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Heightened Directors' Fiduciary Duty to Minority Shareholders in Korea

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As widely reported in the media, the amendment to Article 382-3 of the Commercial Code enacted on July 22, 2025 expanded directors' duty of loyalty to expressly encompass shareholders (as a whole) in addition to the company. On February 25, 2026, the Ministry of Justice issued the Guidelines for Directors' Conduct in Corporate Reorganizations (the "**Guidelines**"), which provide practical direction on the implementation of the amendment. In this newsletter, we examine two contexts in which these developments are particularly significant—(1) joint ventures and (2) going private transactions.

The amendment applies irrespective of whether the company is privately held or publicly listed. Joint ventures in Korea are typically established as private companies. Although joint venture or shareholders' agreements customarily contain provisions safeguarding minority shareholders, the amendment now affords such shareholders an additional layer of statutory protection. Where the directors of a joint venture take action that unfairly prejudices minority shareholders, those shareholders may seek injunctive relief or damages under the statute, in addition to any remedies available to them under contract.

Notable going private transactions in Korea have been led by private equity sponsors following the acquisition of a controlling stake in a listed company as well as by conglomerates undertaking group restructurings. Other recent reforms aimed at protecting minority shareholders—such as cumulative voting and electronic general shareholders' meetings—and at enhancing shareholder value, such as the mandatory cancellation of treasury shares, have weakened traditional takeover defense measures and emboldened more shareholder activism. These developments appear to have heightened interest in going private transactions. Such transactions typically involve two or more sequential phases with minority shareholders (for example, a tender offer followed by a squeeze-out), and the amendment extends protection to minority shareholders at each phase, each of which may be subject to a distinct set of statutory and regulatory requirements, including with respect to pricing.

In light of the foregoing, directors must now exercise heightened care when undertaking transactions in which minority shareholders may allege unfair treatment or outcomes. While the business judgment rule established by the Supreme Court—pursuant to which a good-faith, reasonable judgment made on the basis of adequately gathered and considered information will, absent special circumstances, generally be respected—remains intact, it is expected to be reinforced by the measures recommended in the Guidelines. These include obtaining fairness opinions from external advisors, maintaining more detailed minutes or transcripts of board deliberations (including consideration of available

alternatives), establishing a special committee composed of independent directors, and enhancing disclosure to and engagement with shareholders. In recent corporate reorganizations proposed by listed companies, the financial regulatory authorities have already begun requesting that issuers revise and elaborate upon these matters in their registration statements and material event reports (analogous to Form 8-K filings in the United States).

Shin & Kim is well positioned to advise directors and shareholders of both private and listed companies in each of the situations described above. Our corporate, M&A, capital markets and dispute resolution practices are consistently ranked in the highest tier by leading international publications, and our team comprises experienced lawyers, former officials of the regulatory authorities and the Korea Exchange and qualified accountants.

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