

# A Guide to Listing on the Korea Exchange

## Listing Eligibility Review and IPO

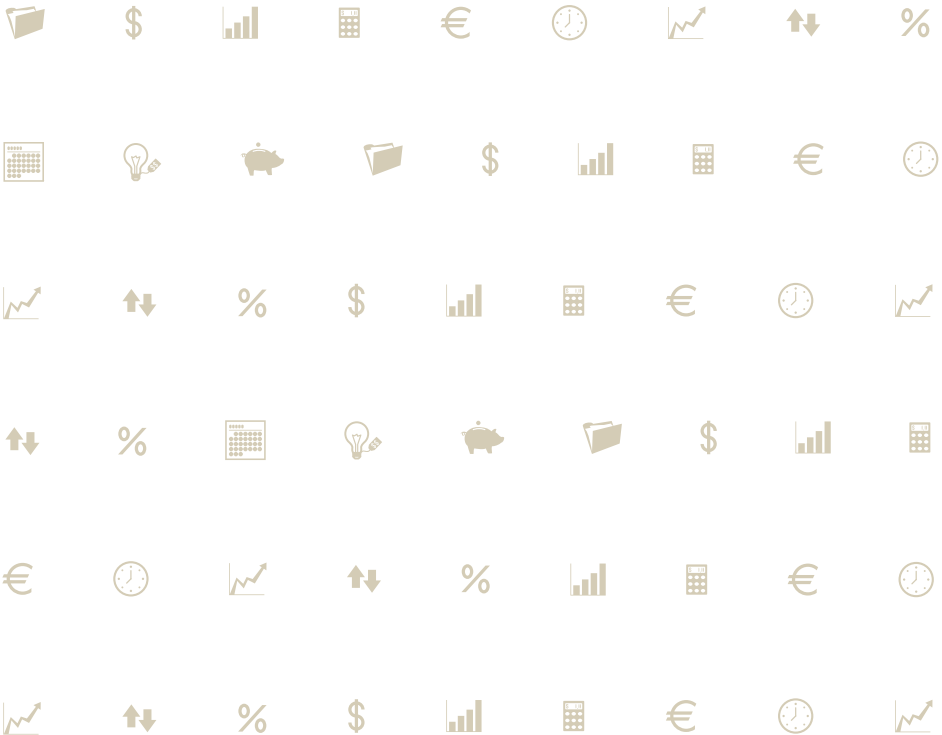


**A Guide to Listing  
on the Korea Exchange :  
Listing Eligibility  
Review and IPO**



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## PREFACE

The ever increasing pressure of globalization has placed contemporary businesses into unlimited competition for survival. Myriads of businesses rising, falling and going through seemingly unending cycles of ups and downs right at this moment testify to the fact that we are living in an age where it is very difficult to predict their future.

Given such an environment, the listing of a company as a result of its ongoing efforts to enhance its competitiveness and efficiency is of considerable significance in that it establishes a new springboard for growth.

The securities exchange serves a critical role by providing a direct connection between businesses requiring capital and investors supplying funds; it provides investors with a range of means and opportunities for financial investment, and businesses with direct financing opportunities.

In this regard, the Korea Exchange (KRX) performs, for investor protection purposes, procedures to verify a listing applicant's eligibility for admission to trade its securities on the Exchange in terms of its continuity and transparency, and this procedural process sums up the essence of a what listing review.

This guidebook is jointly published by the KRX KOSPI Market Division and the KRX KOSDAQ Market Division to help domestic and foreign companies preparing for listing as well as to assist officers and employees of financial investment firms providing IPO services with eligibility review criteria, focusing on the following objectives:

First, in contrast to other field guides available on listing, this book presents a clear and common guideline based on eligibility review cases for the last decade, and every effort has been made to reconcile the different review criteria

between the KOSPI Market and the KOSDAQ Market to the extent possible.

Second, working level personnel of financial investment firms, law firms, public accounting firms and the KRX participated in a task force team organized for the publication of this guide allowing inclusion of specific guidelines on conducting due diligence in the field.

It is our earnest desire that this KRX Listing Eligibility Review Guidebook for Initial Public Offerings will not only enhance the transparency and predictability of eligibility review services but also help corporations wishing to be listed as well as assisting working level personnel and practitioners in performing their IPO activities in a more efficient manner, hopefully resulting in the successful listing of more companies and eventually serving to precipitate the advancement of the capital markets of Korea.

Finally, we express our sincere gratitude to those who actively participated in the task force team and offered valuable input in the development of this Guidebook. We will use our best efforts to continually update this book in order to provide objective eligibility review guidelines that is of practical assistance to those preparing for listing.

Thank you very much.

July 2011

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# Part 1

## Listing on the KRX

### **Chapter 01**

**KRX Securities Markets**

### **Chapter 02**

**Significance of Listing  
on The Securities Exchange**

### **Chapter 03**

**Effects of Listing  
on The Securities Exchange**

### **Chapter 04**

**Process for Listing  
on the Exchange**

# KRX Securities Markets

In 2005, the Korea Stock Exchange, the Korea Securities Dealers Automated Quotations market, and the Korea Futures Exchange were integrated into the Korea Exchange (KRX) in order to enhance their international competitiveness and to better respond to competition among securities exchanges across the globe.

The KRX has two securities markets: the KOSPI Market and the KOSDAQ Market. The KOSPI Market focuses on blue-chip companies, while the KOSDAQ Market specializes in smaller to mid-size venture companies.

The KOSPI Market lists mid to large size corporations that have achieved stability in corporate scale and revenue, whereas the KOSDAQ Market primarily lists high-potential start-up companies.

## < Status of the KOSPI Market and the KOSDAQ Market >

(As of March 31, 2011)

Classification	KOSPI Market	KOSDAQ Market
Establishment	1956	1996
Operated by	KOSPI Market Division	KOSDAQ Market Division
Focus	Primarily larger blue-chip companies	Primarily smaller ventures and growth start-up companies
Market Capitalization	KRW 1,181 trillion	KRW 104 trillion
No. of Listed Companies	781	1,036
Daily Trading Volume	KRW 6,845.3 billion	KRW 2,080.8 billion

# Significance of Listing on the Securities Exchange

For the purpose of this guidebook, “listing” refers to the process by which the securities issued by a corporation meet certain requirements prescribed by the Korea Exchange (hereinafter referred to as the “KRX”) and are thereby qualified for trading on the KOSPI Market or the KOSDAQ Market.

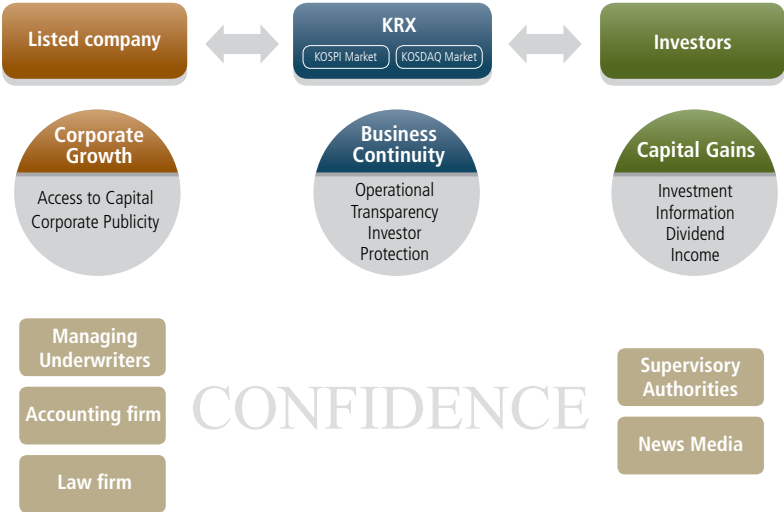


“Initial Public Offering,” or “IPO,” a term interchangeably used with “listing,” refers to a step taken prior to listing in which a company distributes newly issued shares of its capital stock to the general public through public offers and sales and makes disclosures of financial and other substantial information on the company.

Listing requirements and IPO requirements were the same until they were separated in April 1999, and substantive eligibility reviews came to be conducted on all companies being listed on the KRX using these two separate sets of requirements.

Listing is not an end but a breakthrough to a new level in a corporate life cycle, as it allows a corporation to provide investors and the public with investment opportunities and gain international recognition as one of the industry leaders in terms of prestige, assets, profit and customer relations.

Further, it is also necessary for management of the company to make preparations to fulfill stringent, post-listing disclosure obligations by providing investors with important operational and financial information that may affect share prices.



## Listing Services of the KRX

The KRX always welcomes interview requests from the management and other representatives of any corporation wishing to be listed and offers a number of options, including visits by KRX representatives to the corporation, visits by the corporation's representatives to the KRX and telephone inquiries.



Therefore, any willing company may engage in advance discussions regarding whether listing requirements are satisfied and what improvements and system revamping are required to be made to address disqualifications.

The KRX determines listing eligibility by conducting a quantitative review, the minimum requirement for ensuring the listing of robust companies, and a qualitative review intended to protect public interest and investors. The KRX also presents objective eligibility review guidelines in order to enhance the transparency and predictability of the eligibility review, and explores a broad range of solutions with a company wishing to be listed if so requested in connection with the review.

It is, however, required that through listing on the KRX the profit model of such company be capable of generating added value and of having a pos-



itive cyclical impact on the economy. Listing may be denied if the company is engaged in the trading of excess luxury goods, usury, adult services or any other activities considered to have a negative influence on the public.

## Considerations for Listing

- ❖ It is necessary to fully review whether the purpose and use of IPO funds are necessary under operational strategies;
- ❖ Large shareholders should be aware of the fact that listing will weaken their control of the company and that transactions with interested parties must pass through internal control procedures.
- ❖ It is necessary to gain a sufficient understanding of the time and money required for listing.
- ❖ The company should be capable of accepting the obligations required under laws and regulations and the continued and close monitoring by investors.
- ❖ Sufficient understanding needs to be gained of the fact that changes in the corporate governance structure such as the composition of the Board of Directors may affect share prices and the confidence of investors.
- ❖ The company should be ready to allocate sufficient time for communication with investors and analysts.
- ❖ The company should be capable of maintaining a delicate balance between the long-term growth strategy of the company and the maximization of shareholder profits.
- ❖ Officers and employees of the company need to clearly grasp that listing places certain restrictions on the trading of shares.

## < Effects of Listing >

Economic Aspects	Perspective of Investor	Legal Aspects
<ul style="list-style-type: none"> <li>• Access to capital</li> <li>• Accelerated restructuring</li> <li>• Corporate publicity</li> <li>• Improvement of employee morale</li> <li>• Realization of shareholder profits</li> </ul>	<ul style="list-style-type: none"> <li>• Non-taxation of capital gains on share sales</li> <li>• Valuation of inherited and gifted property based on market prices</li> <li>• Exceptions for taxation on dividends</li> <li>• Flexible tax rates in effect for the securities transaction</li> </ul>	<ul style="list-style-type: none"> <li>• Simplification of offering of newly issued shares</li> <li>• Exceptions for the issuance of non-voting shares</li> <li>• Increased maximum allowed bond issuance</li> <li>• Increase in the maximum Amount of share repurchase</li> <li>• Simplification of procedure for convening shareholders meetings</li> </ul>



## a. Economic Aspects

### 1) Access to Capital

A listed company may through initial public offering and rights offerings raise long-term capital from investors in a stable manner. It is also simpler to raise capital as the company is allowed to offer newly issued shares to members of the general public without granting preemptive rights to shareholders by resolution of the Board of Directors as prescribed by the Articles of Incorporation.

### 2) Accelerated Restructuring

A listed company may undertake restructuring by actively using a means that best serves its purpose by relisting in conjunction with a spin-off transaction, listing of a holding company and any other scheme relating to corporate restructuring.

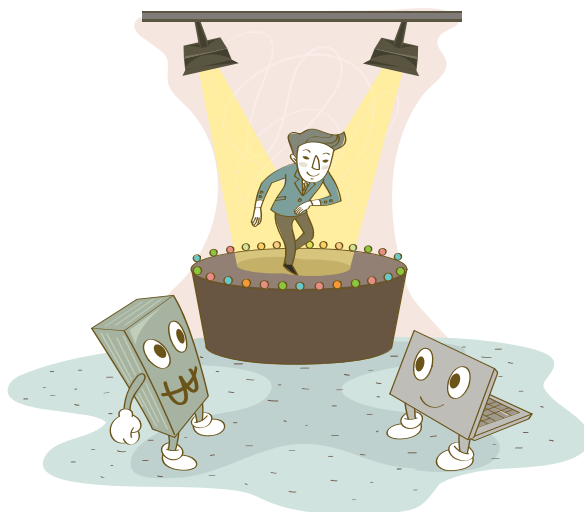
A new company spun off from a listed company may maintain its listing status by complying with more lax listing requirements than applicable to privately held companies, and a newly incorporated holding company that shall own an existing listed company as its subsidiary may also become listed in a speedy manner as a separate set of listing requirements are applicable for holding companies.

A privately held company may apply for original listing even if less than

three years have passed since its incorporation if the combined, substantial operating history of the company and its predecessors that were involved in merger, consolidation, split, business transfer or other similar transactions is three years or more, enabling the company to achieve corporate restructuring faster.

### 3) Corporate Publicity

A listed company draws attention from domestic and foreign investors, the news media and the public, and its financial or operational affairs are reported on the newspaper, the TV and in the materials of security-related organizations and communicated within and outside the country, generating corporate publicity.



Given that the Korean securities market, in particular, is recognized as investment-grade by security-related organizations of developed countries as demonstrated by its inclusion in the FTSE Developed Index in 2009, a company may utilize its reputation as a listed company not only in raising funds from foreign investors but also in establishing overseas presence and establishing joint ventures with foreign partners.

The companies included in the KOSPI 200 index, which are listed on futures and option markets, also draw even more attention from domestic and foreign investors.

#### 4) Improvement in Employee Morale



A domestic company listed on the KOSPI Market is required to preferentially allot up to 20% of the publicly offered shares to the employee ownership association. An employee who has become a shareholder by purchasing shares at a public offering price may reap economic benefits as

the company grows, while the improved labor-management relations and employee morale may allow the listed company to enhance productivity.

## 5) Realization of Shareholder Profits

As investors of a privately held company take on risks associated with the initial stages of the company, they tend to purchase shares at par value or at prices comparable thereto. If the share price rises after listing, existing shareholders may realize capital gains.

### b. Legal Aspects

#### 1) Simplification of Offering of Newly Issued Shares

The allotment of new shares by privately held company to persons other than its shareholders is limited to those cases where such allotment is intended to serve certain operational purposes of the company such as equity swapping, share transfer, the adoption of new technologies and financial restructuring. A listed company, on the other hand, may offer new shares to members of the general public without granting preemptive rights to shareholders by resolution of the Board of Directors so long as it is so stated in its Articles of Incorporation.

## 2) Exceptions for the Issuance of Non-voting Shares

A non-publicly traded company may issue non-voting shares up to 25% of the total number of shares issued and outstanding. A publicly traded company, on the other hand, may issue more non-voting shares as the non-voting shares issued by it in a foreign country and those issued in conjunction with the exercise of foreign convertible bonds, foreign bonds with warrants *etc.* are not included in the 25% cap. The total number of non-voting shares of a listed company including the above, however, may not exceed 50% of the total number of shares issued and outstanding.

## 3) Increased Maximum Amount of Bonds to be Issued

The aggregate amount of the corporate bonds issued by a privately held company may not exceed four times its net assets, while, on the other hand, the amounts of the convertible bonds and bonds with warrants issued by a listed company are not counted toward the total amount of bonds for this purpose. A recent amendment to the Commercial Act, however, will lift the cap on the bonds issued by privately held companies effective March 2012.

## 4) Increase in the Maximum Amount of Share Repurchase

A privately held company may not buy back its own shares unless

under such circumstances as, *inter alia*, cancellation of shares, merger and consolidation, while, on the other hand, a listed company may repurchase its own shares up to the dividend cap as provided for under the Commercial Act, making it easier to defend against a takeover threat or control the shares price.

## 5) Simplification of Procedure for Convening Shareholders Meeting

A privately held company is required to notify each shareholder in writing or electronic form of a shareholders meeting to be convened at least two weeks in advance. The notice of a shareholders meeting provided by a publicly held company for any shareholder holding 1% or less of the total number of voting shares issued and outstanding may be given as prescribed in the Articles of Incorporation 2 weeks prior to the shareholders meeting in two or more daily newspapers of general circulation two or more times or on the electronic disclosure system operated by the Financial Supervisory Service (the “FSS”) or the KRX.

## c. Taxation Aspects

### 1) Non-taxation of Capital Gains on Share Transfers

A shareholder of a privately held company is required to pay a tax on



20% (or 10% in the case of a small and medium enterprise (“SME”) or 30% in the case of a major shareholder holding shares in a non-SME for a period of less than one year) of capital gains on a share sale. Any non-major shareholder selling shares in a listed company on a securities exchange, however, is exempt from the capital gains tax. The term “major shareholder” for the purpose of the Personal Income Tax Act refers to any shareholders holding, in the case of the KOSPI Market, 3% or more of the total number of shares issued and outstanding in a company or such shares worth the market price of ten billion Korean won or more, or in the case of the KOSDAQ Market, 5% or more of such shares or such shares worth five billion Korean won or more.

**< Capital gains tax on share sales >**

Classification		Publicly traded	Non-publicly traded
SME	Minority shareholder	Exchange trading: not taxed Over-the-counter trading: 10%	10%
	Large Shareholder	10%	10%
Large enterprise	Minority shareholder	Exchange trading: not taxed Over-the-counter trading: 20%	20%
	Large shareholder	Held for one year or more: 20% Held less than one year: 30%	One year or more: 20% Less than one year: 30%

## 2) Valuation of Inheritance and Gifted Property based on Market Prices

Although the shares issued by a privately held company are valued for the purpose of the inheritance and gift taxes using the formulas set forth in the Inheritance Tax and Gift Tax Act, those issued by a listed company

are valued based on the average closing price over a period starting two months prior to the date of inheritance or gift and ending two months after such date.

### 3) Exceptions for Taxation on Dividends

Any shareholder of a privately held company, with the exception of minority shareholders who are members of the employee ownership association, is required to pay a dividend income tax at the rate of 14% of the dividend income. Any shareholder holding listed shares for three years or more, however, is only required to pay a dividend tax at the rate of up to 5%, where the dividend income is not counted toward the tax base for the global income tax. Any person holding shares worth thirty million Korean won or less in par value is exempt from the dividend tax altogether.

#### < Dividend taxation >

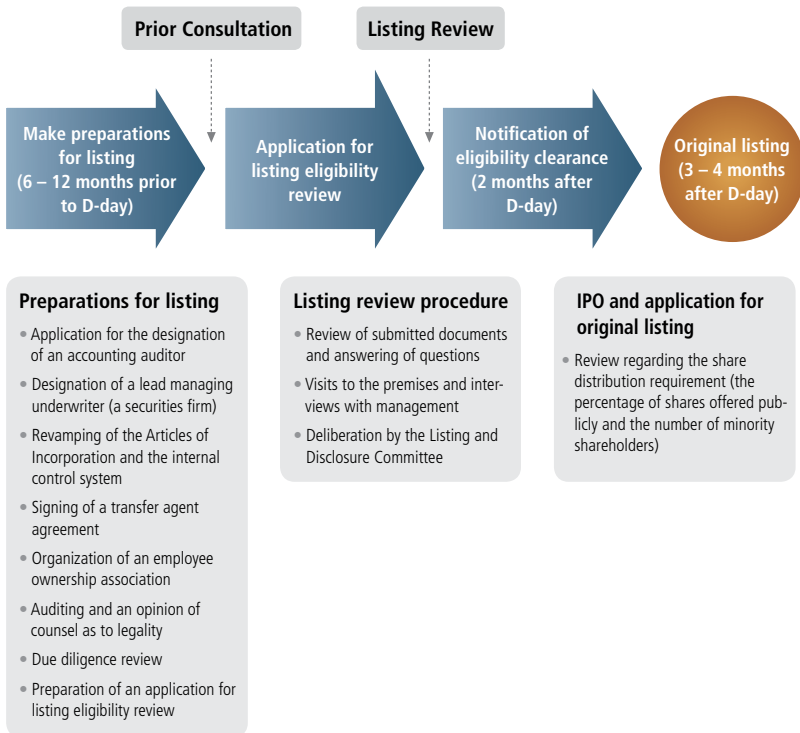
Classification	Shareholder	Criteria	Taxation
Listed company	30 million won or less in par value	Held for three years or more	Not taxed
	30 million to 100 million won in par value	Held for three years or more	Separately taxed (5%)
	Other shareholders	Financial income exceeding 40 million won	Collectively taxed
Privately held company	Any minority shareholder who is also a member of the employee ownership association	- Less than the smaller of (i) 1% of the total amount of the total number of shares issued and outstanding and (ii) 300 million won	Not taxed
	Any shareholder who is a member of the employee ownership association but not a minority shareholder or who is not a member of the association		40 million won or less: Separately taxed (14%) More than 40 million won: collectively taxed

## 4) Flexible Tax Rates for the Securities Transaction Tax

A 0.5% rate is applied to the securities transaction tax on the sale of shares issued by a privately held company, while, on the other hand, a 0.15% rate (in addition to the 0.15% rate for the rural development tax) is applied to shares in a listed company sold on the KOSPI Market, reducing the transaction cost. As for the shares in a listed company sold on the KOSDAQ Market, a 0.3% rate for the securities transaction tax is applicable, and no rural development tax is imposed.

