

Korea Country Paper:
The Role of Boards and
Stakeholders in Corporate Governance

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I. Introduction

Until quite recently boards and their members in Korean corporations played a rather dubious and almost ceremonial role. This stage of affairs has changed dramatically in the last five years, especially since the onset of the financial crisis. With regard to traditional business practice, as well as in the cultural, social and political context, corporate governance has finally entered mainstream discussion as an issue that must be improved upon in Korean businesses. From a practical standpoint, board functions are finally taking form, largely following a string of regulatory and legal reforms. Until then board of directors (BOD) meetings were not even held and BOD minutes could not even be found in most Korean companies.

Typically, boards were perfunctory affairs and rubberstamp mechanisms whereby the planning office of companies would draft the necessary board agenda based on the wishes of the controlling shareholder and then would approve them by stamping all the "seals" of all the directors that they would hold in their office. Many directors did not even know that board meetings were supposed to be held. With the recent onset of legal changes such as the presence of outside directors, the increase in shareholder activism through such means as legal actions, the strengthening of shareholder rights and more emboldened regulatory forces, the legal machinery governing boards finally has started to take form. BOD meetings are now actually convened, the minutes are kept and voting takes place. Progress has been made but much regulatory reform needs to be achieved. In the end, the need for managerial oversight, especially over expropriation by controlling shareholders, still remains a continuing uphill quest in Korea.

II. The General Legal Framework

In Korea, the Commercial Code (CC), the Securities Exchange Act (SEC) and the Korea Securities Exchange Listed Company Regulations (LCR) are the main laws and regulations that apply to listed corporate entities. The CC serves as the primary law governing stock corporations. The SEC in turn applies specifically to all listed companies whereas the LCR applies to those companies specifically listed on the Korea Stock Exchange.¹ The CC and SEC in particular have undergone a string of significant amendments in the past couple of years with most of the revisions focusing on provisions that cover corporate governance. More specifically, the CC was amended three times in 1995, 1998 and 1999 and the SEC was amended more than nine times with the most recent revision coming in March 2001 and pending final approval from the President.²

Korean boards have a minimum of three directors and their respective terms cannot exceed three years each. (CC 383).³ At the end of 1998, listed companies on average had eight directors per board, but as of November 2000 this figure has dropped to 6.5 directors per board. This follows a general trend to reduce the number of board members that has been driven by the

¹ Those companies listed on the Korean Securities Dealers Automated Quotation System (KOSDAQ) have been excluded in this analysis.

² As of March 20, 2001, this most recent revision of the SEC has passed the National Assembly and is pending final promulgation by the President that is scheduled at the last week of March 2001. This paper includes these most recent revisions to the SEC and assumes it is promulgated in its current form.

³ Small companies with less than 500 million won (\$ 385,000) in stated capital can have a minimum of one director. All currency conversions in the paper have been made at U.S. \$ 1 = 1300 won.

need of listed companies to have a certain proportion of outside directors on their boards. In order to meet this requirement, instead of increasing the number of outside directors, many companies have resorted to reducing the number of registered inside directors. Other than outside directors and directors of special entities such as insurance companies and securities companies, there are no minimum legal or regulatory requirements for directors that serve as members of the board.⁴ Finally, although companies can stagger the terms of the members of their board, it could not be determined as to how many companies have actually adopted this type of scheme.

Both inside or executive directors and outside or non-executive directors are elected solely by shareholders in Korea (CC 382). Boards are also unitary. The shareholders elect the directors at the shareholders' meeting through a general majority vote where those that approve must consist of at least one-quarter of the total outstanding stock with voting rights. In the case of large companies with more than 2 trillion won (\$ 1.54 billion) in assets many special rules exist and most notably they must elect outside directors in a special manner. When these large companies elect outside directors that will become members of their audit committee they must follow the election procedures that are used when voting for traditional auditors. This means that large shareholders with more than three percent of the total stock with voting rights cannot exercise the voting rights of those shares that exceed three percent when voting for such outside directors. (CC 409; SEC 54-5). This three percent restriction in voting rights can be even further reduced through the articles of incorporation.

