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Changes to Merger Valuation Rules for Listed Companies: Implications for Businesses

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1. Introduction

On August 20, 2026, the National Assembly passed amendments to the Financial Investment Services and Capital Markets Act (the "FSCMA") that change how values are calculated for mergers and other transactions involving listed companies. The amendments were promulgated on September 8, 2026.

Under the former rules, where a listed company merged with an affiliated company (including a comprehensive share exchange or transfer or a spin-off merger), the listed party was required to use a reference value calculated under a prescribed formula based on its share prices on the Korea Exchange, while the unlisted affiliate was required to use a reference value based on the weighted average of its asset value and earnings value. By contrast, in a merger between a listed company and an unlisted non-affiliate, the parties were free to determine the merger valuation without applying these prescribed methods.

The amended FSCMA introduces a uniform standard: mergers and other covered transactions involving listed companies* must be valued at fair value, whether or not the parties are affiliates. Fair value must reflect the share price, asset value, earnings value and other relevant factors (Article 165-4(1)).

The amendments also require (i) boards to prepare and disclose a written opinion on the transaction (Article 165-4(2)); (ii) listed companies to obtain an external valuation and disclose the results (Article 165-4(3)); (iii) the statutory auditor or audit committee to select the external valuation firm for transactions between affiliates (Article 165-4(4)); and (iv) listed companies to disclose certain relationships between the transaction counterparty and their specially related parties, as defined in Article 9(1) of the Monopoly Regulation and Fair Trade Act (the "MRFTA"), in affiliate transactions (Article 165-4(6)).

The fair-value approach will also apply when a listed company buys back shares from dissenting shareholders exercising appraisal rights (proviso to Article 165-5(3)).

* Covered transactions include mergers; corporate divisions (including spin-offs) and spin-off mergers; acquisitions or disposals of material businesses or assets; and comprehensive share exchanges or transfers.

2. Why the Rules Are Changing: Concerns Over Market-Based Valuations

Under the former FSCMA and its Enforcement Decree, the valuations used for mergers and other transactions involving listed companies, as well as the share purchase prices payable to dissenting shareholders exercising their appraisal rights, have generally been based on share prices on the Korea Exchange. Critics have long argued that this approach gives controlling shareholders an incentive to choose transaction dates that produce favorable prices for themselves, potentially at the expense of other shareholders.

The Financial Services Commission (the "FSC") has raised similar concerns. It noted that reliance on market prices could allow controlling shareholders and others to secure favorable deal terms by scheduling transactions when share prices of the transaction counterparties are undervalued—or even taking steps to depress those prices.

The amendments address these concerns by making fair value the statutory standard for covered transactions involving listed companies, whether or not the parties are affiliates. Its aim is to make these transactions fairer and more transparent.

3. Key Provisions of the Amended FSCMA

A. Fair Value Becomes the Standard for Transaction Valuations

Under Article 165-4(1), the value of a merger or other covered transaction must reflect fair value, taking into account the share price, asset value, earnings value and other relevant factors. This is intended to capture a company's underlying value rather than relying on its market price alone.

The FSC describes asset value as net assets divided by the total number of issued shares. Earnings value is estimated using a reasonable valuation model, such as discounted cash flow (DCF) or the dividend discount model (DDM), to assess the company's future earning potential.

B. Board Opinion and Disclosure Requirements

When a listed company's board approves a merger or other covered transaction, it must prepare and publicly disclose a written opinion explaining the transaction's purpose, expected benefits and the fairness of its value (Article 165-4(2)). Similar requirements previously appeared in Article 176-5(6) of the FSCMA Enforcement Decree and Article 2-9 of the Regulation on Securities Issuance and Disclosure. Codifying these requirements in the FSCMA gives them greater legal force.

C. External Valuation and Public Disclosure

A listed company must obtain an assessment from an external valuation firm to assess the fairness of the transaction value and terms and disclose the results of the firm's assessment (Article 165-4(3)).

Previously, the FSCMA required external valuations for certain mergers and other transactions (former Article 165-4(2)). The amended FSCMA goes further by expressly requiring disclosure of the results as well as the valuation itself (Article 165-4(3)), making the process more transparent.