# Process for Listing on the Exchange

## < Process for listing on the Exchange >



Listing may be broadly broken down into: original listing, relisting and backdoor listing. Original listing requires stringent procedures as it is a process in which the securities of a company qualify for initial admission to trading on an exchange. Original listing procedures include: advance preparations made by a lead managing underwriter, a listing eligibility review by the KRX, an IPO and then listing on the KRX.

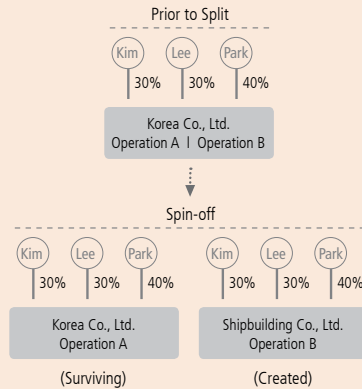


The time period required for such preparations may vary for each company, although it takes approximately three to four months from the submission of application for listing eligibility review until original listing. The KRX typically provides a notice of eligibility clearance within two months of receipt of an application for listing eligibility review filed by a domestic corporation or within three months of receipt of such application submitted by a foreign corporation. The review period, however, may be extended due to significant issues arising that require additional time or due to any delays in submission of relevant supporting documents.



## Relisting

Relisting is a process applicable where a listing eligibility review is requested within five years of delisting or where a company spun off from a listed company applies for listing. Somewhat less stringent requirements than in the case of an original listing are imposed in order to facilitate the rehabilitation of delisted companies and the corporate restructuring of listed companies.

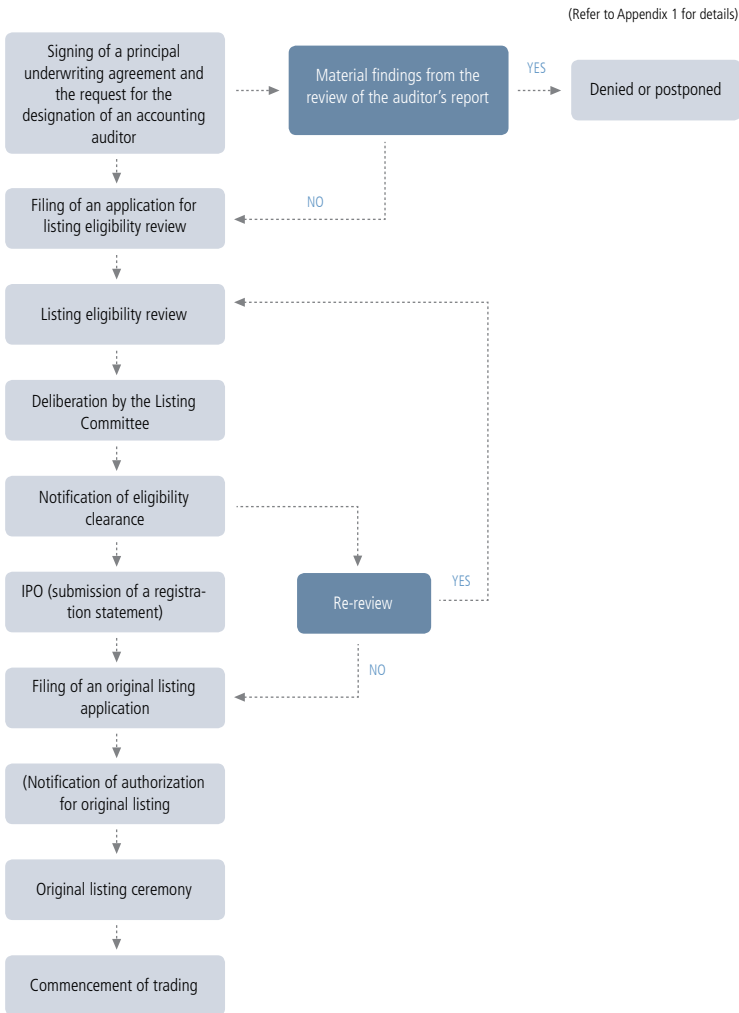


A listed company spinning off one of its divisions may use more convenient procedures and follow less demanding requirements than in the case of an original listing to have it listed. In the KOSDAQ Market, the application for listing eligibility review made within five years of delisting is not classified as an application for relisting but an application for original listing.

## Backdoor listing

Backdoor listing refers to a process in which a privately held company effectively has itself listed using mergers and acquisitions ("M&A") or other similar means in collaboration with a listed company. It is used as a means of listing by privately held companies failing to meet the requirements for original listing; hence the less-than-honorable name, backdoor listing. As backdoor listing creates speculation and a range of other complications, requirements for backdoor listing are becoming increasingly stringent.

## < Figure Original listing procedure >



A listing eligibility review is a process in which the eligibility of a company intending to have its shares initially listed or relisted on the KRX is reviewed, where the KRX verifies compliance with quantitative requirements and other review criteria under the Listing Regulations.

## a. Overview

A listing eligibility review, including a documentary review, interviews, verification visits and deliberation by the Listing Committee, takes two months or less from the receipt of an submission of application for listing eligibility review in the case of a domestic company or three months or less in the case of a foreign company (or two months in the case of any foreign issuer listed on a foreign exchange; such issuer hereinafter referred to as an “applicant for secondary listing of foreign securities”). The progress of the listing review is disclosed in the electronic disclosure system. (<http://kind.krx.co.kr>).

Any company wishing to be listed must submit such supporting documents as set forth in the Listing Regulations together with an application for listing eligibility review in the name of the lead managing underwriter. Upon receipt of an application for listing eligibility review, the KRX will disclose the same in a press release and on its website; thus, the listing applicant should consult with the KRX in advance. With respect to the KOSPI Market, the applicant is notified of the scheduled date of notification of eligibility clearance, within three days of receipt of an application for listing eligibility review.

Any company wishing to be listed must request and obtain an international securities identification number, or ISIN, from the KRX prior to the filing of an application for listing eligibility review. The request for and issuance of ISINs are handled by the Overall Securities Management Team of the KRX. (<http://isin.krx.co.kr>)



An application for listing eligibility review may be filed at any time throughout the year. If, however, any corporation whose fiscal year ends in December applies for listing eligibility review in or after November, it will result in certain complications: the review period will extend from one fiscal year to the next, or a listing eligibility review will proceed without final closing financial statements for the most recent fiscal year.

In this case, a listing eligibility review will be conducted based on such auditor's report as finalized as of the date of application for the listing eligibility review as well as preliminary financial statements for the current year, and eligibility for listing will be determined after the issuance of an auditor's report for the most recent fiscal year. The review will focus on compliance with quantitative requirements and any material issues affecting eligibility as of the most recent year.

## **b. Procedure for Listing Eligibility Review**

A listing review is a process of reviewing compliance by an applicant with the listing requirements as set forth in the Listing Regulations, which is conducted by the KRX in accordance with the Listing Review Guidelines.

## < Procedure for listing eligibility review >



### 1) Documentary Review

A listing review process begins with the review of the application for listing eligibility review and supporting documentation submitted by a listing applicant. In the event of any questions arising in the course of reviewing the documents submitted with an application, the KRX may request additional documentation.

### 2) Interviews and Verification Visits

Over the course of a review, the KRX conducts a number of interviews with the listing applicant and the lead managing underwriter. Interviews may address details not covered in supporting documents and require additional explanations. Although interviews are often conducted over the phone to minimize burden on the listing applicant, the applicant may be requested to visit the Exchange office for interview purposes if necessary.



When primary issues have been discovered in the course of the review, the KRX sends a comment letter on such issues to the lead managing underwriter and the listing applicant, requesting specific opinions of the applicant. In which case, the applicant and the lead manager may state their positions on such issues in writing, which are

considered as official opinions of the applicant and should thus be prudently prepared. A multiple number of comment letters may be sent if necessary.

Verification visits are conducted to verify the production facilities *etc.* of the listing applicant and make a visual verification of such original copies of documents as are required to be verified at the head office and plant of the applicant. Verification Visits may be omitted if verification is not deemed necessary due to the production facilities of the listing applicant being simple and its operations being well known in general or if documentary review and interviews have been sufficient for review purposes.

### 3) Deliberation by the Listing Committee

The results of a listing eligibility review are deliberated and finalized by the Listing Committee. The Listing Committee consists of a group of



experts in accounting, law and other fields, who present a range of expert opinions on the findings of a listing review.

With respect to the KOSPI Market, deliberation by the Listing Committee may be omitted if it is deemed necessary for the purpose of public interest and investor

protection to list any holding company that meets certain requirements\* and owns listed companies, any public institution, any government-owned corporation, or any company incorporated pursuant to a special law.



### Holding Company Meeting Certain Requirements

- ❖ The holding company must own all issued and outstanding shares in each subsidiary listed on the KOSPI Market.
- ❖ The aggregate book value of shares in subsidiaries listed on the KOSPI Market as valued in the opening statement of financial position must be 75% or more of the aggregate book value of all shares in subsidiaries.
- ❖ If the aggregate value of shares in any non-listed subsidiary is greater than the aggregate value of shares in any subsidiary listed on the KOSPI Market, such non-listed subsidiary must have income greater than under listing requirements and comply with the requirement for auditor's opinions and restrictions on the change of the largest shareholder.



## Company Incorporated Pursuant to a Special Law

The term “special law” refers to any law pursuant to which such company is solely incorporated, where a *single* company may be incorporated pursuant to such law, by providing for matters concerning, *inter alia*, the management, operations and incorporation of the particular company.



## The Makeup of the KOSPI Market Listing Committee

The Committee consists of a pool of fifteen persons (in addition to one Executive Officer of the KRX who invariably participates) and a committee meeting requires participation by seven experts in each field.

The term of office of any Committeeperson is two years, which may be renewed once and is comprised as follows:

- two persons appointed by the President of the KOSPI Market Division among the full-time officers of the Korea Listed Companies Association (“KLCA”) or officers of listed companies recommended by the KLCA;
- three legal experts appointed by the President;
- three accounting experts appointed by the President;
- three representative accredited investors as appointed by the President;
- four persons appointed by the President among those having sufficient academic knowledge of and practical experience with the securities market; and
- one Executive Officer in charge of listing or disclosure services at the KOSPI Market Division.



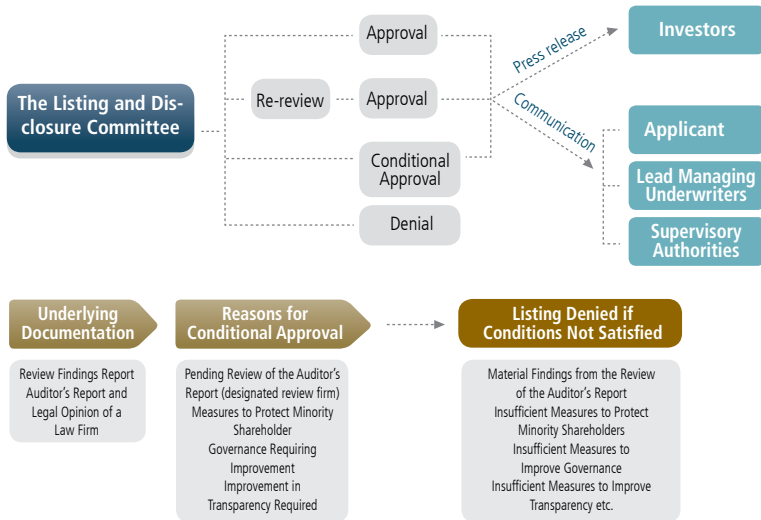
## The Makeup of the KOSDAQ Market Listing Committee

The Committee consists of a pool of twelve persons (in addition to the Chairman of the Committee and the Executive Officer of the KRX in charge of listing two persons which are permanent participants) and a committee meeting requires participation by eight experts selected from the pool.

The term of office of any Committee person is two years, which may be renewed once. The Committee is comprised as follows:

- two persons appointed by the President of the KOSDAQ Market Division among professors in law or in commerce and business of universities and researchers of the Korea Institute of Finance or any other securities-related research organizations;
- two persons appointed by the President among experts in the technologies of high-tech, venture startups;
- two persons appointed by the President among lawyers and other legal experts in securities services;
- two persons appointed by the President among certified public accountants and other accounting experts in securities services;
- two persons appointed by the President among the representatives of the venture industry;
- two such representatives of accredited investors as appointed by the President;
- one person appointed by the President among those having sufficient academic knowledge of and practical experience with the capital market and listing on the KOSDAQ Market; and
- one Executive Officer in charge of listing services at the KOSDAQ Market Division

## < The Process for Listing Eligibility Review >



Deliberation by the Listing Committee results in: approval, conditional approval, re-review and denial.

Approval recognizes eligibility for listing and allows the listing applicant to immediately proceed with the public offering and original listing procedures.

Conditional approval is when the applicant is deemed eligible for listing in most aspects but is required to address a few issues. If the applicant immediately takes remedial measures as required, the applicant maintains its eligibility with no additional deliberation necessary by the Listing Committee.

A re-review decision is similar to conditional approval in that remedial measures are required from the perspective of, *inter alia*, protecting investors, in which case, however, the applicant must undergo additional deliberation by the Listing Committee upon the completion of the remedial measures.

Denial means that the listing applicant is not deemed eligible for listing, where the applicant must address disqualifications (in terms of operational performance, governance structure, internal control system *etc.*) with the assistance of the lead managing underwriter and then file another application for listing eligibility review with the KRX.

#### 4) Notification of Results of Eligibility Review





The KRX typically provides a notice of eligibility clearance within two months of receipt of an application for listing eligibility review in the case of a domestic corporation or within three months of such receipt in the case of a foreign corporation (or within two months in the case of a foreign corporation already listed on the NYSE or any other eligible foreign securities exchange). The review period, however, may be extended if important issues require additional verifications or if the lack of cooperation on the part of the listing applicant delays the progress of the review.

## **Stay of the Effectiveness of Eligibility Clearance**



Despite eligibility clearance granted to a listing applicant, the effectiveness of such clearance may be stayed if any of the following events is deemed by the KRX to materially affect the results of the listing eligibility review. The listing applicant, therefore, should take precautions to prevent any of such material events from occurring even after obtaining eligibility clearance.



## Events Leading to a Stay of the Effectiveness of Eligibility Clearance

- ❖ where dishonor of any checks or notes issued by the applicant, discontinuance of operations, occurrence of a disaster or excessive loss, sale of fixed assets in large amounts, institution of lawsuits, change of directors, merger, demerger, split and merger, business transfer, a resolution to lease out principal assets or delegate management functions, or any other material operational event has occurred;
- ❖ where the application for the listing eligibility review includes false statements or misrepresentations or fails to state or represent material facts;
- ❖ where a review of the financial statements of the listing applicant and the auditor's report thereon has resulted in the Securities and Futures Commission (the "SFC") filing a criminal complaint, notifying the prosecutor's office or imposing a monetary penalty against the listing applicant;
- ❖ where any statements in a prospectus have been corrected;
- ❖ where no listing application has been filed within six months of the notification of listing eligibility clearance (except where an extension of the effectiveness of eligibility clearance has been filed for and the KRX has approved the same);
- ❖ where a change of the largest shareholder occurred on or after the date of application for the listing eligibility review but prior to the date of original listing; and
- ❖ where new shares were issued in a private placement on or after the date of application for the listing eligibility review but prior to the date of original listing.

## 5) Listing Review on the Recent Change in the Fiscal Year

In the event of the change of the fiscal year occurring after the application for listing eligibility review but prior to the date of listing, the KRX determines, as part of the listing eligibility review, whether any event materially affecting the listing eligibility of the listing applicant has occurred.

Since the fiscal year has recently changed, the listing applicant must submit to the KRX financial statements as approved by the shareholders meeting and an auditor's report thereon, and the KRX re-applies quantitative tests for the most recent fiscal year, which were applied upon the application for the listing eligibility review.

## c. IPO of Securities

### < Publication Procedure >



If a listing eligibility review results in eligibility clearance, shares are publicly offered and listed on the KRX. The IPO process is led by the lead managing underwriter, who notifies the KRX of the IPO schedule and its progress. Following an IPO, the KRX reviews whether the distribution requirement is met and whether any material operational event has occurred since the notification of eligibility clearance before finally approving the securities for original listing.

## 1) Submission of a Registration Statement *etc.*

A listing applicant whose securities have been approved for listing must file a registration statement with Financial Services Commission (the “FSC”). A registration statement is a disclosure document stating the substance of the securities to be offered or distributed and matters concerning their issuer, which is the basis for solicitation of subscription.

The FSC imposes certain disclosure obligations regarding publicly offered shares upon any company entering the securities market. These obligations are intended to disclose information on the issuer of securities and provide basic information necessary for making investment decisions to investors.

If the registration statement has misrepresentations or omissions of material facts, the issuer, the lead managing underwriter, and the accounting firm *et al.* may be subject to litigation and liable for compensatory damages. The lead managing underwriter *et al.* reviews the statements in the registration statement as prepared by the listing applicant, relying on the substance of a due diligence review, an independent auditor’s opinion, a lawyer’s legal opinion *etc.*

Any applicant applying for listing of foreign shares who intends to issue securities in Korea must file with the Ministry of Strategy and Finance (“MOSF”) a notice of securities issuance in accordance with the Foreign Exchange Transaction Regulations, and the notification procedure is typically completed prior to the filing of the registration statement.

## a) Statements in a Registration Statement

Matters to be stated in a registration statement are as follows:



### Matters Concerning Offering and Distribution

- ❖ General overview regarding offering and distribution
- ❖ Investment risks
- ❖ Opinion of assessment of the underwriter (or analyzing institution) on the securities
- ❖ Intended use of funds
- ❖ Any other matters necessary for investor protection, *etc.*



### Matters Concerning the Issuer

- ❖ Executive summary of the company
- ❖ Details of operations
- ❖ Financial matters
- ❖ Auditor's opinion *etc.*
- ❖ Matters concerning the Board of Directors and other organizations of the company and its affiliates
- ❖ Matters concerning shareholders
- ❖ Matters concerning officers and employees
- ❖ Transactions with interested parties
- ❖ Accompanying notes
- ❖ Any other matters necessary for investor protection

## b) Amendment to the Registration Statement

If a registration statement is deemed to have deficiencies in form or insufficient statements of important matters, the FSC may order an amendment to the statement to be made, stating the reason therefor.

The person having filed the registration statement may also submit an amendment to it if any amendment is made prior to the beginning of the subscription period.

If any amendment to a registration statement is filed, such registration statement is deemed to be received on the date on which such amendment is filed. If any amendment to the registration statement is filed, the preliminary prospectus and the prospectus must be amended accordingly, in which case the KRX must be notified of such amendments.

If an offering price is finalized, an amendment to the registration statement that additionally states, *inter alia*, such finalized offering price and book-building results must be filed as well, which amendment will not affect the initial effectiveness of the previously filed registration statement.

