Korean Commercial Code Amended to Require Greater Transparency by Listed Companies When Convening General Shareholders Meetings

On January 29, 2020, the amendment to Article 31(3) of the Korean Commercial Code became effective, specifying what listed companies must include in its notification to shareholders when convening an annual meeting for the purpose of appointing directors and auditors (or audit committee members).

Details:

Specifically, **listed companies must include in its notification the following eligibility information:**

i. Whether any director or auditor (or audit committee members) candidate has been given a delinquency disposition under the National Tax Collection Act or Local Tax Act within five years from the date of general shareholders meeting;

ii. Whether any company, in which any director or auditor (or audit committee members) candidate has worked within the last five years from the date of the general shareholders meeting, applied for rehabilitation or insolvency procedures as per the Debtor Rehabilitation and Bankruptcy Act; and

iii. Any reason for disqualification to be a director or an auditor (or audit committee members), such as grounds for employment restriction, etc. (collectively, "**Eligibility Information**").

Further, the **amended Commercial Code requires that the above three Eligibility Information must be stated in accordance with the below table format on the meeting agenda** when notifying shareholders of the general shareholders meeting for the appointment of directors, auditors, and audit committee members.

Candidate Name	Delinquent Payment(s)	Insolvency Status of the Candidate's Employer Company(ies) [1]	Reason(s) for Legal Disqualification

However, depending on the specific issues of the company, determining what information is applicable to such Eligibility Information (upon notice of convening general shareholders meetings) may be difficult.

Thus, we believe it would be prudent to pay close attention to several factors, including the below:

1. If any candidate is in default, but has not been given a delinquency disposition within the last five years from the date of the general shareholders meeting;

2. If any company, in which any candidate has worked within the last five years from the date of the general shareholders meeting, has been in rehabilitation or insolvency procedures after any such candidate has retired; or

3. If any data to verify factual grounds to determine whether to disqualify any outside director, auditor or audit committee member is insufficient or legally unclear

1. Within the last 5 years from the date of general shareholders meeting, as noted in (i) of the Eligibility Information requirements above.

In above examples, if the notice merely states the disqualified candidate(s) without sufficient review or explanation, controversy may arise regarding the authenticity of such eligibility information. Further, the validity of the appointment of any such candidate(s) may be contested through litigations to revoke the relevant resolution of the general shareholders meeting.

Key Takeaways:

Given the above, it is essential for listed companies to verify documentary evidence, in addition to candidates' statement or certificate, and to confirm the authenticity of such a statement or certificate prior to stating any Eligibility Information with the notice for convening general shareholders meetings.

Also, any controversial factual grounds or legal judgment must also be stated along with the Eligibility Information to avoid any potential dispute in the future.

Through a series of amendments to relevant laws in Korea, the above requirements are part of a recent trend to strengthen the requirements for outside directors of listed companies, both in terms of qualifications and requirements for greater information about them.

Questions/Comments:

Should you have any questions or comments about the contents of this newsletter, or if we can be otherwise helpful, please do not hesitate to contact us.

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