Although Korea hails from the German civil law tradition, it is not a legal requirement that employees can elect a board member of the company. Similarly, participation by labor is not required and rarely occurs and this is despite the fact that almost all (99.6%) Korean listed companies have employee stock ownership plans. These stock ownership plans, however, have not had much influence in the election of board members. According to one recent measure, only 4.3% of the total number of outside directors that have been elected have been nominated by employees of companies.

As of 1998, cumulative voting has become an option for companies. Unfortunately, from a policy standpoint, it has remained largely ineffective. The problem lies in that when the Commercial Code was amended to allow cumulative voting the new law also included a provision that permits companies to exclude it through their articles of incorporation. (CC 382-2). As a result, as of November 2000, 77.6% of all listed companies have adopted provisions in their articles that specifically exclude cumulative voting. Even among those companies that have not excluded it and have therefore must follow it, to date, there have been no reports that a company has elected a director through cumulative voting.

The new SEC has attempted to ameliorate this situation by requiring that shareholders with at least one percent of the voting stock can request cumulative voting. (SEC 191-18). This substantially lowers the previous holding requirement of three percent that still applies to non-listed companies. The new SEC also tries to reverse the trend of excluding cumulative voting and has stopped just short of mandating it. In the future, as with the election of auditors, when shareholders' vote to exclude or include cumulative voting in their articles of incorporation large shareholders will be restricted to exercising only 3% of their voting rights. (SEC 191-18). Whether these new changes will be able to resuscitate the adoption of cumulative voting will have to wait until next year and the years to follow.

A legal entity might become a board member in Korea but this is an unclear issue that is disputed among scholars. To date, there have not been any reports that a legal entity such as a

⁴ The detailed qualifications for outside directors are discussed in Section V.

corporation has ever been elected a director. Given the dominating role of controlling shareholders in most Korean companies especially in large chaebol conglomerates where they maintain their control through a matrix of cross-shareholding by sister companies, it is likely that allowing legal entities to become directors will make it more difficult for non-controlling shareholders to monitor potential expropriation by the controlling shareholders. In the case of the top 30 chaebols, for instance, inter-conglomerate cross-shareholding by sister companies accounts for 36.62% of the total shares. The personal ownership stakes of the controlling shareholders in the top 30 chaebols in contrast averages less than 1% per company.

Board members do not have to own shares in the company for which they serve in Korea. Companies, however, may require such ownership in their articles of incorporation if believe it is necessary (CC 387). As for the terms of directors, because non-executive outside directors have the same duties and responsibilities as executive directors it would be difficult to argue that their terms can differ. There have been no reported cases where a company has attempted to have different length of terms for different directors. The reappointment of both non-executive directors and executive directors are not automatic and are instead based on a conscious decision by the shareholders. As mentioned previously, in large companies with more than 2 trillion won in assets outside directors must be appointed through an outside director nominating committee. Overall, conscious decisions regarding reappointment are more suitable because it gives shareholders an opportunity to review and assess the competence of the non-executive outside director.

III. The Composition of the Board

All listed companies in Korea now consist of inside directors and outside directors. In fact, all listed companies must now have boards consisting of at least 25% outside directors (SEC 191-16).⁵ In particular, larger companies with assets over 2 trillion won (\$ 1.54 billion) must have at least boards that have at least 50% outside directors. (SEC 191-16).⁶ As seen in Table 1, the proportion of outside directors has increased dramatically and now nearly approaches one-third of the total number of directors. These changes in board composition largely reflect the new legal requirements of the SEC and LCR that have been adopted in the past couple of years.