### **c) Declaration of Effectiveness**

A registration statement is declared effective fifteen days after acceptance of it by the FSC. If the registration statement is declared effective, the issuer must make a prospectus available and open to public inspection at its head and branch offices, the FSC, the KRX and any other places handling subscription activities and deliver copies thereof upon the request of potential subscribers.

The issuer and distributors of securities and their representatives will carry out subscription procedures in earnest if the registration statement becomes effective and if a prospectus and its copies are made available and distributed.

## d) Filing of a Preliminary Prospectus

Any company intending to offer or distribute securities may prepare a preliminary prospectus to use it for solicitation purposes after the acceptance of a registration statement but before the declaration of effectiveness thereof.

In order to use a preliminary prospectus, the issuer must submit the preliminary prospectus together with a registration statement. The preliminary prospectus may be used as a prospectus if no changes in statements in the registration statement have occurred until the registration statement is declared effective.

## e) Filing of a Prospectus

A prospectus is an *investment solicitation document* provided for ordinary investors in solicitation of subscription of securities, which helps them make proper investment decisions by presenting them with an easier explanation of the content of a registration statement.

A preliminary prospectus is used for purposes of solicitation of subscription after a registration statement is filed but before it takes effect, whereas a prospectus is used after the filed registration statement is declared effective.

The prospectus may not contain any representations different from statements in the registration or omissions of such statements. The issuer

must prepare and make a prospectus available and open to public inspection not only at its head and branch offices but also at the FSC, the KRX and any other places handling subscription activities.

The prospectus must state (i) the date of effectiveness of the registration statement; and (ii) the final offering price, in addition to the statements in the preliminary prospectus. It must also state (iii) that part of the statements in the registration statement may change prior to the first day of the subscription period; and (iv) that the government does not recognize the truthfulness or correctness of the statements in the registration statement or warrant or approve the value of the securities in question.

## **f) Calculation of an IPO Price Band**

IPO pricing, one of the most important issues in listing, is commenced by a lead managing underwriter, who presents an offer price band by using an analysis method capable of estimating the value of a company in the most appropriate manner. Although the IPO price band was calculated in a relatively regular manner in the past – in accordance with the method as defined in the Regulations for Securities Underwriting Activities the method for the calculation of the IPO price has since been liberalized to allow the lead manager to estimate the value of the company in a more appropriate manner.



## g) Primary Valuation Methods and the Discount Rate

Classification		Features
Relative Valuation Approaches	P/E Ratio	<ul style="list-style-type: none"> <li>- Comparison of EPS multiples</li> <li>- Most widely used indicator in the stock market.</li> <li>- Objective and easy to understand.</li> <li>- Pros: clear in concept and easy to calculate.</li> <li>- Cons: the simple assumption that share prices are affected by net earnings only may exclude other factors.</li> </ul>
	EV/EBITDA	<ul style="list-style-type: none"> <li>- Comparison of multiples of the operating value excluding net cash</li> <li>- Underpins cash flow resulting from operating activities.</li> <li>- Primarily used as an auxiliary indicator in P/E ratio analysis.</li> <li>- Pros: Allows objective valuation and the provision of price information based on supply and demand in the capital market.</li> <li>- Cons: It is difficult to select similar corporations, and the lack of market efficiency is likely to result in distortion.</li> </ul>
	P/B Ratio	<ul style="list-style-type: none"> <li>- Comparison of book value per share</li> <li>- Significance on historical value rather than future value.</li> <li>- Primarily used in valuating financial institutions or in the process industry.</li> <li>- Pros: May be useful in valuating corporations if consistent accounting principles are used.</li> <li>- Cons: Difficult to apply to corporations using different accounting principles.</li> </ul>
Absolute Valuation Approaches	DCF	<ul style="list-style-type: none"> <li>- A weighted average of operating cash flows for the next 5 to 10 years</li> <li>- A method of valuing a company using the present value as discounted at the weighted average cost of capital (WACC)</li> <li>- Seldom used in domestic IPO valuation due to the low verifiability of variables affecting the price.</li> <li>- Pros: the best in theory</li> <li>- Cons: Lacks objectivity as financial data and in estimating capital costs and growth rates. The complex valuation process results in low verifiability.</li> </ul>
	Intrinsic Value	<ul style="list-style-type: none"> <li>- Based on a weighted average of the book value per share and the earnings per share value at the rate of 1 to 1.5</li> <li>- Was the valuation approach that was to be used under the provisions of the Regulations for Securities Underwriting Activities.</li> <li>- Used to value the rate of merger; value property under the Inheritance Tax and Gift Tax Act; and in the absence of similar companies.</li> <li>- Applies 1.5 times the average interest rate on all borrowings payable by the company or the interest rate determined and published by the MOSF, whichever is higher, as the capitalization rate to discount the earnings per share value.</li> </ul>

Following a due diligence review, the lead managing underwriter calculates a reasonable price by using a range of approaches to assess the value of the company and determines a IPO price band by applying an appropriate discount rate as agreed upon with the listing applicant.

## 2) Investor Relations and Book Building

### a) Investor Relations Events

Investor relations (“IR”) events are held to enhance the image of a company and obtain an appropriate assessment in the market by providing shareholders, investors and analysts with information on the operations, management strategies and future visions of the company. As the ultimate purpose is to build confidence between the stock market and the company, it is advisable to hold IR events on a regular basis after listing as well.

In general, IR events held in connection with an IPO and an original listing are held intensively for a period of approximately one week after a registration is declared effective and before book building is conducted.

A corporation may hold IR events either on its own or in consultation with the lead manager or an IR service provider *et al.*, where the roles of the lead manager or the IR service provider are to select and invite institutional investors, analysts and other key investors and offer professional assistance

in connection with the IR events. The KRX also provides IR event venues and facilities upon the request of the soon-to-be listed company.

IR events may be classified by size into one-on-one briefings, smaller events and larger events. A one-on-one briefing is a private IR meeting held by visiting any of some ten large institutional investors including large asset management firms and investment trust firms. A smaller IR meeting, on the other hand, is held for smaller institutional investors, banks, investment dealers, investment brokers, insurers and industry analysts, whereas a larger IR event is held for retail investors and other members of the public.



### Korea Investor Relations Service

It is not easy for a privately held company owned by a handful of shareholders to suddenly hold an IR event in order to attract investors and gain publicity. Such being the case, most companies use IR service providers to hold IR events.

The Korea Investor Relations Service (<http://www.kirs.or.kr>) is an IR service provider based on annual membership for which any publicly traded company may sign up. The Korea Investor Relations Service offers not only IR arrangement and support services but also training services to train IR officers. Holding lectures on IR issues as well as economic and securities issues, the organization provides a venue for making ties and socializing among publicly held companies.

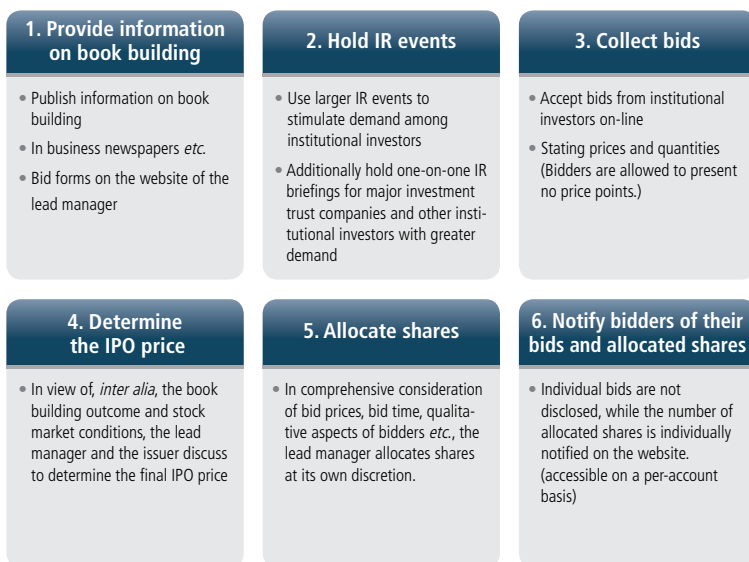
## b) Book Building and IPO Pricing

Book building refers to a process by which the lead manager presents a price band for the shares to be issued and identifies demand profiles (prices and quantities).

Book building is conducted on the shares allocated to institutional investors, excluding those allocated to the employee ownership association and retail subscribers, where institutional investors as prescribed in the Regulations for Securities Underwriting Activities may participate in the book building process.

Having better capability to collect and analyze information than retail investors, institutional investors are capable of verifying the adequacy of the price band as presented by the lead manager. In view of the book building outcome, the lead manager and the issuer discuss to determine the final offer price. If, however, the estimated amount of proceeds of the IPO is less than five billion won, the offer price may be determined without a book building process.

### < Book Building Procedure >



## 3) Subscription and Payment

### a) Subscription

Following the filing of a registration statement but prior to the first day of the subscription period, the lead managing underwriter publishes information on subscription in accordance with the content of such prospectus (including any preliminary prospectus and short-form prospectus) as filed with the registration statement in the joint names of the issuer, the lead manager and all other underwriters.

For a period of approximately two days following the declaration of effectiveness of the registration statement, the lead manager and other underwriters accept subscription orders, after verifying the subscribers' true names, in accordance with the criteria previously published for investors.

In order to prevent default of subscription, it is common practice for the lead manager and underwriters to receive at a certain rate, which rate is determined at their own discretion in accordance with, *inter alia*, market conditions and the number of shares offered. The subscription deposit must be marked as such for each issuer and separately deposited with a financial security company or bank and may not be offered as collateral.

## b) Allocation

The lead manager aggregates subscription orders upon expiry of the subscription period and then allocate shares in accordance with its own allotment criteria. Collating the subscription tables by subscription unit, subscriber sheets and allocation details submitted by other underwriters as well as its own collection of subscription orders, the lead manager searches for duplicate subscribers and examines allocation details by underwriter.

### < Allocation Rates for IPO Shares >

Classification	Allocation Rate
Employee ownership association*	20%
Retail subscribers	20% or more
Domestic and foreign institutional investors	Remainder

\* The employee ownership association is given priority in share allocation in the case of a public offering initiated to have a domestic company listed on the KOSPI Market, but not in the case of any foreign company or a listing on the KOSDAQ Market.

The lead managing underwriter may not allocate publicly offered shares to any person who provides services to the issuer or underwriters or otherwise has material interests in the issuer or underwriters.

The lead manager may adjust the size of a public offering depending on market conditions by using an over-allotment option whereby underwriters may sell additional shares in excess of the original amount offered, in consultation with the issuer.



## Over-allotment Option (Green Shoe Option)

### ➤ Overview

The over-allotment option is a share allocation scheme introduced in 2002, by which the lead managing underwriter may opt to allot shares in excess of the number of shares offered.

### ➤ Details and Procedures

#### • Signing of an Over-allotment Agreement; Compliance

A lead manager who has entered into an over-allotment agreement with the issuer must comply with the following:

- Number of shares over-allotted: 15% or less of the total number of shares offered
- Date of exercise of the over-allotment option: after thirty days but within forty days of the date on which the sale of shares commences
- Issue price of new shares resulting from the exercise of the over-allotment option: offering price

#### • Over-allotment

Upon signing of an agreement by which the issuer grants to the lead manager an option to acquire additional shares, the lead manager over-allots (shorts) the excess number of shares in subscription and allocation activities, where the over-allotted shares must be borrowed from major shareholders *et al.*

#### • Purchase of Shares to Return Over-allotted Shares

If the share price goes above the offering price after a public offering, underwriters are able to cover their short position by exercising the green shoe and acquiring new shares in the issuer. If the share price goes below the offering price, underwriters only need to buy back the shares (market making) in the market to cover their short position (not needing to exercise the greenshoe).

#### **If the market price > the offering price:**

Underwriters exercise a partial or full green shoe to acquire new shares from the issuer at the offering price and transfer such shares to those to whom shares were over-allotted.

#### **If the market price < the offering price:**

Underwriters exercise a partial or full green shoe to buy back shares in the market at a price of 90% or more of the offering price and transfer such shares to those to whom shares were over-allotted.

## c) Payment

After the number of shares allocated to each subscriber is determined, the lead managing underwriter and other underwriters apply the subscription deposit toward the payment of the amount payable by each subscriber and return the balance of the deposit to such subscriber. Conversely, if the amount of the subscription deposit is less than the amount payable, the subscriber must additionally pay the deficiency, where any shares not paid for will be acquired by the underwriter on its own account.

The payment procedure is completed by the lead underwriter paying capital contributions, obtaining a certificate of contribution from the bank and delivering the certificate to the issuer.

## d) Registration of Security and Performance Report on the Securities Issuance

Upon full payment of capital contributions, the issuer must file with the registry office having jurisdiction over its head office an application for the registration of change in capital together with, *inter alia*, the certificate of contribution, the subscription orders of underwriters, a photocopy of firm commitment underwritten offering and distribution agreement, the Articles of Incorporation, and a photocopy of the minutes of the Board of Directors meeting attached thereto within two weeks of the date immediately following the date of full payment. It is, however, advisable to complete the registration of change on the date following the date of full payment in order to ensure prompt listing.



Upon completion of the payment procedure, the issuer must promptly file a post-issuance report with the FSC and a photocopy thereof with the KRX.

## d. Original Listing

A company that has completed a public offering submits an application for original listing to the KRX. The KRX confirms compliance with the share distribution requirement and other matters that were not apparent at the time of the listing eligibility review as well as, *inter alia*, whether a transfer agent agreement has been entered into and whether shares have been paid for. The KRX also reviews again whether listing requirements are met as of the initial listing review. The test of whether share distribution requirements are met through the IPO is the only additional test applied unless any material changes in the operational and managerial environment of the listing applicant have occurred. If, however, the fiscal year in which the listing eligibility review was applied for differs from the fiscal year in which an original listing was applied for, listing requirements must be revisited at the time of application for the original listing in terms of the new fiscal year.

Promptly upon receipt of an application for listing, the KRX notifies the original listing applicant and relevant organizations of whether the securities are approved for original listing.



## Listing Eligibility Review and Initial Listing Review

Any company wishing to be listed must undergo two reviews by the KRX. A listing eligibility review is a review of listing eligibility, while an initial listing review is a review of distribution requirements. If a company has passed a listing eligibility review and satisfies share distribution requirements through an IPO, such company applies for original listing, and the KRX finally conducts an initial listing review.

Application for original listing may take somewhere between six weeks and six months following eligibility clearance or up to one year if fluctuations in the securities market or any other exceptional events result in an extension of the effectiveness of eligibility clearance being approved by the KRX. The date of original listing may not be accurately predicted at the time of eligibility clearance, as such date is determined by the organization that has granted clearance at its own discretion within certain time limits.





# **Part 2**

## **Advance Preparations for Listing Review**

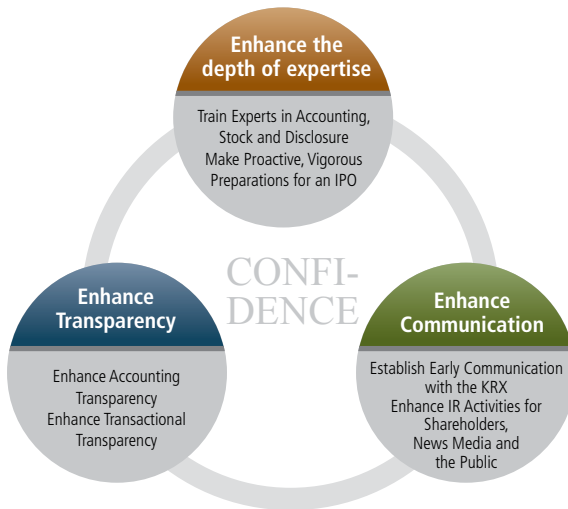
**Chapter 01**  
**Course of Action for Listing**

**Chapter 02**  
**Preparations for Listing**

**Chapter 03**  
**Prior Consultation  
on Listing Application**

**Chapter 04**  
**Filing of an Application for  
Listing Eligibility Review**

# Course of Action for Listing



## a. Enhancement of Expertise

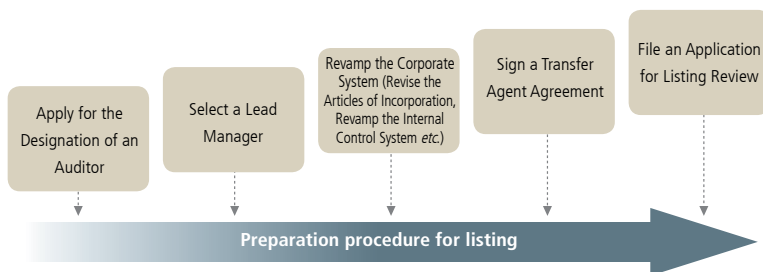
A company preparing for listing should train accounting and disclosure experts to position itself as a publicly traded company. As having no accounting and disclosure experts in the staff may result in unforeseen events where the company is deemed in noncompliance with the disclosure requirement or its issues may be suspended from dealings, such risks should be prevented in advance by training its own group of experts.

## b. Enhancement of Transparency

Accounting transparency and transactional transparency in relations with affiliates are very important elements of investor protection. Although certain companies tend to consider that an unqualified opinion of an independent auditor verifies accounting transparency, an independent auditor's opinion is not an indicator of accounting transparency or reliability but merely verification of the accuracy of financial statements in material aspects in accordance with the Financial Accounting Standards. Transactional transparency should also be enhanced to prevent any abnormal inflow or outflow of wealth in transactions with affiliates.

## c. Improvement of Communication

Listing effectively distributes corporate control previously held by a small number of specially-related persons to a larger number of members of the public. A privately held company does not need to engage in vigorous IR activities for shareholders, investors and news media, whereas a publicly held company does need to communicate corporate information to external entities in a timely manner through active IR activities to have its corporate value properly reflected, making it necessary to have in place a systematic mechanism to enhance communication by building a website and organize, inter alia, a department dedicated to IR.



# Preparations for Listing

The preparatory period for listing may vary company to company. It takes certain companies more than one year, since it is required that there be no change of the largest shareholder within a one-year period preceding the application for listing eligibility review.

## a. Application for the Designation of Auditor

### 1) Domestic Companies

#### a) Necessity of Application

For investor protection purposes, any newly listed company or any other company required to meet auditing requirements must have a designated independent auditor. Any domestic company seeking initial listing on the KRX must apply for the designation of an auditor in the year of listing or in the preceding year.

## b) How to Apply

The Corporate Accounting System Office of the FSS is responsible for practical aspects of independent auditor designation. Any company preparing for listing must apply for the designation of an independent auditor to the FSS in the target year of listing or in the preceding year. Application for replacement of the auditor may be made once, and the application may not be withdrawn once the auditor is replaced. The FSS gives a notice of designation of an auditor within the first two weeks of the month immediately following the month in which the application for the designation of an auditor is accepted.



### Required filings in applying for the designation of an auditor

The filings as required by the FSS as of April 2011 are as follows. As for institutional and working-level details, it is necessary to refer to the Designation of an Independent Auditor section (FAQs on Independent Auditing) of the Accounting Portal Website of the FSS (<http://www.fss.or.kr>) or make direct inquiries with the applicable department.

- ① Application for designation of auditor
- ② Documents evidencing the progress of an IPO procedure
  - Minutes of the Board of Directors meeting
  - Minutes of the shareholders meeting
  - Agreement with the lead managing underwriter
- ③ Closing statement of financial position as of the end of the preceding fiscal year



## c) Companies Exempt from the Auditor Designation Requirement

As the designation of an independent auditor is intended to enhance the accounting transparency of a company for investor protection purposes, any financial institutions for which accounting transparency is deemed to be ensured under other laws (banks, insurance companies, financial investment firms *etc.*), and any companies incorporated pursuant to special laws *etc.* are exempt from the designation of an auditor.