D. Stricter Valuation Firm Selection and Disclosure Rules for Affiliate Transactions

For mergers and other covered transactions between affiliated listed companies, or between a listed company and an affiliated unlisted company, the statutory auditor or audit committee must select the external valuation firm (Article 165-4(4)).

Under the former rules, selection required the statutory auditor's consent or an audit committee resolution (Article 176-5(10) of the FSCMA Enforcement Decree). Assigning responsibility for selecting the firm directly to the auditor or audit committee is intended to make external valuations more independent.

For transactions between affiliates, the listed company must also disclose certain specified relationships between its specially related parties and the transaction counterparty, including debt guarantees, provision of security, and common officers.

E. How the Appraisal Price Will Be Determined

Under the former FSCMA and its Enforcement Decree, a listed company and a shareholder exercising appraisal rights were to agree on the price at which the company would buy back the shares (the "appraisal price"). If they could not agree, the price was determined based on share prices on the Korea Exchange.

Under the amended FSCMA, if the parties cannot agree, the board must determine the appraisal price by considering the share price, asset value, earnings value and other relevant factors, following procedures to be prescribed by Presidential Decree (proviso to Article 165-5(3)). This brings the valuation of shares purchased from dissenting shareholders into line with the fair-value rules for mergers and other covered transactions.

The basic mechanism for resolving disputes over the appraisal price will remain unchanged: the company and shareholder may agree on a price, and either may ask the court to determine the price if they cannot reach an agreement.

F. Broader Enforcement Powers for the FSC

If a listed company breaches the rules governing board opinion statements, the selection of external valuation firms, the disclosure of specified relationships between its specially related parties and the transaction counterparty, or the calculation of appraisal prices, the FSC may publicly disclose the violation and order corrective measures, stating the reasons for its decision. When necessary, the FSC may also recommend the removal of directors or officers, restrict the company's issuance of securities for a specified period or take other measures (Article 165-18).

G. Proposals Left Out of the Amendment

Two proposals were considered during the legislative process but excluded from the committee's substitute bill and the final amendment. They may be revisited, so companies should continue to monitor legislative developments:

i. A provision imposing joint and several liability on the company, its directors, statutory auditors and others for losses suffered by investors as a result of an unfair merger or other covered transaction valuation. Those parties would also bear the burden of proving that they acted without intent or negligence.
ii. A provision in an earlier bill introduced by National Assembly member Lee Kang-il (Bill No. 2210863) that would treat net asset value as the fair value whenever the calculated fair value fell below net asset value.

4. What Companies Should Consider

A. Check the Effective Date Against Your Transaction Timeline

The amendments take effect on December 9, 2026. The revised valuation rules in Article 165-4 and the appraisal-price rules in Article 165-5(3) will apply to mergers and other covered transactions approved by a board on or after that date.

Listed companies planning transactions in late 2026 or early 2027 should review their timelines. To proceed under the existing valuation rules, the board would need to approve the transaction before December 9, 2026.

However, accelerating board approval may attract criticism that the company is trying to avoid the new rules and could prompt objections from shareholders or institutional investors. The timing of approval therefore warrants careful consideration.

B. Update Internal Procedures and Disclosure Practices

The amendments require board opinion statements and public disclosure of external valuations. Affiliate transactions face additional safeguards: the statutory auditor or audit committee must select the external valuation firm, and the company must disclose specified relationships between its specially related parties and the transaction counterparty.

i. The board opinion statement must explain the transaction's purpose and expected benefits, as well as the fairness of its value. Board minutes and the statement should therefore record more than the external valuation firm's final conclusion. They should also cover why the company is pursuing the transaction, how it selected the counterparty, potential benefits and drawbacks, effects on different groups of shareholders, questions raised about the valuation and any follow-up review, and any dissenting directors' views and reasons.
ii. Although the amendments strengthen statutory disclosure requirements, the corresponding changes to the FSCMA Enforcement Decree, the Regulation on Securities Issuance and Disclosure and the stock exchange's disclosure rules had not yet been adopted at the time of publication. Companies should monitor how these rules develop and what additional disclosure they will require.
iii. Companies with audit committees should check whether their articles of incorporation and audit committee rules

address the selection of external valuation firms. If not, they may need to update them to specify how candidates are assessed, how the selection process works and how independence is verified.

iv. Companies preparing affiliate transactions should identify in advance any relevant relationships between their specially related parties and the transaction counterparty. Doing so may require arrangements for obtaining those specially related parties' cooperation and an appropriate legal basis for collecting and processing their personal information.