Another notable change is that the number of non-standing directors has substantially increased relative to the number of standing directors during the past 3 years. This most likely reflects the needs of companies to reduce expenses in terms of the high salaries for these board members, especially because boards used to be unnecessarily overstaffed when their function was more ceremonial. Traditionally, in most of Korean corporate history, boards consisted of former employees that had spent their lifetime at the company. Board positions were often seen as a way to honourably retire aging employees out of the company. Overall, the addition of more independent outside directors can be seen as a positive development in trying to enhance managerial accountability and increasing monitoring against controlling shareholder expropriation. The effectiveness of these outside directors rides on their competency and independence. Nevertheless, several limitations concerning outside directors remain, particularly concerning the selection process whereby they are chosen, which is discussed in greater detail later.

⁵ The first outside directors were elected in 1996, the LCR first required that listed companies have at least 1 outside director in 1998 and the SEC later began to require certain percentages in 2000.

⁶ The audit committees of securities companies must consist of two-thirds outside directors. (SEC 54-6).

Table 1 Proportion of Inside Directors./Outside Directors and Standing Directors/Non-
Standing Directors (1998-2000)

	1998 (736 Companies)	1999 (701 Companies)	2000 (693 Companies)
Directors	5,188 (88.6 %)	3,646 (75.2 %)	3,183 (69.2 %)
Outside Directors	669 (11.4 %)	1,204 (24.8 %)	1,418 (30.8 %)
Total	5,857	4,850	4,601
Standing Directors	4,433 (75.7 %)	3,249 (67.0 %)	2,882 (62.6 %)
Non-Standing Directors	1,424 (24.3 %)	1,601 (33.0 %)	1,719 (37.4 %)
Total	5,857	4,850	4,601

In general, the background of directors is quite diverse with a sizable number of them coming from professional occupations or backgrounds. The overall breakdown from an occupational standpoint has not changed much in the past three years. Persons that are licensed technicians, accountants, attorneys and tax consultants have consistently comprised more than 80% of the board members in the past three years.

Table 2 Skills, Expertise or Background of Directors on Boards (1998-2000)

	1998			1999			2000		
	No.	%	Yearly Change	No.	%	Yearly Change	No.	%	Yearly Change
Licensed Technicians	294	36.0	-64%	269	31.5	-25%	191	24.7	-78%
CPAs	171	21.0	+93%	197	23.0	+26%	171	22.9	-26%
Attorneys	122	15.0	+105%	155	18.1	+33%	147	19.7	-8%
Tax Consultants	76	9.3	+39%	87	10.2	+11%	104	13.9	+17%
Management Consultants	53	6.5	+21%	61	7.1	+8%	37	5.0	-24%
Physicians/ Pharmacists	53	6.5	-3%	46	5.4	-7%	33	4.4	-13%
Professors	14	1.7	-4%	10	1.2	-4%	8	1.2	-2%
Others	33	4.0	+15%	30	3.5	-3%	62	8.2	+32%
Total	816	100.0	-	855	100.0	-	753	100.0	-

The composition of outside directors largely reflects those of inside directors but differs somewhat. Notable variances for instance include the larger numbers of professors and former government officials who account for 26.1% of the outside directors of listed companies and the smaller percentage of attorneys, accountants and tax consultants who comprise only 18.4%. Korea still lacks a sufficient pool of professional managers and those former executives that are chosen as outside directors are almost always old employees or persons from related companies and no matter how qualified are almost never from competitors.

Table 3 Professions of Non-Executive Outside Directors (November 2000)

Profession	Number of Persons	Percentage (%)
Executives	424	28.9
Professors	271	18.5
Bankers/Financiers	249	17.0
Attorneys	140	9.5
Former Government Officials	111	7.6
Accountants	96	6.5
Tax Consultants	35	2.4
Researchers	33	2.2
Securities Dealers	25	1.7
Journalists	22	1.5
Others	61	4.2
Total	1467	100

The total number of foreign directors on boards has been steadily increasing in the past couple of years. From the standpoint of creating more diverse boards, the presence of foreign directors can be viewed as a positive development. While the presence of foreign directors can help, however, the important factor is not as much whether they are foreign nationals per se but whether the directors are independent from the principal and controlling shareholder and can act on behalf of all shareholders equally. In some cases, foreign directors have shown to be more far more willing to withstand improper influence and pressure from outsiders such as regulators, politicians or creditors. Yet, in other cases, foreign directors have been just as complicit in failing to restrain the whims of the controlling shareholders. A telling sign of the pervasive influence of controlling shareholders, for instance, in the selection of outside directors is that 73.8 % of the outside directors that have been elected to boards have been nominated by the controlling shareholder themselves.