## 2) Foreign Companies



As any applicant applying for listing of foreign shares has no obligation to have an auditor designated and is thus free to appoint a domestic or foreign public accounting firm of its own choosing, the KRX imposes the following requirements for qualifications of an independent auditor of such applicant for the purposes of accounting transparency and investor protection:



## Accounting standards applicable to an applicant applying for listing of foreign shares; independent auditor

The financial statements of any applicant applying for listing of foreign shares must be prepared in accordance with any of (i) the generally accepted accounting principles (the "GAAP") in the Republic of Korea, (ii) the GAAP in the United States of America or (iii) the International Financial Reporting Standards (the "IFRS"), which designation may not be changed after listing.

### • Domestic accounting firm

Classification	Qualifications
Years since incorporation	Five years or more since incorporation
No. of experts	Fifty or more certified public accountants in its employment
Revenue	The revenue for the most recent fiscal year is 10 billion won or more.
Capacity to pay damages	The sum of the compensatory damage reserve and the mutual indemnity fund is 2 billion won or more.
International association	An audit quality assurance contract with an accounting services organization having member firms in thirty or more countries that collectively employ 2,000 or more professionals has been entered into.
Penalties by the financial authority	No cancellation of registration or suspension of the whole or part of operations of the accounting firm has been proposed by the SFC for the recent three years.

### • Foreign accounting firm

	Classification	Qualifications
For an applicant not listed on a foreign exchange	Years since incorporation	Five years or more since incorporation
	No. of professionals	Fifty or more certified public accountants in its employment
	Revenue	The revenue for the most recent fiscal year is 10 billion won or more.
	International association	An audit quality assurance contract with an accounting services organization having member firms in 100 or more countries that collectively employ 100,000 or more professionals has been entered into. * The global headquarters of the above organization is exempt from the international association and requirements on number of professionals.
For an applicant listed on a foreign exchange	Years since incorporation	Same as above
	No. of professionals	Same as above
	Revenue	Same as above
	International association	An audit quality assurance contract with an accounting services organization having member firms in thirty or more countries that collectively employs 2,000 or more professionals has been entered into. * The global headquarters of the above organization is exempt from the international association and requirements on number of professionals.

Any applicant for secondary listing of foreign securities may not have the independent auditor replaced for a period of three years starting from the year in which an application for listing eligibility review is filed, and must be audited by a public accounting firm meeting the above requirements three years therefrom.

## b. Selection of a Lead Manager

### 1) Role of the Lead Manager

A lead managing underwriter provides services to ensure a successful IPO and listing of an applicant company. For the selection of a lead manager and the execution of an IPO, one may refer to the Regulations for Securities Underwriting Activities, which provide for the overall regulatory matters concerning the IPO services provided by the lead manager, including the principal underwriting agreement and IPO pricing. (the website of the Korea Financial Investment Association at <http://www.standard.go.kr>)

In a due diligence review, the lead manager examines the eligibility of the company wishing to be listed, the value of shares in the company, *etc.* and engages in discussions with the company to determine, *inter alia*, terms of underwriting. The lead manager also coordinates underwriting and subscription activities and engages in any other such activities as may be necessary in connection with underwriting of the shares. More specifically, the roles of the principal underwriter are as follows:



#### Primary roles of the lead manager are to:

- ❖ review documents on the operating performance of the listing applicant, matters concerning its operations *etc.* and make verification visits;
- ❖ provide direction and conduct checks with respect to the finance, accounting *etc.* of the listing applicant;
- ❖ engage in discussions and provide direction with respect to listing requirements;
- ❖ handle matters concerning, *inter alia*, checking of statements in the registration statement;
- ❖ support regular checking of developments relating to listing and preparation of listing-related documents;
- ❖ conduct stock analysis and book building and discuss IPO pricing; and
- ❖ manage IPO and subscription activities.

## 2) Restrictions on the Qualifications of the Lead Manager

In order to enhance fairness in a due diligence review conducted by the principal underwriter, restrictions are placed in a manner that any financial investment firm deemed to share special interests with a company wishing to be listed may not serve as a principal underwriter for such company. Any financial investment firm in any of the following cases may not serve as a lead managing underwriter:



### Restrictions on the Qualifications of the Lead Manager

- ❖ where the listing applicant or any interested person\* of the listing applicant holds 5% or more of the equity securities issued by the lead manager;
  - \* Interested person: any of the board members, largest shareholder or affiliates of a company in question, any board member of such affiliate, or any spouse or lineal ascendant of the foregoing
  - \* equity securities: voting and non-voting shares, convertible bonds, bonds with warrants, exchangeable bonds, share warrants and any other securities similar thereto
- ❖ where the lead manager holds 5% or more of the equity securities issued by the listing applicant;
- ❖ where the lead manager and its interested persons collectively hold 10% or more of the equity securities issued by the listing applicant;
- ❖ where a shareholder holding 5% or more of the equity securities issued by the lead manager and a shareholder holding 5% or more of the equity securities issued by the listing applicant are the same person or where one is an interested person of the other (except where either one is an institutional investor);
- ❖ where any board member of the lead manager holds 1% or more of the equity securities issued by the listing applicant; or
- ❖ where any board member of the lead manager or the listing applicant is an interested person of the listing applicant or the lead manager.

## c. Revamping the Corporate System

### 1) Amendment of the Articles of Incorporation

Any company wishing to be listed must revamp its articles of incorporation in advance to meet listing requirements. In revising the Articles of Incorporation, any company wishing to be listed on the KOSPI Market may refer to the Standard Articles of Incorporation of a Publicly Held Company as provided by the KLCA (<http://www.klca.or.kr>), while any company wishing to be listed on the KOSDAQ Market will soon be able to refer to the Standard Articles of Incorporation that are being drafted by the KOSDAQ Listed Companies Association for, in particular, for SMEs.

In connection with the revamping of the Articles of Incorporation, the following preparations should be made in advance:

#### a) Number of Authorized Shares

As the total number of issued and outstanding shares in a publicly traded company may increase in the course of public offering and capital increase following an IPO, the number of authorized shares should be adjusted, facilitating the issuance of additional shares. In determining the number of authorized shares, it should be ensured that there will be sufficient room considering the IPO and listing as well as subsequent rights offerings, stock dividends *etc.*

## b) Par Value

The par value should be adjusted considering the offering price and the number of shares to be listed. A par value may be: 100 won, 200 won, 500 won, 1,000 won, 2,500 won or 5,000 won. If too high a par value is deemed to result in a higher offer price and relatively small numbers of listed shares and liquid shares, a stock split may lower the offer price and increase the number of liquid shares.

Due to the Commercial Act of Korea not being applicable to any applicant applying for listing of foreign securities and the absence of any restrictions on the size of capital and the par value in original listing requirements, no restrictions are placed on the par value if non-par value shares are permitted in the applicable jurisdictions such as Japan and Australia.

## c) Exclusion of the Preemptive Rights

A preemptive right, one of the key rights of shareholders, entitles each shareholder to acquire new shares, if and when issued, in proportion to such shareholder's holdings of shares. New shares, therefore, may not be offered to ordinary investors or allotted to the employee ownership association unless the Articles of Incorporation contains a provision whereby the preemption right of the shares may be excluded.

## d) Public Notice of the Shareholders Meeting

A publicly held company may substitute individual notice of a shareholders meeting for any shareholder holding 1% or less of the total number of voting shares issued and outstanding with a public notice

published in two or more daily newspapers of general circulation twice or more, or by announcement on the electronic disclosure system operated by the FSS or the KRX. Accordingly, a company wishing to be listed must include a provision to this effect in its Articles of Incorporation.

## **e) Transfer Agent**

As a listed company is required by the Listing Regulations to designate a transfer agent to perform share transfer activities in order to ensure stable trading of securities and economic efficiency, and the Articles of Incorporation must therefore contain a provision for the appointment of a transfer agent.

Applicants applying for secondary listing of foreign securities commonly designate the Korea Securities Depository (the "KSD") as their transfer agent for both deposited shares and depository receipts in order to facilitate the exercise of rights by minority shareholders.

## **f) Granting of Stock Options**

A stock option is the right for employees to purchase shares in a company and in order to benefit from a broader scope of employees to which stock options may be granted and a simplified procedure for the granting of options, a publicly traded company should include a provision therefor in its Articles of Incorporation.



## Stock Options

### ➔ Eligible Grantees

A publicly traded company may grant stock options to its own or its affiliates' officers and employees who have contributed to or are likely to contribute to its incorporation, operation, overseas sales and/or technological innovation. Among the officers and employees, however, the largest shareholder, controlling shareholders and their specially-related persons are excluded from being awarded stock options.

### ➔ Method of Grant

Stock options may be awarded in any of the following three manners, one of which must be selected at the time of resolution for awarding the options:

- ① In new shares issued and delivered: Upon exercise of the option, new shares are issued and delivered.
- ② In treasury shares delivered: Upon exercise of the option, treasury shares are delivered.
- ③ In payment of share price difference: A cash payment or shares amounting to the difference between the exercise price of the stock option and the market price (if the exercise price is higher than the market price) is delivered.

### ➔ Granting Procedure and Time of Exercise

The granting of stock options requires a special resolution adopted by the shareholders meeting as provided in the Articles of Incorporation as well as a contract between the grantee and the company as prescribed in the resolution. A listed company may award stock options up to 10% by resolution of the Board of Directors or up to 15% by resolution of the general meeting of shareholders.

Any person awarded a stock option must stay in office or employment for a period of two years or more following the date of the resolution of the shareholders meeting before exercising the option and may not transfer the option.

### ➔ Applicable laws

- Articles 340-2 through 340-5 of the Commercial Act
- Article 542-3 of the Commercial Act
- Article 9 of the Enforcement Decree of the Commercial Act
- Article 165-17 of the Financial Investment Services and Capital Market Act
- Article 176-18 of the Enforcement Decree of the Financial Investment Services and Capital Market Act



## **g) Ex-dividend Date for New Shares**

A publicly held company must ensure that its Articles of Incorporation contains a provision to the effect that any new shares issued by it in rights offering, bonus issues or share dividends are covered by the same ex-dividend date for outstanding shares. If different ex-dividend dates are applicable to different classes of shares, the listing of the applicable shares on the exchange is suspended until such difference is resolved.

## **2) Revamping of the Disclosure System**

A listed company must have a disclosure system as may be appropriate to perform its disclosure obligation under the law. The company is required to establish an organization charged with keeping track of and disclosing matters concerning operation, investment and finance and any other important matters to be disclosed that occur within each department.

The KRX designates and uses as an official channel one disclosure officer among the board members of each listed company and requires the company to appoint and register with the KRX one or more disclosure representatives charged with disclosure activities. Such disclosure representative must complete a training course in disclosure within six months of the date of initial listing.

An applicant applying for secondary listing of foreign securities sometimes appoints a disclosure agent in addition to one disclosure officer and one disclosure representative. A domestic law firm or accounting firm is commonly appointed as a disclosure representative, that may offer a

range of assistance with disclosure in initial phases of listing.

### 3) Adoption of K-IFRS

Effective 2011, a publicly traded company is required to prepare its financial statements in accordance with Korean equivalents of International Financial Reporting Standards, or K-IFRS. As the financial statements for the preceding fiscal year presented for comparative purposes must also be in accordance with K-IFRS, applying for listing eligibility review based on K-IFRS financial statements in 2011 would entail converting financial statements for 2010 into K-IFRS compliant format. With a view to preventing confusion regarding disclosure of financial documents as a result of the change of the accounting standards, the FSS has required each listed company to state the progress of preparations for the adoption of K-IFRS in its quarterly, semi-annual and annual operating reports since 2009. For further details, please refer to the K-IFRS homepage of the FSS (<http://ifrs.fss.or.kr>).



#### International Financial Reporting Standards (IFRS)

Increasing liberalization of the global capital market has prompted the necessity for reliable financial information presented in a single set of standards. Accordingly, accountancy bodies in a number of countries founded the International Accounting Standards Board, or IASB, to develop common accounting standards, resulting in IFRS.

Jointly developed by accountancy bodies of the US, the UK and certain other countries, IFRS is a principles-based set of standards rather than presenting detailed, specific accounting methods. IFRS is also based on consolidated financial statements and assessment of fair value, which are capable of offering more accurate information on the financial status and intrinsic value of a company.

In or after 2011, 150 countries including EU member countries, Australia and Hong Kong will fully conform with IFRS, and Korea has fully adopted IFRS for listed companies since 2011.

## d. Revamping of the Internal Control System

### 1) Board of Directors and Statutory Auditor

The Board of Directors, the top decision-making body of a corporation, must be maintained in accordance with the Commercial Act and by-laws. As an applicant applying for listing eligibility review is not yet listed, the appointment of outside directors and a statutory auditor required of a listed company is not obligatory. The appointment of outside directors and a statutory auditor prior to a listing, however, is more likely to result in recognition of operational transparency in the course of a listing review.

### 2) Appointment of Outside Directors

#### a) For Domestic Companies

A domestic listed company is required to ensure that its outside directors make up one fourth or more of all board members. In addition, any listed company with assets totaling two trillion won or more as of the close of the most recent fiscal year is required to appoint three or more outside directors, who must constitute the majority of all directors. A company initially listed on the KRX must appoint its outside directors prior to the first annual general meeting of shareholders convened after listing.

Any KOSDAQ-listed venture company with total assets less than 100 billion won is not obligated to appoint outside directors. Qualifications of outside directors

## Qualifications of outside directors

- Paragraphs (1) and (2) of Article 542-8 of the Commercial Act

**1. A listed company, with the exception of the following companies, shall ensure that its outside directors make up one fourth or more of the total number of directors; provided, however, that any listed company with assets totaling two trillion won or more as of the close of the most recent fiscal year shall appoint three or more outside directors, who shall constitute the majority of all directors:**

- a. any venture company with assets totaling 100 billion won as of the close of the most recent fiscal year that is listed on the KOSDAQ Market;
- b. any listed company for which a debt restructuring proceeding has been commenced or that has been declared bankrupt;
- c. any company initially listed on the KOSPI Market or the KOSDAQ Market (until the day immediately preceding the date of the first annual general meeting of shareholders convened after initial listing); and
- d. any listed company that has adopted a resolution for winding up.

**2. Outside directors of a listed company shall not fall within the scope of any of the following in addition to each item of Article 382-3, and any outside director who does shall be removed from his or her office:**

- a. any minor, incapacitated person or partially incapacitated person;
- b. any person declared bankrupt and not reinstated;
- c. any person sentenced to imprisonment or to a more severe penalty for whom less than two years have elapsed since the completion of the execution of such sentence or since the date on which such sentence was suspended;
- d. any person for whom less than two years have elapsed since such person was released from office or dismissed due to the violation of any financial laws;
- e. shareholder of a listed company and others who have such special relationship with such person as prescribed by the Presidential Decree and collectively hold the largest number of shares among the total number of shares issued and outstanding other than non-voting shares (Article 13-4 of the Enforcement Decree of the Commercial Act);
- f. any person who holds 10% or more of the total number of shares issued and outstanding other than non-voting shares on his or her own account whether or not in his or her name or exerts a substantial influence on the appointment and dismissal of directors or auditors and any other important operational matters of the listed company, as well as such person's spouse or lineal ascendants and descendants; and
- g. any such other person who has difficulty faithfully performing an outside director's duties, or who may have an influence on the operation of the listed company as prescribed by Presidential Decree (Article 13-5 of the Enforcement Decree of the Commercial Act).

• **Article 382-3 of the Commercial Act**

**1. An outside director is a director who is not engaged in the regular business of a company and does not fall within the scope as set forth in any of the following subparagraphs, and any outside director who does shall be removed from his or her office:**

- a. any director or employee engaged in the regular business of the company or any director, statutory auditor or employee who has engaged in the regular business of the company within the last two years;
- b. the largest shareholder or such shareholder's spouse, lineal ascendant or descendant if such shareholder is a natural person;
- c. any director, statutory auditor or employee of the largest shareholder if such shareholder is a body corporate;
- d. any spouse or lineal ascendant or descendant of any director or statutory auditor;
- e. any director, statutory auditor or employee of the parent or subsidiary of the company;
- f. any director, statutory auditor or employee of a corporate body maintaining a transactional relationship or sharing material interests with the company; or
- g. any director, statutory auditor or employee of any other company of which any director is a director or employee of the company.

As an outside director of a listed company may also serve as an outside director of up to one other listed company only, the appointment of an outside director must accompany verification as to whether the candidate serves for any other company.

## **b) For Foreign Companies**

An applicant applying for secondary listing of foreign securities is required, as in the case of domestic listed companies, to ensure that its outside directors make up one fourth or more of all board members. If its assets totals two trillion won or more as of the close of the most recent fiscal year, it is also required to appoint three or more outside directors,

who must constitute the majority of all directors.

An outside director of an applicant applying for secondary listing of foreign securities, however, may not be, as opposed to the case of domestic companies, subject to the restrictions on multiple directorship where otherwise stipulated in the laws of its home country. For example, as a Singapore-based applicant applying for secondary listing of foreign securities is not restricted from serving as an outside



director for other companies under the laws of Singapore, its outside director may therefore serve as outside directors for multiple companies unless such director serves as an outside director for the applicant's competitor or there are any fiduciary duty issues.

### 3) Appointment of Full-time Statutory Auditors; Organization of an Audit Committee

#### **Disqualifications of a full-time statutory auditor of a listed company**

- paragraphs (1) and (2) of Article 542-10 of the Commercial Act

1. Any listed company with assets totaling 100 billion won or more as of the close of the most recent fiscal year shall appoint, by resolution of the general meeting of shareholders, one or more statutory auditors who hold full-time positions and conduct audit inspections for the company ("full-time statutory auditors"), except where an audit committee has been established under this Act or under any other law (including cases where a listed company that is not obligated to establish the Audit Committee have set up an audit committee that satisfies the requirements as set forth in this section).
2. Any of the following persons may not serve as a full-time statutory auditor for a listed company, and any statutory auditor shall be removed from his or her office if such auditor falls within the scope of any of the following:
  - a. any minor, incapacitated person or partially incapacitated person;
  - b. any person declared bankrupt and not reinstated;
  - c. any person sentenced to imprisonment or to a more severe penalty for whom less than two years have elapsed since the completion of the execution of such sentence or since the date on which such sentence was suspended;
  - d. any person for whom less than two years have elapsed since such person was released from office or dismissed due to the violation of any financial laws;
  - e. any person who holds 10% or more of the total number of shares issued and outstanding other than non-voting shares on his or her own account and in the name of such person or any others or exerts substantial influence on the appointment and dismissal of directors or auditors and any other important operational matters of the listed company, as well as such person's spouse or lineal ascendants and descendants;
  - f. any director or employee engaged in the regular business of the company or any director, statutory auditor or employee who has engaged in the regular business of the company within the last two years, with, however, the exception of any director who serves or has served as a member of the audit committee; or
  - g. any person who may have an influence on the operation of the company and is also (i) the spouse, lineal ascendant or descendant of any director engaged in the regular business of the company, (ii) a director or employee who is engaged or has engaged within the last two years in the regular business of an affiliate of the company.

## Requirements for the organization of an audit committee

### • paragraphs (1) through (3) of Article 542-11 of the Commercial Act

- 1. Any listed company with assets totaling two trillion won or more as of the close of the most recent fiscal year shall establish an audit committee with the exception of the following:**
  - a. any listed company that is a real estate investment trust;
  - b. any listed company to which the Framework Act on the Management of Government-Invested Institutions and the Act on the Improvement of Managerial Structure and Privatization of Public Enterprises are applicable;
  - c. any listed company for which a debt restructuring proceeding has been commenced; or
  - d. any company initially listed on the KOSPI Market or the KOSDAQ Market (until the day immediately preceding the date of the first annual general meeting of shareholders convened after initial listing).
- 2. One or more of the committee persons shall be such accounting or financial professionals as prescribed by the Presidential Decree (Article 16 (2) of the Enforcement Decree of the Commercial Act).**
- 3. The representative of the audit committee shall be an outside director.**
- 4. Any of the following persons may not serve as a committee person of the audit committee of a listed company who is not an outside director of such company, and any committee person shall be removed from his or her office if such committee person falls within the scope of any of the following:**
  - a. any minor, incapacitated person or partially incapacitated person;
  - b. any person declared bankrupt and not reinstated;
  - c. any person sentenced to imprisonment or to a more severe penalty for whom less than two years have elapsed since the completion of the execution of such sentence or since the date on which such sentence was suspended;
  - d. any person for whom less than two years have elapsed since such person was released from office or dismissed due to the violation of any financial laws;
  - e. any person who holds 10% or more of the total number of shares issued and outstanding other than non-voting shares on his or her own account and in the name of such person or any others or exerts substantial influence on the appointment and dismissal of directors or auditors and any other important operational matters of the listed company, as well as such person's spouse, lineal ascendants and descendants;
  - f. any director or employee engaged in the regular business of the company or any director, statutory auditor or employee who has engaged in the regular business of the company within the last two years, with, however, the exception of any director who serves or has served as a member of the audit committee; or
  - g. any person who may have an influence on the operation of the company and is also (i) the spouse, lineal ascendant or descendant of any director engaged in the regular business of the company, (ii) a director or employee who is engaged or has engaged within the last two years in the regular business of an affiliate of the company.



