



## Minority Shareholders Gain Tools Against Corporate Abuse in Korea

**The days when minority shareholders of Korean conglomerates, or “chaebols,” could not defend their interests against controlling shareholders are over. With new amendments to the Korea Commercial Code (KCC), our Claim Monetization and Dilution team explains how minority shareholders and activist investors can wield new tools to protect their investments.**

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Domestic and foreign minority shareholders of Korean conglomerate chaebols have had few ways to protect their interests against controlling shareholders abusing management controls or pursuing their personal interests at minority shareholders’ expense.

In December 2020, the Korean National Assembly passed a number of amendments to the Korean Commercial Code (“KCC”) providing additional tools to support and protect minority shareholders against the controlling *chaebol* family’s disproportionate control of large-listed companies.

### Key Changes and Implications

#### 1) 1% Shareholders Can Now Leverage Multi-Level Derivative Litigation

Under the amended KCC, certain qualifying shareholders of a parent company can now bring a derivative lawsuit not only against the directors of the company but also against directors of a subsidiary, including a second-tier subsidiary, for breach of fiduciary duty. Shareholders qualify if they hold 1% or more of the total outstanding shares at any time, or in the case of a publicly listed company, 0.01% or more of the outstanding shares for more than six months.

Minority shareholders may use the claim to delay or even block value-destructive transactions and uphold their interests in the company, and also in the corporate group. These farther-reaching shareholder rights will allow the minority shareholders to hold directors accountable for allowing controlling shareholders to abuse management controls or pursue personal interest – often through intra-group transactions and restructuring that favor controlling shareholders.

#### 2) Minority Shareholders Gain Certain Audit Committee Appointment Rights

The KCC requires listed companies with total assets of KRW 2 trillion or more to have an audit committee, but until the recent amendment had not provided a protection against the controlling shareholder leveraging its votes to effectively designate the members of the committee. The 3% Cap Rule, which helped minority shareholders appoint board members, had previously only applied to those who would not sit on the audit committee.

The amended rule now applies to the election of at least one board member who would sit on the audit committee, allowing minority shareholders to play a larger role not only in appointing a board member, but also in ensuring that at least one of the audit committee members be supported by a broader group of shareholders. This not only increases corporate representation and oversight, making it harder for controlling shareholders to abuse their position, but it also gives minority shareholders leverage to make further proposals to advance their interests and better corporate governance measures.

#### 3) Requirements for Minority Shareholder Rights Gain Much-Needed Clarity

The amendment also clarified that certain shareholder rights are available to a shareholder that holds *either* (i) 3% or more of the outstanding voting shares for a listed or privately held company, *or* (ii) for listed companies, a lower threshold for the 6-month holding period.

Before the amendment, courts were split on whether shareholders had to meet both the 3% holding requirement and the 6-month holding period. In 2005, for example, a court denied Elliott’s injunction application relating to the Samsung C&T-Cheil Industries merger based on the interpretation that Elliott had to meet both requirements. However, the rule has now been clarified – shareholders who do not meet the 6-month requirement can still bolster their position by meeting the 3% threshold. This means a larger number of minority and activist investors have gained new access to rights that were previously in question, allowing them to level the playing field and limit the overreach of controlling shareholders.

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The latest amendments to the KCC confirm the continued development in Korea's capital markets toward a more transparent and value-driven investment ecosystem. Minority shareholders and activist investors from both local and foreign markets are now entering a more inviting environment where they can advance their views, proposals and interests – and defend themselves against self-dealing by management and controlling shareholders – with these new tools at their strategic disposal.

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## **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.