Table 4 Percentage of Foreign Directors on Boards

(2000)

	Koreans	Non-Koreans	Total
Directors	4,468 (97.1 %)	133 (2.9 %)	4,601 (100 %)
Auditors	783 (98.5 %)	12 (1.5 %)	795 (100 %)
Total	5,251 (97.3%)	145 (2.7%)	5,396 (100 %)

(these figures exclude foreign that act as managers, consultants or advisors)

The proportion of independent directors on the board is a very important element in Korean companies. The increasing presence of independent outside directors is positive trend. Outside directors offer one of the few means for bona fide managerial oversight to prevent expropriation and self-dealing by the principal and controlling shareholder. In one previously unimaginable case, for example, that occurred recently, an outside director for a company that is part of one of Korea's leading chaebols, was able to single-handedly cause litigation to be brought against another sister company for funds it was owed. In the past, such "subsidizing" or outstanding receivables from related-sister companies would have gone unclaimed.

In the end it is critical that outside directors be chosen independently. Their "independence" should be defined as impartiality from the disproportionate influence of controlling principal shareholders that dominate Korean companies. Given the inordinate influence of controlling shareholders, mandating cumulative voting could be one simple solution. Furthermore, the recent voting restrictions that were adopted that restrict the voting rights of large shareholders in large companies when electing outside directors is another positive development.

IV. The Responsibilities of the Board

The main responsibilities of the board are to decide the business operations of the company and to oversee the activities of directors. (CC 393). The board remains the leading decision-making of the company. The directors individually have a slightly different set of duties and responsibilities outlines below. The proportion of time, in order of importance that directors devote to the different board activities such as strategic planning, monitoring, executive members' remuneration and nomination or disclosure activities, are not publicly available information at this time.

Under the Commercial Code, directors now have a fiduciary duty toward the company. (CC 382-3). Previously, the duty of directors was limited to a “duty of care.” While the differences between the “duty of care” and fiduciary duty remain unclear among most corporate law experts, this fiduciary duty was affirmatively added in 1998. In addition to their fiduciary duty, it is recognized that directors also have a duty to monitor other directors.⁷ This particularly applies to outside directors.

Overall, when directors violate these types of duties they are primarily liable to the company (CC 399) and if the negligence is serious they can also be held responsible to third parties (CC 401). While the “business judgment rule” that protects directors in the U.S. is not firmly established in Korea, and it might appear that Korean directors are open to litigation, actions involving breaches of fiduciary duty are almost non-existent. It should also be added that directors have other duties such as the duty to report to the auditor, when they discover a fact that might cause serious damage to the company (CC 412-2) or the duty not to leak insider information. (SEC 188-2).

Technically, the corporation and the shareholders are responsible for enforcing breaches of the duties of directors. The shareholders are the primary enforcers of the duty of directors but shareholder litigation remains extremely rare. Only a handful of shareholder cases have been brought against directors in the past couple of years. The first reported shareholder derivative suit occurred only in 1997. Litigation has been rare primarily because of the lack of class action lawsuits that makes it difficult to amalgamate common claims. Given the ineffective nature of the enforcement system, adoption of an “opt-out” type of U.S.-style class actions is an important means to enhance private enforcement by shareholders. Such class actions have been debated in Korea for the past 10 years and the government has announced plans to establish them but these plans have yet to materialize.⁸

Finally, it should be noted that Korean boards are responsible for “the best interest of the company” which primarily consists of the shareholders. In Korea, at least legally, it corresponds only to the interest of the shareholders, and does not cover a broader category of other people such as stakeholders. Social responsibility or constituency statutes do not exist yet in Korea. The major ingredients for board members to ensure “the best interest of the company” are most likely to be independence and competence.