Any listed company with assets totaling 100 billion won or more as of the close of the most recent fiscal year is required to appoint one or more full-time statutory auditors, while any listed company with assets totaling two trillion won or more as of the close of the most recent fiscal year is required to establish an audit committee.

It should be noted that outside directors and an audit committee are only required to be appointed or set up prior to the first annual general meeting of shareholders convened after initial listing whereas full-time statutory auditors must be appointed prior to the date of original listing. Listing is not approved unless full-time statutory auditors are appointed as of the date of application for original listing.

In the case of the KOSDAQ Market, any company subject to the full-time statutory auditor requirements must appoint one or more full-time statutory auditors by the date of application for listing review.

The audit committee must have outside directors comprising two thirds or more of all committeepersons and include one or more accounting and financial professionals.

The qualifications of statutory auditors and members of the audit committee are stipulated in the Commercial Act. An applicant applying for secondary listing of foreign securities may appoint statutory auditors qualifying under the provisions, if any, of the laws of its home country.

## 4) Revamping of Regulations on Internal Controls

Any company preparing for listing shall revamp its by-laws to establish such internal controls as may be appropriate for a listed company. It is important, in particular, to have in place and thoroughly enforce regulations on the operation of the Board of Directors and transactions with specially-related persons, which may demonstrate the level of transparency.

## 5) Regulations on the Operation of the Board of Directors

Since the Board of Directors serves to curb and monitor the operational duties of the CEO, the proper operation of the Board effectively enhances the internal controls of a company. Any company preparing for listing should establish practical regulations on the operation of the Board, ensure that the Board is operated in accordance therewith, and prepare detailed minutes of board meetings. The minutes of board meetings relating to listing, in particular, are often requested as supporting documents in the course of an IPO and should thus be well preserved.

## 6) Regulations on Transactions with Specially-related Persons

Any company wishing to be listed should have in place measures for ensuring fairness in transactions, if any, such as asset transfers, loans or

operation-related transactions with, *inter alia*, the largest shareholder, affiliates and controlling shareholders.

If the business structure, operational environment *etc.* result in frequent transactions with specially-related persons, it could be a viable option to ensure fairness by establishing controls on such transactions. It should also be ensured that any transaction with a specially-related person is effected by a resolution of the Board of Directors or any other stringent procedures or reflect the fair assessment by an independent organization.

## Transactions with interested parties

### ● Restrictions on transactions with interested parties (paragraphs (1) and (2) of Article 542-9 of the Commercial Act)

**1. A listed company shall not extend credit (referring to lending of money or any other property with economic value, guarantees for the performance of obligations, purchase of securities of a financial assistance nature, and any such other direct or indirect transaction accompanying credit risks as prescribed by the Presidential Decree (Article 14 (1) of the Enforcement Decree of the Commercial Act)) to or for the benefit of any of the following persons:**

- a. any controlling shareholder and such shareholder's specially-related person;
- b. any director (including any person who has used his or her influence on the company to direct a director to execute a task, who has personally executed a task in the name of a director, or who is not a director but has executed a task by using a name such as honorary chairman, chairman, president, vice president, executive vice president, senior vice president, director or any other name that may be deemed authorized to execute a task of the company); or
- c. any statutory auditor

**2. Credit may be extended in any of the following cases:**

- a. where money in the amount of up to 100 million won is lent to a director or a statutory auditor for the purpose of tuitions, housing loans, medical costs or any other fringe benefits as prescribed by the company;
- b. where credit is extended as permitted by other laws; or
- c. where credit is extended to or for the benefit of a controlling shareholder (including such shareholder's specially-related persons) who is a body corporate in accordance with lawful procedures, and such extension of credit is not likely to undermine the operational integrity of the listed company and is necessary to achieve the operational objectives of such company.

- **Procedure for the approval of the Board of Directors on transactions with interested parties (Article 542-9 (3) of the Commercial Act)**

1. Any listed company with assets totaling two trillion won or more as of the close of the most recent fiscal year that intends to enter into any of the following transactions (excluding any transactions prohibited under Article 542-9 (1) of the Commercial Act) with or for the benefit of such largest shareholder, specially-related person of the largest shareholder or specially-related person of the company as prescribed by the Presidential Decree (Article 14 (5) of the Enforcement Decree of the Commercial Act) shall obtain an approval from the Board of Directors:

a. any single transaction amounting to no less than the following amounts in terms of the total amount of assets or revenue:

- ① 1% of the total assets as of the close of the most recent fiscal year if the listed company is subject to inspection under Article 38 of the Act on the Establishment *etc.* of the Financial Supervisory Commission; or
- ② 1% of the total assets or total revenue as of the close of the most recent fiscal year if the listed company is not subject to inspection under Article 38 of the Act on the Establishment *etc.* of the Financial Supervisory Commission; or

b. any transaction where the total amount of transactions, including the transaction in question, effected with a particular person during a given fiscal year is no less than the following amounts:

- ① 5% of the total assets as of the close of the most recent fiscal year if the listed company is subject to inspection under Article 38 of the Act on the Establishment *etc.* of the Financial Supervisory Commission; or
- ② 5% of the total assets or total revenue as of the close of the most recent fiscal year if the listed company is not subject to inspection under Article 38 of the Act on the Establishment *etc.* of the Financial Supervisory Commission.

2. Any ordinary transaction specific to a line of business in which a listed company may be engaged without obtaining an approval from the Board of Directors if such transaction falls within the scope as set forth in subparagraph a or without reporting the details of the transaction to the general meeting of shareholders if such transaction falls within the scope as set forth in subparagraph b.

- a. Any uniform transaction under a standardized contract based on the Regulation of Standardized Contracts Act
- b. Any transaction effected in a manner not exceeding such total amount of transactions as approved by the Board of Directors

Although an applicant applying for secondary listing of foreign securities may comply with the laws of the country of incorporation if such laws conflict with the laws of Korea, the applicant may receive recognition for transparency of its internal controls if its Articles of Incorporation and by-

laws incorporate the restrictions on and procedures for transactions with interested parties in accordance with the Commercial Act of Korea.

● **Specially-related Persons and Interested Parties**

As for the term “specially-related person” as used in the Listing Regulations, the definition given in the Financial Investment Services and Capital Market Act (the “FSCMA”) is used as it is. Special relationship as used in the course of a listing review, however, is a catch-all notion encompassing a group of similar concepts such as specially-related person, specially-related party, interested party and affiliate. The reason for this broad interpretation of the term ‘special relationship’ in a listing review is because all transactions that may infringe on the property of a company and the interests of its shareholders must be addressed by the review, making it impractical to limit transaction counterparties to a narrower breadth. That being given, a company preparing for listing is advised to use efforts to enhance the level of transparency for all transactions that may result in undue benefits for whoever the counterparty may be.

- Specially-related person: Article 9 of the FSCMA
- Specially-related party: Financial Accounting Standards 20, K-IFRS 1024, Article 87 of the Enforcement Decree of the Corporate Income Tax Act and Article 98 of the Enforcement Decree of the Personal Income Tax Act
- Affiliate: Article 5 of the Enforcement Decree of the Act on External Audit of Stock Companies
- Interested party: Article 542-9 of the Commercial Act

## e. Lock-up of shares held by the largest shareholder *et al.* (See Appendix 2.)

**< Requirements for Lock-up in the KOSPI Market >**

Largest shareholder <i>et al.</i>	For a period of six months starting on the date of listing for equity securities held by the largest shareholder <i>et al.</i>
Private offering	For a period of six months starting on the date of listing if equity securities are acquired in a private placement or equity securities held by the largest shareholder <i>et al.</i> are acquired within one year of the date of application for listing eligibility review



## Requirements for lock-up in the KOSDAQ Market

- ❖ Largest shareholder *et al.*: For a period of one year starting on the date of listing (Up to 5% may be sold in each month after six months have elapsed since the date of listing.)
- ❖ Any person having acquired new shares or shares held by the largest shareholder *et al.* in a private placement within one year preceding the date of application for listing eligibility review: for a period of one year starting on the date of listing
- ❖ Any venture capitalist or accredited investor: for a period of one month starting on the date of listing if the duration of investment as of the date of application is less than two years (not applicable to any new growth engine company)
- ❖ Any over-allotted shares in a rights offering or bonus issue: for a period of one year starting on the date of listing

The shares held by the largest shareholder *et al.* are locked up for a certain period of time following a listing. The shares acquired from the largest shareholder *et al.* within a one-year period preceding the date of application for listing eligibility review are also locked up. This is intended to prohibit avoidance of the lock-up obligation through the sale of shares prior to the application for listing eligibility review.

The largest shareholder and their specially-related persons, therefore, must inform the potential purchaser of the lock-up and obtain the consent of the purchaser when selling their shares. If the failure to do so results in the purchaser refusing the lock-up or reselling of shares, the largest shareholder *et al.* are required to buy the applicable number of shares from other investors and effect a lock-up over the shares.

A listing applicant, in the course of preparing for listing, must identify any and all applicable shares, and the CEO of the listing applicant must be authorized by the largest shareholder and any other applicable shareholders

to perform activities relating to the lock-up of their holdings for and on their behalf and deposit such equity securities with the lead managing underwriter. The lead manager must, in turn, deposit such equity securities with the KSD for each shareholder.

In filing an application for listing eligibility review, the listing applicant must submit lock-up agreements entered into by the shareholder and a lock-up certificate of deposit issued by the KSD. The lock-up agreement is to the effect that shares locked up will not be withdrawn or transferred except where the KRX deems it necessary to do so, while the lock-up certificate of deposit is a document evidencing deposited shares as issued by the KSD.

As an applicant applying for secondary listing of foreign securities is only required to submit lock-up certificates of deposit not at the time of application for listing eligibility review but prior to the application for an original listing, it shall suffice to prepare a lock-up agreement at the time of application for listing eligibility review. After applying for listing eligibility review, however, it is necessary to promptly proceed with the lock-up procedure and submit to the KRX lock-up certificates of deposit as issued by the KSD.

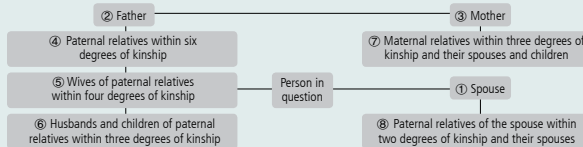
The shares subject to a lock-up are as follows:



## The largest shareholder *et al.* (the largest shareholder and their specially-related persons)

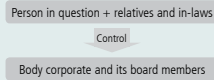
The scope of the largest shareholder and their specially-related persons as defined in the Listing Regulations and the FSCMA are as follows:

- If the person in question is a natural person

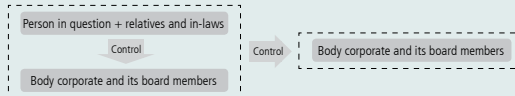


- ⑨ Lineal ascendants by blood of one's adoptee
- ⑩ Children by blood, their spouses and the lineal descendants of their foster parents
- ⑪ Natural mothers of children born out of wedlock
- ⑫ Any person supported with one's money or any other property and any person living with one
- ⑬ Any body corporate or organization controlled (30% contribution or substantial control) by one or collectively by one and the above persons (① through ⑫) as well as any board member of such body corporate or organization

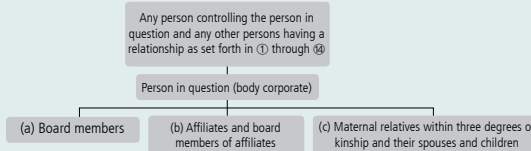
\* Substantial control: where a substantial influence is exerted on the appointment and dismissal of board members and any other important operational matters of such body corporate or organization



- ⑭ Any body corporate or organization controlled by one or collectively by one and the above persons (① through ⑬) as well as any board member of such body corporate or organization



- If the person in question is a body corporate or organization



- 1) Any natural person controlling (30% contribution or substantial control) or collectively controlling with the above persons (① through ⑭) the person in question; any body corporate or organization having a relationship as set forth in ① through ⑭ with such natural person; and any board member of such body corporate or organization
- 2) Any body corporate or organization controlled (30% contribution or substantial control) by the person in question or collectively by the person in question and any other persons having a relationship as set forth in (a), (b) or (c) as well as any board member of such body corporate or organization



## f. Other Steps

### 1) Change of the Largest Shareholder

(See Appendices 3 and 4.)



The Listing Regulations require that there be no change of the largest shareholder of a listing applicant within a one-year period preceding the application for listing eligibility review. This is intended to ensure that a company may prepare for listing in a stable operational environment. A company wishing to be listed, therefore, must pay attention to the trading of shares by the largest shareholder.

Although it was required in the past that no single share held by the largest shareholder may be traded within a one-year period preceding the application for listing eligibility review, the Listing Regulations as they are now permit the largest shareholder to sell part of his or her holdings provided that there be no change of the largest shareholder. If, however, the largest shareholder of the listing applicant falls within the scope of a shell

corporation and the largest shareholder of such shell corporation becomes the largest shareholder of the listing applicant, such change does not fall within the scope of the change of the largest shareholder.



### Shell corporation

A shell corporation is a company whose primary business activity is to manage the operation of its subsidiary. If the largest shareholder of a listing applicant falls within the scope of a shell corporation, the largest shareholder of such shell corporation is also required to have all of its shareholdings locked up for a period of six months (or one year in the case of the KOSDAQ Market) following an original listing.

The criteria for a shell corporation are as follows:

- The largest shareholder of the listing applicant is not a listed company.
- The value of its shareholdings amounts to 50% or more of its total assets.
- The corporation is exclusively engaged in, *inter alia*, the management of the operation of its investee company.

## 2) Merger, Consolidation, Business Transfer *etc.*

(See Appendices 3 and 4.)

In the event of any merger other than small-scale mergers, consolidation, demerger or demerger and merger, transfer of the whole or material part of operation or any other material operational event, a listing applicant may file for listing eligibility review after finalizing the closing financial statements for the applicable fiscal year. If, in particular, the interval between the date of the merger *etc.* and the end of the fiscal year is less than three months, a listing eligibility review may be filed for after the issuance of an auditor's report on the semi-annual financial statements for

the following fiscal year.

Although, however, in the event of a small-scale merger, the listing applicant may file for listing eligibility review without finalized closing financial statements in the KOSPI Market, it is necessary to consult with the KRX prior to the application for listing eligibility review in the case of the KOSDAQ Market.

## Small-scale merger

### ● Article 527-3 of the Commercial Act

1. If the number of new shares issued in conjunction with a merger by a surviving company from the merger does not exceed 5% of the total number of issued and outstanding shares in such company, the approval of the shareholders meeting of such surviving corporation may be substituted with the approval of the Board of Directors, except where the amount determined to be paid to the shareholders of the non-surviving company, if any, exceeds 2% of the net assets presented on the final balance sheet of the surviving company.
2. In the event as set forth in paragraph 1, the merger contract entered into by the surviving company shall contain provisions to the effect that the merger will be completed without obtaining the approval of the general meeting of shareholders.
3. In the event as set forth in paragraph 1, the surviving company, within two weeks of the date of the merger contract, shall publish a notice or provide each shareholder with a notice stating the corporate name and the location of the head office of the non-surviving company, the scheduled date of merger, and its intention that the merger will be completed without obtaining the approval of the general meeting of shareholders.
4. Any merger under the provisions of the main clause of paragraph 1 may not be completed if any shareholder holding 20% or more of the total number of issued and outstanding shares in the surviving company notifies in writing the company of its objection to the merger as set forth in paragraph 1 within two weeks of the notice given under the provisions of paragraph 3.

A listing eligibility review may be filed for in the year in which a merger is completed if an applicant applying for secondary listing of foreign securities submits pro-forma financial statements that may verify or ascertain, *inter alia*, the financial effects of mergers etc.

### 3) Execute a Transfer Agent Agreement

If a listing results in an increasing number of shareholders and more frequent trading of shares, it becomes more difficult for a company to manage the register of shareholders or share certificates on its own. Accordingly, the KRX requires the company to appoint a transfer agent providing share-related services.

As any company awarded eligibility clearance is required to state matters concerning the appointment of a transfer agent in a registration statement for an IPO, such company must sign a transfer agent contract after obtaining a board resolution for the appointment of a transfer agent prior to the filing of the registration statement. In Korea, the KSD, Kookmin Bank and Hana Bank provide transfer agent services.

### 4) Organization of an Employee Ownership Association

The employee stock ownership plan allows workers to acquire shares in the company in order to enhance their economic and social status and promote labor-management cooperation. The employee stock ownership plan and the establishment of an employee ownership association are provided for in detail in the Framework Act on Worker's Welfare. Workers and the company may consult with each other to organize an employee ownership association, as the establishment of the association is a voluntary option for workers. The FSCMA also offers a priority option, to members

of the employee ownership association of a domestic company to be listed on the KOSPI Market, to be allotted the shares offered or sold by the company.

A worker employed by a company for which an employee ownership association has been established is free to sign up for or cancel membership. Any worker falling within the following scope, however, may not become a member, and any member falling within the following scope loses his or her membership.



### Disqualifications of Member

- ❖ Any board member appointed in a general meeting of shareholders of the company or its affiliate
- ❖ Any shareholder of the company's affiliate if such shareholder is a shareholder of the company or a worker of the affiliate (Any shareholder holding shares amounting to 1% of the total number of shares issued and outstanding or 300 million won, whichever is less, may maintain membership status.)
- ❖ Any casual worker under Article 20 of the Enforcement Decree of the of the Personal Income Tax Act or the largest shareholder under the FSCMA the surviving company notifies in writing the company of its objection to the merger as set forth in paragraph 1 within two weeks of the notice given under the provisions of paragraph 3.

The obligation for priority allocation to members of the employee ownership association under the FSCMA, however, is applicable to domestic companies only and therefore not applicable to any foreign company offering its shares and then being listed on the KRX. Any company listed on the KOSDAQ Market has no obligation for priority allocation to members of the employee ownership association, either.

## 5) Notification of a Plan of Applying for Listing Eligibility Review for the Purpose of the FSS Filing Review

The lead managing underwriter must notify the KRX in advance of the plan for applying for listing eligibility review of any company wishing to be listed. The KRX submits to the FSS a list of companies preparing to apply for listing eligibility reviews so that these companies may be included in the pool of companies subject to FSS filing reviews, and the FSS conducts filing reviews on a selection of targets among the list of companies. It should be noted that the failure to give a notice of a plan for applying for listing eligibility review may result in the company not being selected for FSS filing reviews, which, in turn, may lead to delays in applying for listing eligibility review.

### < Timetable for notification of plans for applying for listing eligibility reviews >

Scheduled date of application for listing eligibility review	Time limit for notification of a plan of application for listing eligibility review
Jan. 1 – Feb. 28	Nov. 30
Mar. 1 – Apr. 30	Jan. 31
May 1 – June 30	Mar. 31
July 1 – Aug. 31	May 31
Sep. 1 – Oct. 31	July 31
Nov. 1 – Dec. 31	Sep. 30

The KRX rejects an application for listing eligibility review if the filing review has led to the discovery of violations of accounting standards and thus resulted in the Securities & Futures Commission (SFC) filing a criminal complaint, notifying the prosecutor's office or imposing a monetary penalty against the listing applicant. The listing applicant is also not allowed to apply for listing eligibility review within three years of the date of rejection.

