

# South Korea

## Summary of Current Shareowner Rights

*Percentages cited reflect information gathered by GMI Ratings about 91 companies in South Korea as of 31 August 2012.*

Shareowner engagement in South Korea is often hindered by the country's conglomerates, whose circular, complex networks of cross-holdings shield them from market disciplines. Shareowner activism is also hindered by the country's regulatory ambiguities, which often undermine shareowners' abilities to fully exercise their rights. A prevailing management structure that fosters the infrequent placement of independent members on company boards further weakens shareowner rights in this market. Despite these obstacles, shareowners in the South Korean market hold considerable rights.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	40%	
What percentage of companies have fully independent audit committees?	28.6%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	12.1%	
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	No, mostly	Share ownership limitations are not common but do apply in strategically sensitive industries, such as telecommunications and maritime and aviation transportation.
Are there (other) common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies adhere to a majority voting standard in the election of board members?	Yes	Majority voting is a requirement in South Korea. Board members are not required to retire ahead of the annual general meeting, however, unlike in a number of other markets.
Do companies allow for cumulative voting in the election of board members?	No, mostly	South Korean companies can take one of three positions concerning cumulative voting: (1) preempt it by putting a clear provision banning cumulative voting in the bylaws; (2) conditionally allow cumulative voting by not formally banning it, which, in turn, allows shareowners to request cumulative voting with a 3% ownership threshold; or (3) explicitly allow it with a clear provision in the bylaws. The first and second positions are most common.
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or non-binding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or something comparable?	No	No such right exists in South Korea.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	Yes	This right is standard in South Korea.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Shareowners may call an extraordinary general meeting or make a shareowner proposal with only a 3% voting threshold for companies with less than KRW10 billion in capitalization and a 1.5% threshold for companies with more than KRW10 billion in capitalization. All shareowner proposals that pass are binding.
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	

(continued)

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What percentage of companies include golden shares in their capital structure?	0%	Golden shares are not allowed in South Korea.
Are shareholder rights plans (poison pills) allowed in this market?	No	
If shareholder rights plans are in use, do they have to be approved by shareowners?	na	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is a requirement in South Korea.
Do companies require a supermajority vote to approve a merger?	Yes	This practice is a requirement in South Korea.
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Yes	This provision is a requirement in South Korea.
Are class action suits commonly used in this market?	No, mostly	Class action and derivative suits were introduced in late 2005 but are not yet common.
Are derivative suits commonly used in this market?	No	

na = not applicable.

## Current Engagement Practices and Shareowner Rights Developments

Although shareowner engagement in South Korea has evolved rapidly, political factors and other influences have prevented fully realized shareowner rights. The issue of shareowner engagement has traditionally been treated as political, and considerable focus remains on the omnipresent financial and political influence that the country's family-controlled conglomerates, or *chaebols*, exert on society.

The issues of shareowner engagement and corporate governance entered public debate in 1998 when South Korea began restructuring the *chaebol* system under the International Monetary Fund's mandate. As a result of this activity, public companies improved the accountability of their boards by substantially reducing board sizes and by seating board members from outside the *chaebols* on their boards. Also, most restrictions on foreign ownership were removed. In 2001, People's Solidarity for Participatory Democracy (PSPD),

one of South Korea's largest civic groups, took advantage of this opening and started a minority shareowner campaign. With a mere 1% of voting stock, PSPD activists challenged management at the shareowner meetings of Samsung Electronics, SK Corporation, and other companies, thus bringing the issues of shareowner rights and activism to media attention. Although its five-year campaign failed to bring specific improvements to the governance of the *chaebol* companies that it targeted, PSPD's high-profile efforts have sustained public debate about the issues of shareowner rights and activism.

PSPD had largely discontinued the campaign by 2006, and in late 2006, Jang Ha-sung, one of the two college professors who led the campaign, began to work as an adviser to Lazard's Korea Corporate Governance Fund—the first such fund formed by a foreign entity. Kim Sang-jo, the other professor, began to lead Solidarity for Economic Reform, a governance and regulatory reform advocacy group that involved some former supporters of PSPD. The divergent routes of these leaders marked a shift away from the public perception that shareowner engagement is primarily a social justice issue.

In South Korea, shareowner engagement is hampered by the absence of a strong local advocate. Local engagement consultants have begun to emerge, but their influence appears marginal. Policymakers have long proposed using the National Pension Service (NPS) as a vehicle for shareowner engagement. For example, in March 2008, the NPS said it would vote against appointing the founders of Hyundai Motor Company and Doosan Infracore as board members because of their involvement in financial scandals. This move was the first instance of shareowner engagement by the fund.

