing audit committee members; and mandate the introduction of fully virtual general meetings of shareholders for large-scale listed companies.

Particularly noteworthy is that the final Amendments not only resuscitate, but also fortify, the bill that had passed the National Assembly last March but was nullified through the exercise of a veto by Han Duck-Soo, then “Acting President” and former Prime Minister, acting on behalf of former President Yoon Suk-Yeol. As it concerns the effective dates of the Amendments, the statutory provision expanding directors’ duty of loyalty toward shareholders will take effect immediately upon promulgation, the requirement for electronic shareholders’ meetings will become compulsory as of 1 January 2027 and the remaining provisions will enter into force after a one-year grace period. The Amendments do not, however, incorporate earlier proposals to mandate cumulative voting for large-scale listed companies or to expand the number of audit committee members to be elected by separate vote, and those issues have been deferred for further review after additional public hearings, leaving open the prospect of subsequent amendments.

As the first piece of legislation enacted through bipartisan agreement under the new administration, these Amendments are poised to usher in a transformative shift in corporate governance and shareholder-rights protection. Corporations must now evaluate, and promptly adapt to, the practical ramifications of these statutory changes. This newsletter seeks to provide an overview of the Amendments’ principal features and analyze the key implications for corporate boards,

management, and investors alike.

2. Expansion of Directors' Duty of Loyalty to Include Shareholders

The Amendments expand the scope of a director's duty of loyalty from being owed solely to "*the company*" to being owed to both "*the company and its shareholders.*" Under former Article 382-3 of the KCC, directors were expressly obliged to perform their duties faithfully "*for the company,*" a formulation that critics argued left ordinary shareholders insufficiently protected. Courts frequently echoed this limitation, characterizing directors merely as agents of the corporation and rejecting liability where the company itself suffered no direct loss, even when shareholders' interests were clearly harmed.

The revised statute now makes explicit that directors must actively safeguard the interests of both the corporation and its shareholders. This change is expected to enhance the influence of minority shareholders and institutional investors, likely resulting in an uptick in shareholder derivative actions, direct shareholder suits, and even criminal complaints for breach of fiduciary duty. In particular, corporate restructurings such as mergers or spin-offs — where the interests of controlling shareholders and those of minority shareholders often clash — present a heightened risk of escalating into criminal proceedings if directors fail to balance these competing interests properly.

Accordingly, companies should refine their decision-making protocols in anticipation of issues on which shareholder factions may sharply diverge. When considering such matters, boards must thoroughly evaluate not only the impact on the corporation but also the consequences for ordinary shareholders, devising measures to mitigate any adverse effects they may face. It has become critically important to create and preserve contemporaneous records demonstrating that decisions were made on the basis of adequate information and with a view to the best interests of the shareholder body as a whole.

Proactive investor-relations efforts and transparent communication with minority shareholders will likewise be essential to mitigate or prevent unnecessary friction and litigation. By persuading shareholders in advance and maintaining clear, comprehensive disclosures, companies can reduce disputes and comply more effectively with the newly clarified and broadened duty of loyalty.

3. Expansion of Independent Directors in Listed Companies

Under the Amendments, the statutory designation of "outside director" applicable to listed companies has been replaced with the term "independent director," and the mandatory minimum ratio of such "independent directors" sitting on the board of a listed company has been increased from at least one-quarter to no less than one-third of the total number of directors. The independent director regime, originating in the United States as a device to mitigate the agency problems arising from the separation of ownership and management and to safeguard shareholder interests, was introduced in Korea decades ago, yet the Korean outside - director regime has often been criticized as a mere formality, lacking genuine independence and functioning only as a rubber-stamping mechanism.

Although the Amendments preserve virtually all of the existing qualifications and disqualifications applicable to outside directors, the deliberate shift to the term “independent director” is intended to underscore both the independence and the attendant fiduciary responsibilities of these board members. Substantively, the prior outside-director framework remains in place and the provisions in the special chapter governing listed companies have simply been revised to substitute the term “independent director” for “outside director.” Because the core eligibility and disqualification standards remain unchanged, this particular change introduced as a result of the Amendments is largely viewed as a terminological refinement that highlights the importance of independence. Nevertheless, subsequent amendments to the Enforcement Decree of the KCC could tighten the qualification or disqualification criteria for independent directors, and companies should therefore monitor forthcoming regulatory developments with particular vigilance.