# Prior Consultation on Listing Application

## a. Domestic Companies

In order to prevent inappropriate statements in, *inter alia*, the application for listing eligibility review, the KOSPI Market requires the lead managing underwriter to submit a draft copy of the application for listing eligibility review, the general opinion of the lead manager, a due diligence checklist and an auditor's report and verifies the statements therein.

The correction of the application for listing eligibility review is required if inappropriate or erroneous statements are discovered; the KOSPI Market Division discovers risk factors for the applicant company in earlier phases while going over the application and discusses solutions with the lead manager.

As prior consultation is, in principle, conducted at least one week prior to the filing of an application for listing eligibility review in the case of the KOSPI Market, it is desirable for the lead underwriter to make thorough preparations for prior consultation to ensure the speedy progress of the listing eligibility review.

In the KOSDAQ Market, prior consultation is undertaken only if such consultation is required to ensure investor protection and the stability of the KOSDAQ Market.

## b. Foreign Companies

An applicant applying for secondary listing of foreign securities must invariably engage in prior consultation with the KRX no later than one month before filing for listing eligibility review. This is because the different institutional and legal environment of the applicant in relation to domestic companies mandate an opportunity in the prior consultation stage to review, *inter alia*, the Articles of Incorporation of the applicant and provisions of the laws of the country of incorporation different from those of Korea.

In prior consultation, the listing applicant must submit its Articles of Incorporation that reflect *requisite provisions in the Articles of Incorporation* as well as a legal opinion and an auditor's report. The KRX also relies on the legal opinion *etc.* to identify the substantiality of the listing applicant, pending lawsuits, and government restrictions *etc.* in advance.

Before engaging in prior consultation with the KRX, the listing applicant must discuss with the lead manager not only *requisite provisions in the Articles of Incorporation* but also any provisions as may be necessary for investor protection to ensure that these statements and provisions are all reflected in the Articles of Incorporation.



Reducing the period of time taken for prior consultation and the overall listing eligibility review requires, at the very least, complete preparation of the supporting documents as may be necessary to file for the eligibility review.

**< When to have prior consultation; documents to be prepared for an applicant for listing of foreign securities >**

	KOSPI Market	KOSDAQ Market
<b>When</b>	One month prior to application for listing eligibility review	Same as left
<b>Documents to be prepared</b>	<ul style="list-style-type: none"> <li>- Articles of Incorporation</li> <li>- Legal opinion of a law firm</li> <li>- Auditor's report</li> <li>- Draft application for listing eligibility review</li> <li>- General opinion of the lead manager</li> <li>- Due diligence checklist</li> </ul>	<ul style="list-style-type: none"> <li>- Articles of Incorporation</li> <li>- Legal opinion of a law firm</li> <li>- Auditor's report</li> <li>- Draft application for listing eligibility review</li> <li>- General opinion of the lead manager</li> <li>- Due diligence checklist</li> <li>- Articles of Incorporation</li> <li>- Legal opinion of a law firm</li> <li>- Auditor's report</li> <li>- Due diligence report prepared by the lead manager</li> <li>- Checklist for quantitative requirements</li> <li>- Checklist for requisite provisions in the Articles of Incorporation</li> </ul>

Upon discovering any material issues to be addressed in the legal opinion or the Articles of Incorporation as reflecting requisite provisions, the KRX requires such issues to be addressed before submitting an application for listing eligibility review, where non-material issues may be discussed with the KRX and addressed during the period of the listing review but before a Listing Committee meeting is held. The period of prior consultation, therefore, may be flexibly adjusted depending on the situation at hand if material issues have been discovered.

Upon discovering any material accounting issues in the course of prior consultation or a listing review, the KRX may require a comfort letter issued by an accounting firm; if internal controls are deemed vulnerable, the Exchange may also require the accounting firm or lead manager to submit an accounting review report.

The accounting review report contains verifications of, *inter alia*, how the accounting activities of the listing applicant are functionally differentiated, whether accounting-related regulations and reporting system are in place, and how accounting data are systematically managed.

Although the process of prior consultation may somewhat serve to burden the lead manager and the company, thorough prior consultation allows the listing applicant to reduce the period time for the listing eligibility review and facilitate the progress of the listing procedure.

# Chapter 04 Filing of an Application for Listing Eligibility Review

The KRX conducts a review based on the statements in an application for listing eligibility review. Being an important document conveying information on a listing applicant, the application must thus be prepared in a prudent and accurate manner.

The KRX may refuse to accept an application for listing eligibility review if the application contains false statements or omissions of material matters or if the application is deemed inappropriate for public interest, investor protection *etc.*

A case in point, for example, is where an applicant having issued a large number of preferred shares failed to specify the conversion rate, expiry date *etc.* for preferred shares giving rise to the likelihood of legal disputes between holders of preferred shares and those of common shares and may result in dilution issues for those holding publicly offered shares.

The KRX may also refuse to accept an application for listing eligibility review in the event that the laws applicable to the listing applicant may

be in conflict with the Financial Accounting Standards or that the Articles of Incorporation place restrictions on transfer of shares with no particular reason, which may present issues with investor protection.

An application for listing eligibility review consists of statements that allow one to obtain an outline of a listing applicant. The application should describe primary operations of the applicant including its financial details for the last three years as well as an overview of the applicable industry and include statements regarding, *inter alia*, its governance and transactions with interested parties.

A listing applicant may download the application for listing eligibility review form on the website of the KRX, which must be filled out with the assistance of the lead manager and submitted to the KRX together with supporting documents.

Listing applicants and lead managers sometimes find it burdensome to prepare applications for listing eligibility review. It is more important to make brief and accurate statements of analysis of key elements regarding the operations of the applicant and the industry than to produce a lengthy application.

An applicant with a long operating history may also find it difficult to keep track of and state changes in capital by date since its incorporation. In this case, it is also possible to make statements to the extent that such changes may be identified at the present time.





# Part 3

## Guidelines for Listing Review

### **Chapter 01**

#### **Overview**

### **Chapter 02**

#### **Criteria for the Business Continuity Test**

### **Chapter 03**

#### **Criteria for the Operational Transparency Test**

### **Chapter 04**

#### **Criteria for Assessing Investor Protection**

# Chapter 01 Overview

## < Listing Review Criteria >

Business Continuity	Operational Transparency	Investor Protection
<ul style="list-style-type: none"> <li>• Stability – operational continuity, financial stability, operational stability, customer satisfaction</li> <li>• Growth potential – revenue, base market capitalization, operating profit, operating cash flow</li> <li>• Profitability – base requirements for operating performance, the payoff structure for each part, ROE</li> </ul>	<ul style="list-style-type: none"> <li>• Corporate governance – the board, full-time statutory auditors, shareholders meetings and other factors indicating operational independence, the composition of management</li> <li>• internal control system – regulations, internal auditing, operation</li> <li>• Accounting transparency – the accounting system, accounting transparency, the independent auditor's opinion</li> <li>• Transparency in transactions with interested persons – legitimacy of transactions, compliance</li> </ul>	<ul style="list-style-type: none"> <li>• Transparency of disclosure – designation of a disclosure officer, relevant regulations</li> <li>• Protection of minority shareholders – protection of shareholder rights</li> <li>• Market liquidity – likelihood of excessive or insufficient quantity</li> <li>• Expertise of the lead manager – expertise in corporate examination, transparency of the bases of IPO pricing, disclosure of investment risk</li> </ul>



Criteria for listing review by the KRX may be roughly broken down into three categories: business continuity, operational transparency and investor protection.

## a. Business Continuity



The business continuity test verifies whether a listing applicant may continue to operate after being listed on the KRX, where the primary review criterion is the continuity of operational stability, growth potential and profitability.

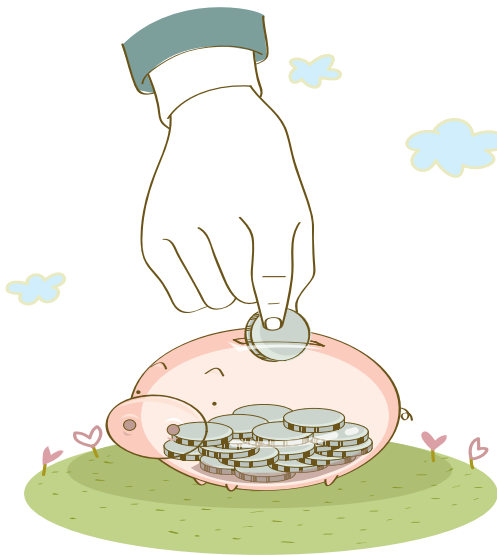
It is desirable for the listing applicant to basically have stable streams of purchase and sale transactions and be posting steady earnings while continuing to maintain growth. The applicant may occasionally post deficits due to temporary deterioration of sales activities, valuation loss using the



equity method and valuation loss on derivatives, presenting difficulties with listing. In order to address this issue, the KRX introduced the base market capitalization requirement in September 2008 so that a company posting a temporary deficit may have itself listed if the base market capitalization in terms of IPO shares is 50 billion won or more (or 9 billion won or more in the case of the KOSDAQ Market).

As the listing applicant is required to establish that the deficit is of a transient nature, it is necessary to objectively demonstrate an improving tendency through an independent auditor's report on quarterly and semi-annual financial statements, contract awards *etc.*

## b. Operational Transparency



Primary criteria for the operational transparency test are: corporate governance, internal controls, accounting transparency and transparency in transactions with specially-related persons.

A publicly held company must ensure operational transparency to maximize shareholder returns. Over the course of preparing for listing, a listing applicant needs to ensure the substantiality and efficiency of its regulations and improve its corporate governance by, inter alia, appointing outside directors and professional managers, who could make independent decisions to sustain operational transparency.

## c. Investor Protection



Investment protection, the most fundamental test applied in a listing review conducted by the KRX, is the overriding consideration in determining the eligibility of a listing applicant.



A listing applicant must be thorough and complete in selecting its lead managing underwriter to ensure investor protection after listing, as the lead manager serves as an adviser who is capable of proactively identifying and addressing any issues in investor protection over the course of due diligence investigation.

The recently increasing number of companies whose share prices go below offer prices after IPOs underlines, more than ever, the capability of the lead managing underwriter to calculate an appropriate offer price in the interest of investor protection.

# Criteria for the Business Continuity Test

< Business Continuity >



## a. Stability

Operational stability	Financial stability	Operating history	Customer satisfaction
<ul style="list-style-type: none"> <li>• Specificities of the industry</li> <li>• Market share and contract awards</li> <li>• Increases in trade receivables and inventories</li> <li>• Excessive dependence of operation</li> <li>• Disproportionate dependence on customers</li> </ul>	<ul style="list-style-type: none"> <li>• Equity capital and profit</li> <li>• Borrowings</li> <li>• Stability, contingent liabilities etc.</li> <li>• Establishment of new operations</li> </ul>	<ul style="list-style-type: none"> <li>• Operating history of three years or more</li> <li>• Merger, consolidation, demerger, business transfer</li> </ul>	<ul style="list-style-type: none"> <li>• External customers] price, quality and service</li> <li>• [Internal customers] job analysis, compensation system, authority and obligation</li> </ul>

# 1) Operational Stability

## a) Industry Characteristics

### Key Issues of the Review

KEY ISSUE

01

Whether stability could be maintained in light of, *inter alia*, competition in the industry, market size, government regulation and alternative industries

KEY ISSUE

02

Whether the growth and longevity of the industry could be sustained if the industry is in an introductory or declining phase in its life cycle

The KRX examines competitive pressures in the applicable industry, market size, government regulation etc. to conduct in-depth verification of whether stability could be sustained. Determination of eligibility in terms of stability is not based on individual issues but on comprehensive assessments of a broad range of items.

### Review Guidelines

KEY ISSUE

01

**Competitive pressures in the industry, market size, government regulation and alternative industries**

KEY POINT

**If competitive pressures in the industry make it difficult to maintain a stable market share, measures must be presented.**



It is desirable in terms of operational stability to maintain a stable market share for the three recent fiscal years in light of competitive pressures in the industry to which the listing applicant belongs.

The difficulty in maintaining operational stability due to a low entry barrier resulting in a decline in the market share or due to widespread mergers and acquisitions among competitors, may be a key issue in the listing review, making it necessary to present measures to cope with such difficulty with a view to ensuring business continuity.

Actual or expected emergence of an alternative industry as a result of intrinsic natures of the industry may also impede operational stability.

In this case, the KRX performs in-depth examination focusing on possible issues in terms of operational stability, while the listing applicant must submit to the KRX current and scheduled key operational strategies, presenting an objective likelihood that the risks may be mitigated.

## KEY POINT

It is necessary to identify, in advance, the likelihood and scope of violations of government regulation and applicable law and develop strategies to cope with expected risks, if any.

If the lines of business engaged in by the listing applicant are directly subject to government regulation, the listing review focuses on the possible influence of such regulation on the operation of the listing applicant and potential issues resulting therefrom.

If, for instance, the applicant is engaged in food and beverage manufacturing and casino operations, the KRX determines the likelihood of suspension or cancellation of the business license and examines whether the applicant has been subject to government warnings.



In addition, if the applicant has been investigated by the Fair Trade Commission (the “FTC”) and not been notified of the result of such investigation, the finalization of the listing review may be withheld until such result is finalized.

If the applicant is at the risk of losing its monopoly or oligopoly due to government regulation

*etc.*, the examination will focus on potential issues in terms of operational continuity, and the applicant must submit key operational strategies *etc.* to the KRX, presenting a likelihood that the risk may be mitigated.

If the applicant is or has been subject to government regulation or risks associated therewith, it is desirable for the applicant to build an internal control system to address the same and present to the KRX documents evidencing such controls.

**KEY ISSUE**  
**02** **Life Cycle of the Industry**

**KEY POINT**

**It is necessary to identify the life cycle of the industry and have in place measures if growth prospect is not positive.**

If the industry to which a listing applicant belongs is not in a growth or maturing phase but approaching a declining phase in its life cycle, the examination is based on possible issues in terms of operational continuity, and the applicant must present to the KRX an objective likelihood that the risk may be mitigated.

It would also be difficult to recognize operational stability if the market share of the applicant were maintained on a stable level but the industry were approaching a declining phase in its life cycle, resulting in a decrease in the market size for the industry.



Despite the industry of the listing applicant being in an introductory phase, the KRX takes a positive stance if the industry is intrinsically capable of creating added value and the applicant has a profit model that may generate positive effects for the advancement of the national economy and the securities market.

The eligibility of the industry itself is additionally examined if the industry is contrary to public sentiment as in the case of any luxury, adult or usury industry and inappropriate for access to capital in the securities market.

## **Responsive Measures by the Listing Applicant**

If competitive pressures or government regulation in the industry or alternative industries have led to or are likely to lead to potential issues, the influence on such issues on the listing applicant should be analyzed. If such analysis indicates that such issues potentially undermine operational stability and materially affect business continuity, an application for listing eligibility review must be filed after resolving such issues.

If the industry engaged in by the listing applicant is inappropriate for listing on the securities exchange, prior consultation must invariably be carried out with the KRX as an application for listing eligibility review may not be accepted.

## b) Securing of Suppliers and Customers

### Key Issue of the Review



Whether stable operational activities may be maintained by securing suppliers of important raw materials and customers of products

### Review Guidelines

#### KEY POINT

Long-term purchase and sale contracts *etc.* must demonstrate operational stability and responsive measures after listing.

Even if primary products maintain stable market shares, the applicant must have purchase contracts and contract awards that may sustain future sales.

In order to determine whether a listing applicant has stable sources of raw materials, the KRX examines, *inter alia*, long-term purchase contracts, changes in key suppliers, trading histories with key suppliers, and advance payments paid.

In order to determine whether the applicant has a stable customer base and the likelihood of sales, the KRX examines, *inter alia*, long-term sale contracts, outstanding contract awards, changes in primary customers, trading histories with key suppliers, and advance payments received.

If outstanding contracts show a declining tendency, the KRX determines if the decline is a common phenomenon resulting from changes in market conditions for the industry or unique to the applicant alone.

## Responsive Measures by the Listing Applicant

The listing applicant must submit contracts verifying operational stability in terms of purchase and sale of key raw materials and products as well as other documents verifying outstanding contract awards *etc.* and, if the applicant engages in high-mix, low-volume production, documents summarizing outstanding orders for all product items.

## c) Increases in Trade Receivables and Inventories

### Key Issue of the Review



Whether sudden increases in trade receivables and inventories, *etc.* indicate the likelihood of a sudden drop in sales

### Review Guidelines

#### KEY POINT

If trade receivables and inventories show sudden increases, their causes must be identified.

As increases in trade receivables and inventories are two of the primary factors undermining operational stability, the KRX verifies post-listing sustainability of sales as well as operational stability in terms of: changes in and collectability of trade receivables, changes in inventories, and long-term inventories.

If trade receivables and inventories suddenly increase, the causes of such increases are additionally examined despite continued increases in sales and operating profit.

As trade receivables and inventories are major factors for cash flow, these two factors are examined together rather than on its own.

If trade receivables and inventories have increased, post-listing sustainability of sales is additionally considered, and in the short haul, the KRX examines whether inventories sit idle and whether trade receivables are collectible by verifying the credit standings of customers.

The listing applicant, therefore, must present to the KRX detailed analyses of, *inter alia*, the age of trade receivables, solvency of primary customers, and causes of the increase in inventories as well as appropriate measures to address these issues.

## **Responsive Measures by the Listing Applicant**

From the planning phase for listing, the listing applicant should pay attention to sudden increases in trade receivables and inventories.

If these increases occur, the applicant must analyze their causes and prepare objective documentary proof verifying that such causes are transient. If the increases exhibit persisting tendencies, the applicant must present reasonable measures to maintain operational stability.

## d) Excessive Operational Dependence

### Key Issues of the Review

KEY ISSUE  
**01**

Whether operations are independent from purchasing, production and sales activities.

KEY ISSUE  
**02**

Whether dealings with other companies on which all or part of main operations are dependent, if any, may be sustained in light of trading history and inevitability of such dealings

### Review Guidelines

KEY ISSUE  
**01**

**Independent performance of purchasing, production and sales activities**

**KEY POINT**

The listing applicant must have the capability and system enabling it to carry out key operational activities on its own.

Dependence on affiliates or the parent company with respect to key elements of operational activities such as purchasing, production, sales,



human resources management and financing may seriously undermine operational stability.

A listing applicant must have in place the personnel and system enabling it to carry out key operational activities on its own. For example, a company which is entirely dependent on its affiliate for sales of its products despite its independent production of the products could be deemed to lack independent capability to carry out operational activities.

If, however, a listing applicant and its affiliates jointly purchase raw materials to achieve economies of scale, the listing review is conducted in comprehensive consideration of the specificities of the industry, the applicant's status in the industry, *etc.*

In addition, in case an overseas holding company incorporated in Cayman, Hong Kong, *etc.* has subsidiaries in China, *etc.* which are engaged in actual operational activities, the above guidelines do not apply to a holding company, and it could apply for listing if it has an independent decision-making system of its own.

As subsidiaries of a conglomerate have a practice of reporting important decisions to the management of its parent, operational stability is not deemed to be impeded if such reports are merely ex-post reports and actual decisions are independently made by the Board of Directors, *etc.* of the listing applicant.



## Sustainability of Dealings with other Companies

### KEY POINT

**If certain aspects operational activities are inevitably dependent on other companies, such dependence must be reasonably justified.**

Excessive dealings with other companies may act as elements impeding the operational stability of the listing applicant. However, due to specificities of the industry, it may be inevitable for a company to depend on other companies by way of entering into exclusive purchase or exclusive supply contracts *etc.*

In this case, the listing applicant must present objective and reasonable justification for the inevitability of such dealings.

If such dealings are reasonably justified, the KRX examines, *inter alia*, the history of dealings, the remaining term of the contract, the terms and conditions of dealings, and penalties for breach of such contracts to determine whether a stable transactional relationship could be sustained.

## Responsive Measures by the Listing Applicant

If a dependence of operational activities is not justified in a due diligence review by the lead managing underwriter, the listing applicant must have in place the personnel, organization, structure *etc.* capable of carrying out operational activities on its own and submit a verification of stable operation thereof to the KRX.