Regulatory inadequacies often impede both the formation of independent corporate boards and the improvement of shareowner engagement practices. South Korean regulations require that 50% of the board of a public company whose market value is KRW2 trillion (approximately USD2 billion) or more be independent; for a public company valued at less than KRW2 trillion, at least 25% of the board's members must be independent. The regulations do not explicitly define the term “independent,” however, and the terms “independent director” and “outside director” are used interchangeably. The materiality threshold for related-party transactions is set at KRW5 billion (approximately USD5 million), and no materiality or time threshold has been set for professional or personal services provided by outside board members. These unclear rules cumulatively result in corporate boards that tend to be far less independent than the companies claim. Board member elections are often staggered because many board members are elected to two- or three-year terms on different schedules, although this practice varies. New board members may be appointed to fill vacancies between annual general meetings, but they must stand for election by shareowners at the next available general meeting (annual or extraordinary).

In South Korea, takeover rules are modest. Poison pills are not allowed, although talk of introducing them has been going on since 2006. Recent legislation meant to introduce poison pills did not pass.

Shareholdings that enmesh *chaebol* affiliates into a web of cross-shareholdings greatly hamper the market mechanism of takeovers. The complex networks of cross-shareholdings, further strengthened by routine related-party transactions between *chaebol* affiliates, seriously reduce the exposure of the conglomerates to market disciplines.

## Legal and Regulatory Framework

Key shareowner rights are stipulated in three pieces of legislation: the Company Law, the Commercial Code, and the Securities Trade Law. Legislation is administered by the Financial Supervisory Service (FSS), which has a wide range of enforcement powers. Disclosure and key market regulations are governed under the Securities Exchange Listed Company Regulations, which have legislative backing. The FSS oversees the enforcement of takeover rules and regulatory disciplines but has no criminal enforcement authority.

A number of mechanisms are available in South Korea for shareowner engagement and activism. The one share, one vote system is the norm, although dual-class shares with different voting rights are now permitted.

South Korea's anti-monopoly and fair trade regulations restrict the voting rights of the financial and insurance units of the conglomerates with KRW5 trillion (approximately USD5 billion) in market value connected with the shares these units own in other units of the same conglomerates. These units' voting rights are reinstated but with a 30% voting power ceiling, regardless of the number of shares they own, when they vote on such key issues as mergers and acquisitions or amendments to the articles of incorporation.

A request for an extraordinary general meeting or a shareowner proposal may be made by a shareowner holding a minimum of 3% of the voting shares for companies with less than KRW10 billion (approximately USD10 million) in capitalization or holding 1.5% of shares for companies with more than KRW10 billion in capitalization.

Shareowners may appoint proxies for general meetings without restrictions and are not required to block shares in order to vote. Board members may be removed without cause with a supermajority vote of shareowners or of the board.

On 3 February 2009, the Capital Markets Integration Act took effect. It lowered regulatory walls between banks and nonbank financial institutions. The act was designed to realign the financial industry by encouraging mergers and acquisitions, but it may take some time for this change to come to fruition because of the global financial crisis and the limited amount of capital available for acquisitions in the current environment.

Another bill under consideration would affect shareowners' rights through amendments to the Commercial Code. Ongoing gridlock in the legislature, however, has slowed the progress of this bill. If passed, the amendments would offer mixed results for the future of shareowner engagement. Some proposals could help weaken the one share, one vote principle by allowing shares with differing voting rights; other proposals are designed to make it easier for shareowners to take such actions as calling special meetings or filing derivative lawsuits. In conjunction with the amendments, the lack of a national consensus on whether *chaebols* should be allowed to own controlling stakes in lending institutions offers another point of political contention.

The Company Law was amended in 2011. The most significant changes to the law are that it now requires board approval of major related-party transactions and for the first time imposes personal liability on directors for decisions made around such transactions. There are currently talks of further amending the law in order to include a more stringent definition of "outside director."

The Financial Services Commission (FSC) is also working on a bill to better define the corporate governance requirements of financial companies.

## Key organizations with information relevant to shareowner rights in South Korea include the following:

Korea Stock Exchange ([www.krx.co.kr](http://www.krx.co.kr))

KOSDAQ Listed Companies Association ([www.kosdaqca.or.kr](http://www.kosdaqca.or.kr))

Korea Fair Trade Commission ([www.ftc.go.kr](http://www.ftc.go.kr))

National Pension Service ([www.nps.or.kr](http://www.nps.or.kr))

Solidarity for Economic Reform ([www.ser.or.kr](http://www.ser.or.kr))

People's Solidarity for Participatory Democracy ([www.peoplepower21.org](http://www.peoplepower21.org))

Financial Services Commission ([www.fsc.go.kr](http://www.fsc.go.kr))

Financial Supervisory Service ([www.fss.or.kr/kr/main.html](http://www.fss.or.kr/kr/main.html))

Center for Good Corporate Governance and CGInfo Service ([www.cgcg.or.kr](http://www.cgcg.or.kr))

Korea Listed Companies Association ([www.klca.or.kr](http://www.klca.or.kr))

Korea Outside Directors Directories ([www.outside-director.or.kr](http://www.outside-director.or.kr))

Korean Institute of Directors ([www.kiod.or.kr](http://www.kiod.or.kr))