V. The Decision Making Process of the Board

The Commercial Code specifically outlines various specific matters that are reserved for the board’s decision. These matters include approving the transfer of certain shares (CC 335-2, 335-7), convening shareholders’ meetings (CC 362), electing the representative director (CC 398), approving self-dealing transactions by directors (CC 398), new issues of stock (CC 416), approving financial records (CC 447, 447-2), issuing bonds (CC 469) and approving small-scale mergers, spin-off mergers short-form mergers (CC 527-2, 527-3, 530-11). N

Irrespective of these duties, in Korea almost all inside directors are management executives and Korean companies do not distinguish between officers and inside directors. Given this background, for the board to retain effective control over the company and the executive management, the roles of outside directors and outside auditors are critical. The

⁷ Judgment of July 25, 1985, Supreme Court, 84 Daka 1954.

⁸ Joongi Kim, “Minority Shareholder Rights in Korea: Why Securities-Related Representative Actions Should Be Established,” Vol. 19, No. 3, Korean Commercial Law Review (2001).

outside directors and auditors are the only persons that can directly maintain effective control over misdeeds that are carried out by the executive management when they tend to follow the controlling shareholders desires.

In the first-half of 2000, boards on average met 1.8 times a month or 10.5 times for that six-month period. Boards themselves therefore are operating functionally. At the same time, there is no required reporting activity from the managers to the directors during these meetings. Some possible reforms that are being considered are to require immediate public disclosure of how each director including the outside director voted in BOD meetings.

Stakeholders, and in particular employees, do not have any official role on the board. Their presence has not been mandated by law and there has been little movement toward adopting this type of German model. Additionally, stakeholders such as employees do not receive any information or have special access to it based on any legal requirements.

Board members can be held collectively liable where they violate a law, the articles of incorporation or are negligent in their duties. (CC 399). Directors, for instance, are collectively liable for all decisions that are placed on the agenda of the BOD that they affirmatively agree. Furthermore, if a director does not affirmatively object to a board decision and does not indicate this in the minutes of the board it will be presumed that they agreed with the decision thereby subjecting them to liability. (CC 399).

Directors can be liable for false or misleading statements but there have been only a handful of reported cases in recent years. Criminal sanctions exist if a director materially benefits or causes others to benefit by violating one of its duties. (CC 622). The punishment is up to 10 years imprisonment or up to a 30 million won (\$ 23,000) fine against violators, but such sanctions also are almost never levied. Prosecutors must become more active in recognizing the need to seek punishment against serious violations, especially when they undermine the integrity of the marketplace. Furthermore, the criminal sanctions must be strengthened in order to enhance enforcement and deter misdeeds. The leading examples are the ongoing criminal trials against senior corporate officials of the defunct Daewoo conglomerate that was found to have allegedly participated in more than \$ 40 billion in accounting fraud, a historic sum.

Outside directors usually have personnel that are in charge of providing them with information on the company. Board committee members, however, do not in general have the necessary access to the information of the company. Outside directors on board committees in particular have had difficulty in acquiring enough critical information about the company. A recent survey of outside directors indicated that they were provided either “enough” or “an average” amount of information 77.4% of the time. It is important that companies develop means for which outside directors can gain direct access to more information, including for instance a budget and dedicated personnel that they can direct such as the audit personnel or compliance officers.

VI. The Relationships among Board Members and between the Board and the other Bodies

The functions of chairman and chief executive officer are not separated in most Korean listed companies. The same person usually holds the position of chairman of the BOD, representative director and CEO in most Korean companies. Some recent exceptions where these roles have been separated are large commercial banks that have substantial foreign

ownership such as Korea First Bank and Korea Exchange Bank. There has been some discussion about separating the roles.

