



Maximize Shareholder Value: Activist Investor Strategies in Korea

The shifting corporate environment in Korea has given overseas activist investors an opportunity to maximize shareholder value, but the intricacies of the Korean capital market and legal practice, as well as the influence of chaebols, create many potential risks. Our Claim Monetization & Dilution team, including lawyers based in Seoul, lays out creative strategies to help investors navigate the pitfalls and increase their chances of success.

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Recent developments have made Korean family conglomerates known as chaebols increasingly attractive to overseas activist investors. Succession of family control of *chaebols* and heavy inheritance tax burden dilute ownership, which increases openness to foreign investors. The government has also pushed for reforms, including recent amendments to the Korean Commercial Code in favor of minority shareholders, and major Korean institutional investors have adopted stewardship codes.

However, the intricacies of the Korean capital market and legal practice, combined with still overwhelming influence of the *chaebol* companies over the market and economy generally, mean activist investors need to tread carefully. Only by engaging in creative strategies that take both local and overseas factors into consideration do investors have the greatest chance of success.

#1: Find Your Allies

The more shareholders unite, the more pressure this creates for controlling shareholders. Many pension funds and mutual funds hold significant stakes in companies, but they have historically been passive when it came to shareholder votes and activist campaigns. In recent years, many of these traditionally passive institutional investors publish and emphasize voting guidelines or investment philosophies, the market has developed more visibility as to what values these investors hold important by looking at the “trigger words,” which in turn enables activist shareholders to adopt as they develop their proposals, potentially leading to more support from these traditionally quiet players. For example, Korea’s National Pension Service (“NPS”) – one of the biggest investors in the world, adopted its Stewardship Code in 2018 and have since been open to taking a more open approach, focusing on shareholder value.

In addition, the success of overseas activist campaigns has led to the launch of Korean activist funds. There are at least dozen Korea-based activist funds focusing on Korean capital market and they have led local activist campaigns over the past several years. Joining forces with these local activist funds often benefit both sides in different ways.

While retail investors are typically not the core target audience in many activist campaigns, some level of mass media outreach can be fruitful, particularly in close votes. Publicity from retail investors may also create pressure on key local shareholders, and vice versa, setting off a positive feedback loop. This makes it especially important to have Korean-speaking counsel on the ground to take full advantage of local messaging and advocacy.

#2: Generate Public Pressure

As alluded to above, an effective public relations campaign is an essential ingredient to communicating the activist investor’s position to other shareholders and persuade them on which way to vote. A well-designed PR campaign takes into consideration the broader strategy, including anticipating key inflection points, and has precise messaging supported by verifiable facts.

One consideration turns on whether to coordinate with local or worldwide media outlets and proxy advisors. Some local media may be affiliated with or influenced by the target company or controlling family, so it is critical to be alert to the reporters who are able to write neutrally. Working with global outlets that are respected in Korea may mean that, if coverage is favorable, even hostile local outlets have no choice but to boost coverage and share the activist investor’s messaging.

#3: Make Your Move

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In addition to a conventional application for court injunction to block resolution of a shareholder's meeting, sometimes an effective way to secure the attention and support of shareholders and proxy advisory firms is to make a move, including by proposing a competing shareholder resolution. Proposing reasonable and economically attractive alternatives to shareholders helps to achieve the activist investor's ultimate goals, especially if the goal is to block a controlling shareholder's attempt to extract value from the minority shareholders.

Investors need to pay special attention to legal thresholds for shareholder participation, however. Korean law has two alternate routes to make a shareholder proposal: (i) 0.5% of the total outstanding voting shares, plus a 6-month holding period, or (ii) 3% of the total outstanding voting shares for a publicly listed company. However, although requiring more work and coordination, shareholders can also engage in proxy solicitation without a proposed resolution, setting up a more aggressive environment that invites more scrutiny and debate on the paths forward.

#4: Play Nice

In certain circumstances, a more cooperative approach with the controlling shareholders may yield a better result, though investors need to consider carefully whether this is the right strategy. The target audience is often most receptive only if they perceive the activist shareholder as a palpable threat – such as if they are winning over the overall shareholder opinion or at least has a strong economic case that other shareholders would find persuasive – or if the activist shareholder has taken a “white knight” approach and cooperated with the controlling shareholder.

Some controlling shareholders may be amenable to discussions about the activist shareholder becoming a strategic partner, in exchange for certain concessions. Activists need to be wary of significant legal risks of accusations of insider trading and “unfair trading,” however, when communicating with management – in addition to, of course, the level of commitment on the economic side, e.g. lock-up period, voting restrictions, etc.

Activist investors rightly sense opportunities in the Korean market, but potentially serious pitfalls await them in their path. By engaging with counsel who understands both the intricacies of Korean corporate and criminal law, as well as the potential collateral effects of any consequences within and outside Korea, activist investors can design and deploy a holistic strategy aimed at maximizing shareholder value.

About Kobre & Kim's Claim Monetization and Dilution Offering

Kobre & Kim is a conflict-free Am Law 200 law firm focused on disputes and investigations, often involving fraud and misconduct. Because our firm avoids ongoing client relationships with common industry participants and instead focuses on special-situation engagements, our Claim Monetization and Dilution team can offer the most aggressive, creative and independent advocacy even in cases involving numerous, overlapping institutional stakeholders' interests.

We also have significant experience in corporate governance matters, having led and defended initiatives on the formation and conduct of special investigative committees; organization of steering committees of equity holders to remove incumbent directors outside a regularly formulated election; the serving of statutory notices and pursuit of emergency actions relating to books and records access and related asset-freeze applications; applications for involuntary receiverships and liquidations; and other special strategies to place our clients in a position of strength to negotiate a satisfactory resolution.

Led by former U.S. federal prosecutor Michael Kim, our Korea team includes native Korean-speaking lawyers based out of our Seoul and U.S. offices. Additionally, we have extensive experience with South Korean regulatory and criminal authorities such as the Korean Financial Supervisory Service and the Korean Public Prosecutors' Office.