## e) Disproportionate Dependence on Customers

### Key Issues of the Review

KEY ISSUE  
**01**

Whether the dependence on a particular company for the sale of main products stems from specificities of the industry

KEY ISSUE  
**02**

Whether the technologies or efficient processes of the listing applicant may lead to production of competitive products and sustain a mutually dependent relationship

KEY ISSUE  
**03**

Whether the insolvency of a primary customer is likely to materially threaten operation of the listing applicant

KEY ISSUE  
**04**

Whether the listing applicant is able to find other customers in the event of a sudden decrease in the volume of sales to its primary customer



## Review Guidelines

KEY ISSUE

01

### Dependence of Primary sales on particular companies

#### KEY POINT

A disproportionate dependence of sales on particular customers, if any, must be reasonably justified.



If the listing applicant has a disproportionate dependence of sales on a small number of customers, its potential impact on operational continuity is determined by comprehensively examining, *inter alia*, inevitability stemming from specificities of the applicable industry, the financial structures of the customers, and collection periods for receivables.

An intensive listing review is conducted if a listing applicant with such disproportionate dependence is subject to a vulnerable cost structure compared to its competitors, low profitability, insolvency risk of primary customers, unfair trading practices or the risk of trading interruptions.

Operational stability, however, could be recognized if certain specificities of the industry, as in the case of the automobile industry, inevitably result in a disproportionate dependence of sales on particular customers.



## Unique technological capabilities and mutually dependent relationships

### KEY POINT

**A disproportionate dependence of sales may be justified if such dependence arises from the applicant's unique technological capabilities and mutually dependent relationships.**

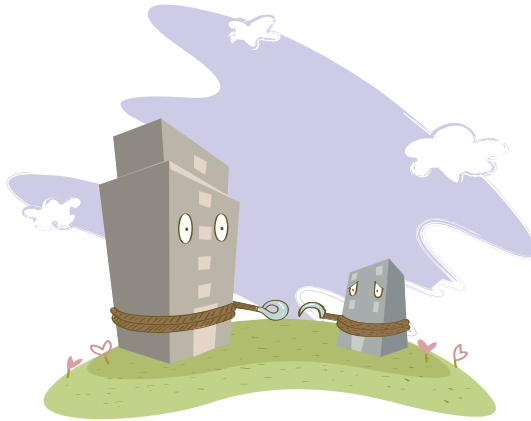
The most objective method for verifying sustainability of dealings with particular customers is to examine if the listing applicant possesses key technologies of its own.

The listing applicant may be deemed to maintain a mutually dependent relationship with an important customer and have operational stability if the applicant possesses key technological capabilities more advanced than its competitors, its products create a synergistic effect on the production of products by such customer, and thus any interruption of the supply contract would materially undermine the sales activities of such customer.

## Likelihood of insolvency of primary customers

### KEY POINT

The operational stability of the listing applicant is recognized if its primary customers maintain stable operations.



In a listing review, the KRX also examines the financial stability of primary customers of the listing applicant. It is because the bankruptcy of a primary customer as a result of excessive borrowings, increases in trade receivables and inventories *etc.* could adversely affect the operational stability of the applicant despite its stable operations.

Although a listing review regarding the applicant's customers would be plain and simple if the applicant were producing and supplying a broad range of products to a large number of customers, the applicant would need to make available documents verifying stable operation of primary customers if the applicant were supplying products to a handful of customers only.

## Likelihood of securing other customers in the event of a sudden decrease in the volume of sales to a primary customer

### KEY POINT

The applicant must make efforts to secure new customers. The applicant may be deemed to have operational stability if it could secure other customers.



The listing applicant must make a range of efforts to secure other customers if the volume of sales to primary customers could possibly decrease where specificities of the industry makes a disproportionate dependence of sales on particular customers inevitable. It would be desirable for the listing applicant to diversify its customer base in the overseas markets if it were difficult to find new customers in the domestic market.

The applicant may be deemed to have operational stability if a tendency for a steady increase in the number of customers and the sales volume can

be verified despite an insignificant percentage of sales to new customers is indicated as of the date of application for listing eligibility review.

The KRX additionally inspects contracts, purchase orders, bills of lading and other relevant documents to verify if the listing applicant has secured new customers.

### **Responsive Measures by the Listing Applicant**

Measures may vary depending on whether the disproportionate dependence of sales stems from specificities of the industry or from the key technological capabilities of the listing applicant.

If the disproportionate dependence of sales is attributable to specificities of the industry, primary review items shall include possible insolvency risks of customers and unfair trading practices; therefore, the applicant must make available objective data that may dispute these factors.

If the disproportionate dependence of sales may be ascribed to the possession of key technologies, the applicant must make available objective data proving that it has technological capabilities more advanced than its competitors.

The listing applicant must evaluate the likelihood of insolvency of its primary customers, make efforts to secure other customers and present the results of such efforts to the KRX to prove its operational stability.

## 2) Financial Stability (See Appendices 3 and 4.)

### a) Equity Capital and Profit

#### Key issues of the review



Equity capital, the number of shares to be listed, the amount of revenue and satisfaction of profit requirements

#### Review Guidelines

##### KEY POINT

The amount of equity capital and the number of shares to be listed must meet or exceed the minimum requirements.

#### < Minimum requirements in terms of equity capital (base market capitalization) and the number of shares to be listed in the KOSPI Market >

Item	Non-holding company	Holding company
Equity capital (or base market capitalization)	10 billion won or more (20 billion won or more)	Same as left
No. of shares to be listed	1 million shares or more	Same as left

#### < Minimum requirements in terms of equity capital (base market capitalization) in the KOSDAQ Market >

Listing requirements	Ordinary Company	Venture Company	New growth Engine Company
Equity capital (or base market capitalization)	3 billion won or more (9 billion won or more)	500 million won (9 billion won or more)	

The listing applicant may elect to apply the base market capitalization requirement in lieu of the equity capital requirement. This is intended to address the limitations of equity capital based on historical performance (book value) with the value of shares as assessed in the market.

Equity capital as of the date of application for listing eligibility review reflects rights offering and other changes occurring from the end of the most recent fiscal year until the date of application. Since it is difficult for the listing applicant to determine whether the base market capitalization requirement is met as of the date of application for listing eligibility review, the test is applied based on the public offering price of shares offered or sold at a later point in time.



## Calculation of base market capitalization and equity capital

### • Base market capitalization

- Company offering or selling shares after applying for listing eligibility review  
The number of shares to be listed  $\times$  the price of a share offered or sold
- Company switching from the KOSDAQ Market to the KOSPI Market  
An arithmetic mean of (i) the closing market prices for the ninety days preceding the date of application for listing multiplied by (ii) the number of shares listed on each day  
\* A sum of the arithmetic mean for each class if more than one class of shares (common shares, preferred shares *etc.*) are listed
- Company applying for listing of depositary receipts representing foreign shares or simultaneous listing on domestic and foreign exchanges *et al.*  
A price calculated considering market prices on the foreign exchange, the prices of depositary receipts offered or sold *etc.*

### • Equity capital

The total amount of assets as of the close of the latest fiscal year – the total amount of liabilities as of the close of the latest fiscal year  $\pm$  changes in capital stock and capital surplus since the close of the latest fiscal year

If an applicant applying for secondary listing of foreign securities prepares its financial statements in accordance with U.S. GAAP or IFRS, the amount of total stockholder's equity, including equity of shareholders overseas, as stated in consolidated financial statements is used as the amount of equity capital.

The amount of equity capital is verified via the corporate register transcript as of the date of application for listing eligibility review, auditor's report, minutes of the shareholders meeting, minutes of the Board of Directors meeting, changes in capital stock shown on the application for listing eligibility review *etc.* Compliance with this requirement is additionally verified in the corporate register transcript, post-issuance report *etc.* submitted at the time of application for initial listing following an IPO.

If the applicant elects the base market capitalization requirement in applying for listing eligibility review, the price of the publicly offered shares is not known until the lead manager and the listing applicant finalize the offer price, rendering it impossible to determine its adequacy during the listing eligibility review.

As the scheduled offer price stated in the application for listing eligibility review, however, is an important piece of information that allows one to determine the likelihood of compliance based on base market capitalization, the adequacy of comparable companies selected to calculate the scheduled offer price, the reasonableness of basis for calculation *etc.* may be treated as important issues in the listing review.



The requirement in terms of the scheduled number of shares to be listed is applicable to the KOSPI Market only, and any applicant failing to meet the requirement of one million shares to be listed as of the date of application for listing eligibility review may satisfy the requirement by taking into account the offer amount and the number of offered shares which are finalized after being granted eligibility clearance.



### KEY POINT

The amount of revenue and profit must meet or exceed minimum requirements.

#### < Minimum requirements in terms of revenue, profit and ROE in the KOSPI Market >

Factors	Non-holding company	Holding company
Revenue	30 billion won or more for the recent year and 20 billion or more for the previous three years on average	Based on "the revenue shown on the individual financial statement of the holding company + $\sum$ (revenue of each subsidiary $\times$ shareholding percentage)"
Profit etc. (ROE and profit)	The applicant must have realized an operating profit, a profit before income tax from continuing operations and a current net income.	Same as left
	<p>The applicant must meet any of the following:</p> <p>① ROE: 5% for the most recent year and 10% in total for the past three years</p> <p>② Amount of profit: 2.5 billion won for the most recent year and 5 billion won in total for the past three years</p> <p>③ Any company with equity capital of 100 billion won or more: - 3% ROE or 5 billion won or more in profit - Positive operating cash flow</p>	<ul style="list-style-type: none"> <li>• Holding company in existence for the past three years or more: Same as left <ul style="list-style-type: none"> <li>- Calculated, however, based on the profit and total stockholder's equity, (excluding equity of shareholders overseas) as shown on consolidated financial statements</li> </ul> </li> <li>• Holding company in existence for less than three years <ul style="list-style-type: none"> <li>- Profit since incorporation: same as left</li> <li>- Profit prior to incorporation: profit of subsidiaries taken into account</li> </ul> </li> </ul> <p>* <math>\sum</math>(profit of each subsidiary <math>\times</math> shareholding percentage) - For any holding company incorporated or converted to a holding company for less than one fiscal year, the sum of the operating profit, the profit before income tax from continuing operations and the current net income must be a positive figure.</p>

< Minimum requirements in terms of revenue, profit and ROE in the KOSDAQ Market >

Item	Ordinary company	Venture company	New growth engine company*
Net profit, ROE, revenue and market capitalization	Must have realized a profit before income tax from continuing operations		
	The applicant must meet any of the following: ① 2 billion won or more in current net income ② ROE of 10% or more ③ 10 billion won or more in revenue and 30 billion won or more in market capitalization	The applicant must meet any of the following: ① 1 billion won or more in current net income ② 5% or more in ROE ③ 5 billion won or more in revenue and 30 billion won or more in market capitalization	Exempt
Impaired capital	No impaired capital as of the close of the most recent fiscal year		

\* A new growth engine company is a venture company rated A or higher by a rating agency

The revenue realized since the date of incorporation as in the corporate register transcript alone is recognized as revenue and the minimum requirement is imposed as a criterion for estimating the size of the company without regard to differences among lines of business. Even in the event of a merger, consolidation, demerger, business transfer or parent-subsidary merger, therefore, the applicant must meet the review requirement to apply for listing eligibility review.

Revenue is based on the revenue shown on the auditor's report. If revenue is calculated on a prorated monthly basis due to a change in the fiscal year *etc.*, it is verified in monthly revenue statements, sales books, reports for VAT returns, the certificate or report issued by an *independent auditor*, *etc.*

As sales discounts, sales returns, sales allowances, provision of paid-for-supplies, revenue recognition of errors in revenue, overstated revenue (cancelled tax invoices) *etc.* are already reflected in the auditor's report and

thus they are not directly taken into account. If, however, accounting review by the Korean Institute of Certified Public Accountants (the “KICPA”) *et al.* has noted overstated revenue and thus resulted in a modified auditor’s report, such fact is taken into account to examine the likelihood of failure to meet numerical requirements in the qualitative review process.

The KOSDAQ Market additionally requires that there shall be *no impaired capital*. Impaired capital refers to a state in which the amount of equity capital is less than that of capital stock. A company with impaired capital may not apply for listing eligibility review.

In the KOSDAQ Market, continuous revenue must have been generated for the previous three fiscal years to apply for listing eligibility review. In the case of a holding company, the sum of (i) the revenue of the company and (ii) the sum of revenue of each subsidiary multiplied by the shareholding percentage is applied. As for any holding company holding shares in listed companies, however, the revenue, profit and base market capitalization requirements are not applicable.

As the KOSDAQ Market focuses on SMEs and venture companies, less stringent requirements are imposed on the companies compared to those imposed in the KOSPI Market. Any venture company qualifying as a new growth engine company is also exempt from requirements in terms of operational performance (profit before income tax from continuing operations), revenue, profit *etc.* (5% in ROE or 1 billion won in current net income *etc.*). This is because the future value of a new growth engine company is considered to be more important than its current operating performance.

A new growth engine company is a company engaged in business eligible for the intensive promotion program of the government for its technological capabilities and growth potentials as evidenced by, *inter alia*, a high technological assessment rating by an accredited rating agency.



## KEY POINT

The profit test is based on operating profit, profit before income tax from continuing operations, or current net income, whichever is less. The ROE test is applied by taking into account the negative figures.

The KRX applies the profit test on the basis of operating profit, profit before income tax from continuing operations, or current net income, whichever is less. This is to protect investors by applying the profit requirement in the most stringent and conservative manner.

In the case of the KOSPI Market, the return on equity (ROE) requirement applied on the basis of the most recent three fiscal years, while in the case of the KOSDAQ Market, it is on the basis of the most recent fiscal year alone.

In applying the ROE requirement for the past three fiscal years, the ROE for each fiscal year must first be calculated on the basis of equity capital and profit, and then the three figures are added up. Despite any negative ROE figure for the first or second year, the profit requirement is met if the sum for the three years is 10% or more.

### < Example application of the ROE requirement in the KOSPI Market >

Year	'09	'08	'07	Total for 3 years
ROE	15%	-5%	10%	20%

Any large company applying for listing on the KOSPI Market with equity capital of 100 billion won or more may elect to meet either the ROE requirement of 3% or the profit requirement of 5 billion won.

< Effective lower bound by equity capital of a KOSPI Market listing applicant >

Equity capital		100 billion won	150 billion won	166.6 billion won	300 billion won
Requirement	ROE of 3%	3 billion won	4.5 billion won	5 billion won	9 billion won
	Profit of 5 billion won	5 billion won	5 billion won	5 billion won	5 billion won

If an applicant applying for secondary listing of foreign securities prepares its financial statements in accordance with U.S. GAAP or IFRS, the revenue, ROE, profit *etc.* as stated in consolidated financial statements are used.



**KEY POINT**

In exceptional cases, listing application may be filed despite a low profit level if the applicant meets the revenue, base market capitalization and cash flow requirements and is expected to achieve increases in its operating profit.

< The revenue and base market capitalization requirements and the revenue, base market capitalization and cash flow requirements in the KOSPI Market >

Item	Non-holding company	Holding company
Revenue and base market capitalization	The revenue for the most recent fiscal year must be 50 billion won or more, and the base market capitalization must be 100 billion won or more.	Same as left
Revenue, base market capitalization, and operating cash flow	The revenue for the most recent fiscal year must be 70 billion won or more, the base market capitalization must be 50 billion won or more, and the operating cash flow for the most recent fiscal year must be 2 billion won or more.	<ul style="list-style-type: none"> <li>- Operating cash flow is calculated based on consolidated financial statements.</li> <li>- As for a holding company incorporated for less than one year, the operating cash flow of subsidiaries are taken into account.</li> <li>* <math>\sum(\text{operating cash flow of each subsidiary} \times \text{shareholding percentage})</math></li> </ul>

< The revenue and base market capitalization requirements in the KOSDAQ Market >

Item	Ordinary company	Venture company	New growth engine company
Revenue and base market capitalization	10 billion won or more in revenue and 30 billion won or more in market capitalization	5 billion won or more in revenue and 30 billion won or more in market capitalization	Exempt

Any listing applicant with a low level of profit due to transient deterioration in sales, industrial specificities *etc.* may file for listing eligibility review by meeting the base market capitalization requirement.

The applicant, however, must prove that the cause of the low profit level is transient and make available data that may objectively verify the likelihood of improvement in operating profit *etc.* in the future.

### Responsive measures by the listing applicant

Before filing for listing eligibility review, the listing applicant must check whether requirements in terms of equity capital, the scheduled number of shares to be listed, revenue, profit *etc.* as provided for in the Listing Regulations are satisfied and verify its financial stability by submitting additional documentary proof.

The applicant must make efforts to ensure a gradual improvement in operating profit is achieved if the applicant files for listing eligibility review based on the base market capitalization requirement.

## b) Borrowings

### Key issues of the review

KEY ISSUE  
**01**

Whether the applicant is capable of repaying excessive borrowings, if any, and generating sustainable cash flow

KEY ISSUE  
**02**

Whether the applicant could secure additional borrowings by offering existing assets as collateral, obtaining credit loans *etc.*

### Review Guidelines

KEY ISSUE  
**01**

#### Excessive Borrowings

##### KEY POINT

If borrowings are excessive, causes and solutions must be clearly presented.

The KRX first determines whether an increase in borrowings stems from sudden increases in trade receivables and inventories or inevitable factors such as making new capital expenditures, *etc.*

If the increase in borrowings is caused by an increase in trade receivables, the tendency of changes in payment terms of dealings with primary customers is examined. If borrowings have increased due to excessive payment guarantees provided for its affiliates or repayment of loans

extended to affiliates, the KRX examines collectability of funds from the affiliates and the likelihood of exercising a right of indemnity.



The KRX requires submission of and examines materials on the ratio of long-term and short-term borrowings, restrictions imposed on the use of *deposits, etc.* the repayment schedule for the borrowings, *etc.*, and identify monthly and quarterly changes for the recent three years to assess the likelihood of a sudden deterioration of financial stability.

KEY ISSUE  
**02**

### Verification of Capacity for Additional Borrowing

#### KEY POINT

The applicant must maintain stable capacity for additional borrowing to repay outstanding borrowings.



The listing applicant is required to show the level of capacity for additional borrowing, by presenting to the KRX materials detailing the appraised value of real property in its possession, the likelihood of early collection of trade receivables, the maximum amount of credits to be extended by banks, *etc.*

These data allow the KRX to determine whether the assets of the listing applicant would be sufficient to repay the principal and interest of borrowings reaching its maturity. It may be difficult to obtain approval for listing if the capability for additional borrowing is not verified.

### **Responsive Measures by the Listing Applicant**

If borrowings are excessive or exhibit an increasing tendency, the applicant must prepare and submit plans for repayment of its long-term and short-term borrowings and documentary evidence for its capacity to make such repayment.

## c) Stability of Business, Contingent Liabilities *etc.*

### Key issues of the review

- KEY ISSUE 01** Whether the applicant maintains a stable financial position in comparison with its competitors
- KEY ISSUE 02** Whether primary customers maintain stable financial positions
- KEY ISSUE 03** Whether recent operating cash flow is maintained at a stable level
- KEY ISSUE 04** Whether a strategy for managing and operating financial derivatives, if any, has been developed
- KEY ISSUE 05** Whether collateral or guarantees are provided to affiliates
- KEY ISSUE 06** Whether any pending or likely disputes or lawsuits exist in connection with management and operational activities, key technologies, corporate governance *etc.*
- KEY ISSUE 07** Whether the applicant has developed a plan for using funds raised from IPO and long-term and short-term financial strategies
- KEY ISSUE 08** Whether the bank at which the accounts of the applicant are kept has recently been replaced

## Review Guidelines

### **KEY ISSUE** **01** **Stable financial position**

#### **KEY POINT**

**If the listing applicant has failed to maintain financial position materially better than the industrial average, the applicant must present clear justification.)**

A stable financial position of the applicant is verified by the current ratio, debt ratio, receivables turnover ratio, operating cash flow *etc.*, and a cause is identified if the financial indication is not better than the average for the industry.

### **KEY ISSUE** **02** **Financial positions of customers**

#### **KEY POINT**

**Primary customers must maintain favorable financial positions so that uninterrupted transactional relationships can be sustained.**

One of the most critical factors affecting the financial position of the listing applicant is the financial positions of primary customers. It is because deterioration in financial positions of primary customers may undermine the financial position of the applicant despite its stable operation of business.