The impact of the concentration of such roles on the governance of the company is that it becomes more difficult for them to withstand the wishes of the controlling shareholder. In order to create as many checks and balances for the chairman of the board and CEO, and ultimately the controlling shareholder, it is preferable to divide the responsibilities at the head of the company to ensure a more even balance of power and authority within a company. Otherwise, this situation concentrates too much power into one position and often one person and makes it more difficult to monitor the principal and controlling shareholders' overwhelming influence on the board.

The main board committees that exist in Korean corporations include the audit committees, outside director nominating committees, management committees, remuneration committees. Almost all of these are very recent features in Korean boards. Audit committees and outside director nomination committees are required for large companies with more than 2 trillion won (\$ 1.54 billion) in assets and securities companies. The percentage of companies that have audit committees is 14.3 % and closely corresponds to the number of companies with more than 2 trillion won in assets. Only 12 companies have adopted audit committees voluntarily and 9 have adopted remuneration committees. This demonstrates that companies tend not to adopt committees willingly as shown in the lower percentages.

Table 5 Percentage of Board Committees
(As of May 15, 2000)

	No. of Companies	Percentage	Reference
Management Committees	40	19.2 %	
Audit Committees	81	38.9 %	
Outside Director Nominating Committee	42	20.2 %	
Remuneration Committee	9	4.3 %	
Others	36	17.3 %	
Total	208	100.0 %	On average companies have 2.1 committees

(These figures are among 566 of the 576 listed companies with accounting years that end in December)

Table 6 Companies That Have Adopted Audit Committees (2000)

Companies Sampled	Companies where Audit Committees are Mandatory	Companies where Audit Committees were Voluntarily Established	Total Number of Companies with Audit Committees	% of Companies with Audit Committees	% of Companies that have Voluntarily Established Audit

					Committees
566	69	12	81	14.3	2.4

In the case of the 30 largest chaebol conglomerates, as of June 2000, among the 107 listed companies combined together 48.6% of them have established audit committees. This figure most likely represents the fact that most of these chaebol subsidiaries have more than 2 trillion won in assets. Overall, the new SEC requires that for these large companies the chair of the audit committee must be headed by an outside director. (SEC 54-6; 191-16).

It is also significant to compare the companies that have audit committees to those that are monitored only by auditors in the traditional manner. Reflecting the need for legal requirements, the numbers show that those companies that do not have to establish audit committees are not likely to have a substantial number of outside auditors relative to standing auditors. Only 6.7% of the auditors are outside auditors whereas 23.2% of the outside directors are members of audit committees.

**Table 7 Composition of Audit Committees and Auditors
(May 2000)**

	81 Companies with Audit Committees			485 Companies without Audit Committees			
	Standing Committee Members	Outside Directors that are Members	Total	Standing Auditor	Outside Auditor	Non-standing Auditor	Total
Total	195 (76.8%)	59 (23.2%)	254 (100%)	382 (57.3%)	45 (6.7%)	240 (36.0%)	667 (100%)
Ave. per company	2.4	0.7	3.1	0.8	0.09	0.5	1.4

Table 8 Composition of Audit Committees (2000)

Asset Size of Companies	Companies with Audit Committees	Number of Auditor Committee Members		Number of Outside Directors on Audit Committees		Percentage of Outside Directors to Directors on Audit Committees
		Total	Ave.	Total	Ave.	
More than 2 trillion won	44	134	3.0	103	2.3	76.9
Less than 2 trillion won	8	24	3.0	17	2.1	70.8
Total	52	158	3.0	120	2.1	75.9

The relationship between the board and the management, on one hand, and the board and board committees such as audit, remuneration and nomination committees is still evolving. As stated above other than audit committees for large companies outside directors tend to be in the minority on board committees. At the same time, the standing directors almost always hold positions as management and are able to shape the agenda of these board committees and control information access.

In the case of outside director nominating committees one particular new change occurred in the most recent revision to the SEC. Outside directors that are proposed by shareholders with at least one percent of the total stock must be included in the nominees for outside director that the nominating committee forwards to the shareholders' meetings. (SEC 54-5; 191-16). Until this recent change was made, outside directors that were proposed by minority shareholders could be rejected by the nominating committee and would not even have a chance to be placed on the ballot at the shareholders' meeting.