4. Expansion of the 3% Rule for the Appointment of Audit Committee Members in Listed Companies

The Amendments introduce a matter that had been omitted from the previous revision — the extension of the so-called “3% rule” to resolutions concerning the appointment and removal of audit committee members of listed companies. Under the current statute, a listed company that exceeds a statutory asset threshold (a “**Large Listed Company**”) must establish an audit committee. Where the shareholders’ meeting elects or dismisses an audit committee member who is an outside (independent) director, the controlling shareholder and each of its specially related parties are permitted to exercise up to 3% of their respective voting rights on an individual basis, and their shareholdings are not aggregated for this purpose. By contrast, when the shareholders’ meeting elects or dismisses an audit committee member who is not an outside director, the voting rights of the controlling shareholder and all of its specially related parties are aggregated and capped at an aggregate maximum of three percent (the “**Aggregate 3% Rule**”). Because of this disparity, most Large Listed Companies have customarily ensured that audit committee members are elected from the pool of “outside directors” in order to avoid the stringent aggregate cap.

Pursuant to the Amendments, the Aggregate 3% Rule will now apply uniformly even to the election or removal of audit committee members who are outside (independent) directors. Accordingly, the controlling shareholder must now aggregate its own shareholdings with those of its specially related parties, and the combined voting power may not exceed 3% of the total issued and outstanding shares. This change is expected to materially diminish the influence that a controlling shareholder can exert over resolutions concerning the composition of the audit committee. Furthermore, shareholders’ meetings have historically faced challenges in achieving the requisite quorum for such resolutions and the universal application of the Aggregate 3% Rule may exacerbate the risk of failing to satisfy the statutory voting thresholds.

5. Mandatory Electronic Shareholders’ Meetings for Large Listed Companies

Whereas the decision to convene an electronic shareholders' meeting previously rested with the board of directors, beginning in 2027, Large Listed Companies will be statutorily required to hold an electronic shareholders' meeting in parallel with the physical meeting.

The electronic shareholders' meetings currently conducted by certain listed companies are "observer-type" hybrid meetings, meaning that shareholders who participate electronically may observe the proceedings but cannot exercise their voting rights in real time. The Amendments, however, expressly mandate the use of "participatory hybrid meetings," under which shareholders attending electronically must be able to vote and otherwise engage in the decision-making process contemporaneously with on-site participants. By making electronic attendance compulsory, the Amendment is expected to facilitate participation, increase the attendance rate of minority shareholders, and alleviate the concentration of voting rights.

This new requirement raises practical issues, including how to verify that a remotely attending individual is an actual shareholder and how to ensure that the rights to ask questions and submit motions are fully protected. Corporations must therefore not only undertake comprehensive technical preparations — such as building the requisite IT infrastructure — but also adjust their overall procedures for conducting shareholders' meetings to accommodate the shift to electronic participation.

6. Conclusion

The Amendments, now dubbed as the very first legislation aimed at improving people's lives by the Lee Jae-Myung administration, were enacted pursuant to bipartisan agreement. Although the National Assembly resolved to address the adoption of cumulative voting and the expansion of separately elected audit committee members at a later public hearing, consensus was nonetheless achieved on the core provisions of the Amendments, thereby striking an equilibrium between apprehensions over increased managerial uncertainty and the imperative to protect shareholder rights. The revised statute heralds more than a mere legislative adjustment; it tends to shed light on an upcoming paradigm shift in corporate governance and a corresponding evolution in directors' perceptions of their fiduciary responsibilities. Strengthened duties of loyalty and related provisions uniformly pursue the twin objectives of empowering minority shareholders and imposing more robust checks on controlling shareholders and management, and are poised to exert both direct and indirect influence on board operations and shareholder-meeting strategies in the years ahead.

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