C. Anticipate More Valuation Disputes

Under the former rules, using the formula prescribed by the Enforcement Decree generally reduced the risk of legal challenges to a merger valuation. The amended FSCMA, however, does not specify how much weight to give share price, asset value and earnings value when determining fair value. This uncertainty could lead to more disputes over valuation methods and outcomes.

In an earlier case concerning the buyout of unlisted shares, the Korean Supreme Court held that the weight given to market value, net asset value and earnings value should reflect the company's circumstances and industry characteristics. The court also emphasized whether each factor accurately captures the shares' objective value and whether the valuation method contains any errors (Supreme Court Decision 2004Ma1022, November 24, 2006).

That ruling concerned unlisted shares and does not necessarily govern valuations of listed shares under the new rules. It may nevertheless help companies explain why a particular valuation method and weighting are reasonable.

The new disclosure requirements will also give shareholders more information to review. Shareholders who disagree with a transaction may use that information to oppose it or pursue claims against directors. In particular, board opinion statements and external valuation reports could become important evidence of whether the relevant transaction terms were fair. Companies should prepare both with that possibility in mind.

For transactions with significant conflicts of interest, companies should also consider the safeguards recommended by the Ministry of Justice in its Guidelines on Conduct for Directors in Corporate Reorganization, published on February 25, 2026. These include establishing and operating a special committee, obtaining a review by independent external experts and providing shareholders with sufficient information.

D. Plan for Appraisal Rights Costs and Related Transaction Terms

The fair-value approach will also apply to the buyout price when dissenting shareholders exercise appraisal rights. Disputes over these prices may therefore become more common, just as disputes over merger valuations may increase.

Even if a company considers asset value and earnings value when setting the appraisal price, dissenting shareholders may ask the court to determine a different amount. A court could take a different view of earnings value or the weight assigned to the various valuation factors, potentially increasing the buyout price and leaving the company with a larger payment obligation than expected.

Companies should therefore assess appraisal prices carefully and consider including provisions in the merger or other transaction agreement to address how any resulting price dispute or increased payment obligation will be handled.

5. Conclusion

The new rules form part of a broader shift in Korean corporate law toward greater protection of shareholders, including amendments to the Korean Commercial Code that expressly recognize directors' duty of loyalty to shareholders. Further legislative changes may follow.

The Ministry of Justice's Guidelines on Conduct for Directors in Corporate Reorganization, released on February 25, 2026, also recommend safeguards where a merger or other restructuring may create conflicts of interest. These include establishing and operating a special committee, seeking reviews from independent external experts and providing shareholders with sufficient information. Companies contemplating such transactions should consider whether these safeguards are appropriate.

Important details remain to be worked out. A Presidential Decree is expected to specify how fair value should be calculated, what procedures companies must follow and what information they must disclose. Lawmakers may also revisit proposals left out of this amendment, including civil liability for losses caused by unfair valuations. Companies should therefore monitor future legislation and implementing regulations.

For companies, compliance with the amended rules involves more than adopting a new valuation methodology. They call for a clear, well-documented process that can withstand scrutiny from shareholders, regulators and, potentially, courts. Shin & Kim's Corporate Governance Practice Group helps listed companies meet these challenges, drawing on extensive practical experience and rigorous analysis of mergers and other corporate restructurings. We advise clients on developing defensible fair-value methodologies, strengthening board opinion and external valuation procedures, navigating disclosure requirements for affiliate transactions, and preparing for shareholder appraisal rights claims. Companies planning a merger or other restructuring, or seeking guidance on the amended FSCMA, are welcome to contact our team.

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