The qualification requirements for outside directors are specified in the SEC. Outside directors may not be any of the following (SEC 54-5, 191-160):

- (1) minors, incapacitated, or partially incapacitated;
- (2) a person who was bankrupt but has not been reinstated;
- (3) a person who has been sentenced to a punishment of more than imprisonment without prison labor;
- (4) a person who has a special relationship with the largest shareholder
- (5) the major shareholder of the company or that persons spouse or lineal ascendant or descendant
- (6) a person who was an officer or full-time employee of the concerned company or any of its affiliated companies as provided under the Monopoly Regulation and Fair Trade Act or who was one for any of these companies within the preceding two years
- (7) a spouse or lineal ascendant or descendant of an officer or director of the concerned company
- (8) an officer, director or full-time employee of a company that has an "important business relationship," that has a competitive business relationship or that has a cooperative relationship with the concerned company or who was one for any of these companies within the preceding two years;
- (9) an officer, director or full-time employee of a company in which an officer, director or employee of the concerned company was a non-standing director; or,

- (10) a person who has difficulty in faithfully performing their duties as an outside director or can affect the management of the company as prescribed by Presidential Decree.

These stipulations are specific and attempt to preclude individuals that have a more direct conflict of interest. The more challenging question is whether similar restrictions should also be established for inside directors.

Conflicts of interest at the board level are resolved through board review and approval. Self-dealing involving business relationships between a board member and the company or its directors, for instance, require board approval. Similarly, directors may not engage in business that may compete with the company unless they receive approval from the BOD. (CC 397, 398). This later approval was previously required from the shareholders, but was modified in 1995.

VII. The Board Remuneration and Training

Companies pay their board members in the form of monthly salaries most of the time. In the case of outside directors, monthly salaries were the chosen form of compensation 77.2% of the times for a monthly average of 17 million (\$ 1300) for each director. The other primary forms of compensation to outside directors involved paying outside directors each time they attended a board meeting and this occurred 21.7% of the time. Incentives in the form of stock options were officially adopted in 1997 (SEC 189-4; CC 341-2) and other similar instruments also can be found. Stock options are an important means of remuneration in Korea because it for the first time gives a more immediate incentive for managers to focus on increasing shareholder value. Incentives such as stock options can contribute toward the performance of directors on behalf of the company. Non-executive may also receive such benefits and frequently do.

One recent form of compensation that remains controversial is the practice of some companies to allocate forfeited shares from new issues to directors and senior employees at significant discounts. Such allocations are usually made by the BOD to themselves as directors and can function as a form of self-dealing. Ideally, such forfeited shares should be made publicly available, nullified or if at all offered to directors at prices closer to market levels.

Board members as a whole do not receive any internal or external training primarily because it is not a legal requirement. Although most Korean companies and board members attempt to comply with mandated legal requirements, such training is recommended because most board members are ill-prepared for their positions. Most of them do not have a sense of the basic legal duties and responsibilities they face. Fundamental concepts, for instance, such as fiduciary duties and duties of care are still very new to most executives.

VIII. Conclusions

Korea has undergone significant regulatory and legal changes in the past couple of years. These reforms are marked by such requirements that outside directors must be elected, the dramatic strengthening of minority shareholder rights, the enhancement of the role of auditors and outside accountants, and even making the rules for more flexible for mergers and acquisitions. Despite this progress, boards still remain largely captive to the interests of the controlling shareholders. The inordinate and virtually unchallenged influence of controlling

shareholders, which there are very few parallels in other countries, creates an environment that is ripe for expropriation and self-dealing. It is therefore critical to continue to enhance the role of boards to offer a better corporate governance system consisting of checks and balances. Such important measures such as mandating cumulative voting or allowing class actions are presently at the forefront of needed steps toward improving corporate governance in Korea.

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