This risk is examined by the KRX on the basis of business reports, quarterly reports *etc.* disclosed in the securities market if the primary customer is a listed company, while the listing applicant is required to submit financial statements of the customer to the KRX if the customer is a privately held company, due to difficulties in accessing financial data.

If the financial position of a primary customer is proved to have been deteriorated, the applicant must find other customers or have other detailed measures in place.



### Operating cash flow

#### KEY POINT

Stable operating cash flow must be maintained.

Fluctuations in operating cash flow may serve as a risk in the operation and financial position of the listing applicant. Deterioration in operating cash flow as a result of a recession in the industry as a whole also requires the applicant to have a solution in place to overcome it.

Such solution must be practical and workable. It may be difficult to obtain approval for listing if the solution is not deemed achievable.

KEY ISSUE  
**04** **Holding of Financial Derivatives**

**KEY POINT**

**The process of making decisions on investment in financial derivatives must be transparent, and a reasonable and specific strategy for managing investment risk must be developed.**

With a larger number of companies entering into currency knock-in knock-out (KIKO) and other highly risky financial derivatives transactions and generating losses in excess of their operating profits in 2008, any listing applicant holding financial derivatives must have a stable and reasonable management strategy. As a fund management committee solely consisting of internal employees may have difficulty making objective decisions, it is desirable to arrange an investment review committee consisting of independent accounting and financial professionals in order to minimize investment risk.

KEY ISSUE  
**05**

## Loan guarantee and offering of collateral

### KEY POINT

**Provision of a loan guarantee for an affiliate must accompany justification, the likelihood of repayment, and an analysis of influence on financial risk faced by the listing applicant.)**

If the applicant has provided collateral or a loan guarantee to help its subsidiary or other affiliate borrow funds, the KRX verifies justification as to whether such transaction was inevitable as well as the adequacy of the amount of the loan guarantee, examining a possible influence of such collateral or guarantee on the financial stability of the listing applicant.

The affiliate's capacity to repay its debt is separately examined as well. If there is no justification for the guarantee or no capacity of the affiliate to repay the debt, it is desirable to consult with the lead manager to cancel the loan guarantee.

KEY ISSUE  
**06**

## Disputes and litigation

### KEY POINT

**If there are disputes or litigation cases involving the listing applicant, it is necessary to identify their causes, quantify their influence on the listing applicant, and conduct a legal review of their subsequent effects.**



If there are any pending or threatened disputes or lawsuits in connection with management and operational activities, key technologies, corporate governance *etc.*, the listing applicant must submit to the KRX a legal opinion of a law firm that provides an objective overview of, *inter alia*, their causes, progress, and the amount of potential damages.

The KRX determines the importance of lawsuits on a case-by-case basis rather than applying uniform criteria.

In addition, even if the ongoing litigation is deemed to be material in light of its nature and magnitude, the case is no longer deemed a risk factor provided that a third party procures a performance bond from a guarantee provider with a good credit rating or provides collateral objectively sufficient to guarantee performance.

If the opinion of a law firm as submitted by the listing applicant and the lead manager is not sufficient for the KRX to determine the likelihood of prevailing in a lawsuit and the expected amount of damages, the KRX

retains another law firm for the purpose of the listing review. If the lawsuit is, by nature, a malicious lawsuit intended to obstruct the listing of the listing applicant; this is taken into sufficient account in the listing review.

An in-depth listing eligibility review is conducted if the examination by the KRX leads to the conclusion that the lawsuit is likely to result in the listing applicant losing the case and that the amount of the damages imposed may materially affect its business in continuing.

**KEY ISSUE**  
**07** **Development of plans for using Funds raised from IPO and financial strategies**

**KEY POINT**

**Plans for using funds raised from IPO and financial strategies for maintaining financial stability must be established**

A listing applicant is required to submit its post-listing plan for using funds raised from IPO for review by the KRX. The listing applicant must submit to the KRX a specific plan with itemized details for the use of such funds in filing for listing eligibility review and present the same content in the registration statement filed with the FSS to have it disclosed to investors.

It is desirable to use funds raised from IPO for the purpose of productive operational activities of the listing applicant. If the submitted plan for the funds is not specific enough, the KRX requires it to be submitted again.



## Change of the bank at which the listing applicant's accounts are maintained

### KEY POINT

Any change of the bank at which listing applicant's accounts are maintained must be justified.

The change of the bank at which the listing applicant's accounts are kept is often the result of disagreements between the listing applicant and the bank. Such disagreements are an issue that may directly affect the raising of funds for the applicant.

In the event of the change of such bank, the listing applicant must submit to the KRX a document justifying the change. If no justification is provided, the KRX requests additional documents to identify possible impact on financial stability of the listing applicant.

### Responsive Measures by the Listing Applicant

If the financial stability of a listing applicant is vulnerable, the applicant must consult with the lead managing underwriter to develop workable, specific, long-term and short-term financial strategies and prepare to submit supporting documents for these strategies.

## d) Expansion into New Line of Business

### Key issues of the review

KEY ISSUE  
01

The nature of the new line of business, if any, established by the listing applicant; the amount of investment; and the likelihood of generating profits.

### Review Guidelines

#### KEY POINT

**A new line of business launched by the listing applicant must create a synergistic effect with its current business operations.**

Unilateral decisions made by major shareholders and management occasionally result in a company launching a new line of business unrelated to existing business operations which leads to a loss.

As losses incurred as a result of entry into new areas of business may lead to a decrease in the corporate value of the listing applicant and in the value of shares held by minority shareholders, the KRX examines the nature of the new line of business, the amount of investment, and how likely a profit may be generated in the future.

If the listing applicant is not likely to enjoy a synergistic effect due to the absence of relation in nature between the new business operation and the existing business operations and there is no internal personnel specializing

in the new business operation, the KRX identifies a potential impact of the failure of the new business will have on financial stability of the existing business and additionally verifies the feasibility of the operation.

If there is any difference between the amount of investment expected at the time of developing the business plan and the amount currently expected to be invested, the listing applicant must identify its cause and specify when the operation is expected to generate profits.

As a new business may always involve financial risk, it is not deemed desirable to make any investment large enough to impair the financial stability of the listing applicant.

If the new business of the applicant has production facilities in operation and has secured specific projects, has been awarded contract awards, *etc.*, the KRX deems that the risk associated with the new business has been somewhat mitigated.

## **Responsive Measures by the Listing Applicant**

The listing applicant must identify any items possibly affecting its financial stability and have in place measures to address these. If any concerns over possible, subsequent impairment of financial stability are raised, the applicant must present persuasive data.

### 3) Operating History (See Appendices 3 and 4.)

#### a) Operating History of Three Years or More

##### Key issues of the review



Whether the listing applicant has a substantial operating history of three years or more since incorporation

##### Review Guidelines

###### KEY POINT

Calculate the length of the substantial operating history since the date of incorporation as stated in the corporate register transcript.

##### < Requirement in terms of operating history in the KOSPI Market >

Non-holding company	Holding company
Three years or more	Same as left - With the length of substantial operating history of each key subsidiaries taken into account

##### < Requirement in terms of operating history in the KOSDAQ Market >

Ordinary company	Venture company
Three years or more	-

The criteria for calculating the operating history of a listing applicant may vary: for example, since the date of the first sale of services or goods,

or since the date of registration as specified in the corporate register transcript.

For the purpose of listing review, the KRX reckons the operating history from the date of incorporation as stated in the corporate register transcript. This is because the corporate register transcript is the most objective document that allows identification of the operating history of the listing applicant. Despite an operating history exceeding three years since the date of incorporation, however, a company may not file for listing eligibility review unless revenue has continually been generated for the past three fiscal years.

In the KOSDAQ Market, the operating history requirement is not applied to venture companies.



#### KEY POINT

**A construction contractor must meet the operating history requirement and the construction capacity amount requirement.**

#### < Criteria for Operating History and Construction Capacity Amount by Market >

Item	KOSPI Market	KOSDAQ Market
Operating History	Ten years or more	Five years or more
Construction Capacity	50 billion won or more	30 billion won or more

A more stringent requirement is applicable to a listing applicant who is primarily engaged in construction business. This stems from the fact that a total of seven construction companies out of thirteen listed during the stock market boom beginning in 1988 suffered financial failure with their issues placed under surveillance and the necessity to reinforce the listing review procedure was recognized, resulting in separate and more rigorous requirement.

Construction capacity amount may be looked up on the website of the Construction Association of Korea (<http://www.cak.or.kr> ⇒ Message Info ⇒ Bulletin Board).



#### KEY POINT

**The operating history of a holding company is calculated by considering the substantial operating history of each of its key subsidiaries.)**

A holding company may file for listing eligibility review by considering the substantial operating history of each of its key subsidiaries\*. The operating history of any subsidiary falling outside the scope of key subsidiaries is not taken into account for this purpose.

\* Key subsidiary: any subsidiary falling within the group of subsidiaries the sum of whose book value (which shall be added up in order of size in book values) accounts for 75% of the book value of all subsidiaries as recorded in the financial statements of the holding company as of the close of the most recent fiscal year (or in the statement of financial status as of the date of its incorporation or conversion if the holding company was incorporated and existing for less than one fiscal year since incorporation or conversion)

## Responsive Measures by the Listing Applicant

As the operating history requirement must be invariably met by a listing applicant before filing for listing eligibility review, it is necessary to verify if the operating history exceeds three years as of the date of application for listing eligibility review.

### b) Merger, Consolidation, Demerger,, Business Transfer

#### Key issues of the review



Whether the actual operating history exceeds three years if any merger, demerger, demerger and merger or business transfer has occurred



Whether an auditor's report for the applicable fiscal year has been finalized if a merger *etc.* has occurred.

#### Review Guidelines



**Occurrence of a merger, demerger, demerger and merger or business transfer**

#### KEY POINT

The operating history of a listing applicant is calculated by considering the substantial operating history of the added division if a merger, business transfer *etc.* has occurred.

Notwithstanding that the operating history of a listing applicant is less than three years since its incorporation, if the added division as a result of a merger *etc.* is material, the substantial operating history of the added division is taken into account.

If, for example, a company existing for a little more than two years with no substantial history of operating activities merges with another company which has existed for a decade, the KRX considers whether the division with an operating history of a decade has maintained the integrity of its operation with physical and personnel resources during the period and is engaged in actual operation.

In the case of business and asset transfer, however, the scope of applicability is narrower than in the case of merger as it is required that the transferred division constitutes primary assets or operation of the transferee.



### 02 Merger; finalization of an auditor's report

#### KEY POINT

**An auditor's report for the applicable fiscal year must have been finalized if a merger *etc.* has occurred.**

As a listing review posits that the historical performance of a listing applicant leads to similar performance in the future, the listing review must be conducted based on financial statements that sufficiently reflect



the influence of a change in the substance of the company resulting from a merger *etc.*

If three months or more have elapsed as of the balance sheet date since the date of merger *etc.*, the influence of a merger *etc.* is deemed to have been sufficiently reflected on the financial statements for the applicable year. If, however, less than three months have elapsed as of the balance sheet date since the date of merger, the influence of a merger *etc.* is not deemed to have been sufficiently reflected on the financial statements for the most recent fiscal year, requiring the submission of a semiannual auditor's report for the subsequent fiscal year.

There may be a disagreement over whether the three-month period should be reckoned from the date of merger or the date of registration. The date of merger, however, is used, since there is a difference of only a day or two between the two dates, and the substantial transfer of assets and liabilities is made on the date of merger.



#### KEY POINT

**In the event of a business transfer, it is necessary to make available supporting documents that may verify the generation of revenue and the continuity of operating activities.**

Since a business transfer is not subject to registration, no apparent means of verification exists other than a contract between the parties and the date of transfer as specified in the contract is relied upon. In order to

allow verification of a substantial business transfer, however, documents supporting the generation of revenue and the continuity of operating activities must be submitted to the KRX.



### KEY POINT

The materiality of a business transfer is assessed using the criterion of 10% of the applicable assets, liabilities, revenue *etc.*

The FSCMA stipulates that a business transfer shall be deemed material where the amount of assets, liabilities or revenue of the subject business division is 10% or more of the applicable amount for the fiscal year immediately preceding the transfer, which provision is applied with appropriate modifications by the KRX as well.



### Criteria for determining the materiality of a business transfer

A business transfer is deemed material in any the following cases:

- ❖ where the business transfer results in any change in the line of business of the company;
- ❖ where the business transfer results in the company failing to meet original listing requirements at the time of finalization of financial statements for the applicable fiscal year; or
- ❖ where the business transfer is deemed material with the size of the company taken into account as in any of the following cases:
  - where the total amount of assets, liabilities or revenue of the subject business division is 10% or more of the applicable amount for the most recent fiscal year;
  - where entire operations are transferred; or
  - where the total amount of assets subject to transfer is 10% or more of the total amount of assets as of the close of the most recent fiscal year, excluding the sale and purchase of goods, products and raw materials effected in the ordinary course of business.

## Responsive Measures by the Listing Applicant

It is necessary to verify if the operating history substantially exceeds three years as of the date of application for listing eligibility review since the date of merger or business transfer. A listing application must be filed after any merger, demerger, demerger and merger or business transfer, if any, has been sufficiently accounted for in the financial statements.

## 4) Customer Satisfaction

### a) Outside Customers

#### Key issues of the review



Whether there are any pending lawsuits or disputes with custom



Whether ongoing customer satisfaction may be ensured in terms of price, quality, service *etc.*

#### Review Guidelines



**Lawsuits or disputes with customers**

## KEY POINT

The influence of lawsuits or disputes with customers, if any, on business continuity must be analyzed through a legal review.

If a listing applicant is subject to any lawsuits *etc.* instituted by customers of products or services provided by the applicant, the KRX examines their influence on business continuity of the applicant in light of their nature, the scale, *etc.*



The KRX decides whether to continue the listing eligibility review if a lawsuit is lodged prior to eligibility clearance, or whether to recognize the effectiveness of eligibility clearance if a suit is filed after the clearance.

In this case, the materiality of the influence of the lawsuit on the listing applicant must be determined, and details of any lawsuits must be sufficiently accounted for in the registration statement.

- ❖ If the lawsuit is not material, proceed with the listing procedure.
- ❖ If the lawsuit is material, additionally analyze the likelihood of winning the suit *etc.*

**KEY POINT**

**Customer satisfaction is an important indication of the likelihood of business continuity.**

The reputation of the company among customers is a very important factor in determining of business continuity. Even though the Company occupies the position of monopoly or oligopoly in the market, failing to realize customer satisfaction in terms of price, quality, service, *etc.*, may threaten business continuity due to customers refusing to purchase the products.

Although the level of satisfaction of external customers of the listing applicant is somewhat difficult to quantify, the KRX relies on press release and materials on customer preference for products *etc.*, which are actively used as reference materials in the course of the listing review.

### **Responsive Measures by the Listing Applicant**

The listing applicant must proactively have in place a range of programs, systems, remedial measures *etc.* to satisfy external customers, and obtain a legal analysis on lawsuits and other disputes from a law firm.

## b) Inside Customers

### Key issues of the review

KEY ISSUE

01

Whether the loyalty of the officers and employees may be maintained in light of job analysis findings, the compensation system, authority and duty imposed on them.

### Review Guidelines

#### KEY POINT

The officers and employees of the company must be retained in employment by putting in place a compensation system and granting appropriate authority.

Key personnel of a listing applicant may be one of the key factors in ensuring its business continuity. Fast-paced development of the industries increasingly emphasizes the importance of research and development capacity and the leadership of executive management is also considered to be a very important factor as well.

In order to prevent key officers and employees from leaving for competitors, the listing applicant should build an appropriate compensation system and delegate authority and assign responsibility that may enhance the level of job satisfaction.

As an appropriate compensation system based on job analysis may support stability in terms of business continuity, it is desirable for the applicant to be prepared for these factors.

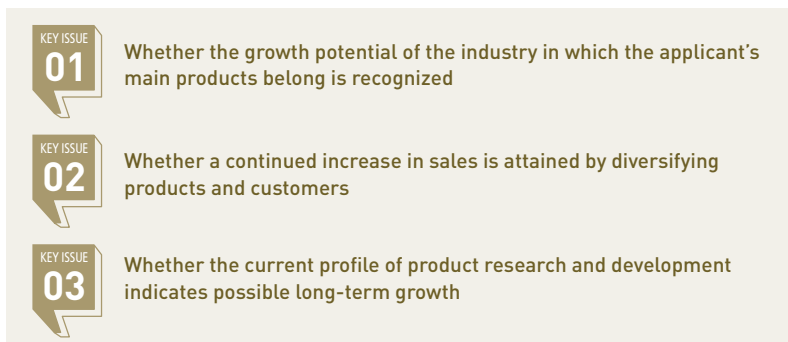
## Responsive Measures by the Listing Applicant

The listing applicant must minimize staff turnover and maintain operational stability by putting in place and proactively implementing a compensation system that may be agreed upon by all officers and employees.

## b. Growth Potential



### Key issues of the review



## Review Guidelines



### Growth potential of the industry

#### KEY POINT

A business analysis of the industry must indicate the level of growth potential.

In verifying the growth potential of the listing applicant, the KRX examines not only the current phase in the life cycle of the industry but also the potential for growth in the future.

For example, even though the domestic market is saturated and reached a declining phase, the growth potential of the industry may be recognized if the applicant has entered overseas export markets. The growth potential of the industry may also be well recognized if a company engaged in a declining industry such as apparel manufacturing, sewing *etc.* relocates its production facilities, produce and export competitive products to developed countries, and record an increase in sales.



### Efforts to diversify products and customers

#### KEY POINT

To ensure continued growth, a tendency of product and customer diversification must be identified.





Efforts to diversify products and customers are a key indicator of continued growth of a listing applicant after it is listed.

Despite a general increase in overall sales, the KRX conducts an in-depth examination of the continuity of growth if the listing applicant has a decreasing number of products and a small number of customers.

Diversification of products requires continued investment in research and development and production facilities. The KRX looks into the percentage of investment made by the applicant in R&D and production facility against its total revenue for the recent three fiscal years.

Even where sales depend on a customer having dominant status due to the specificities of the industry, it is desirable to maintain continued growth by making efforts to, *inter alia*, find overseas customers.

The KRX also examines potential issues with growth potential in sales

that may arise if the sales of the applicant decreases noticeably compared to the preceding fiscal year or quarter.

< Direction for the examination of growth potential in sales >

	Revenue and profit requirements	Prospect for the current year after the date of deliberation	Review direction
If sales for the current year decrease	Satisfied	Increasing or Unchanged	Positive
		Decreasing	Negative
	Not Satisfied	-	Negative



**Product R&D**

**KEY POINT**

**There must be ongoing investment in product research and development.**

The KRX examines the profile of research and development, which may develop into the listing applicant’s key capacity for growth. An intensive examination is conducted if the applicant is not uncommitted to engaging in research and development activities and makes insufficient investment in R&D.

An applicant is positively viewed if a new product developed by the applicant is deemed marketable and contributes to growth potential through patent registrations, *etc.* although sales are yet to be generated since its development.

As for research and development costs, the review focuses on development costs, which are largely accounted for as assets. This is because despite that development costs presented as assets are essentially expenses, expense recognition is deferred to subsequent years, resulting in asset information being distorted and the property value in the financial statement possibly being stated higher than what they are really worth.

In analyzing the profit and loss effect of presenting development costs as assets, the KRX considers both the effect of presenting development costs for the current year as assets and the amortization of development costs presented as assets for the previous year, and also analyzes, *inter alia*, a competitor's percentage of development costs against total assets, percentage of development costs against revenue.

## **Responsive Measures by the Listing Applicant**

The listing applicant and the lead manager must make available objective data supporting potential for continued growth. If the level of growth potential is low, facilitation of the progress of the listing review requires the applicant to specifically establish whether such phenomenon is prevalent across the industry or specific to the applicant only

# c. Profitability

Capacity to Generate profit	Efficient Use of Assets	Likelihood of Continued Profit
<ul style="list-style-type: none"><li>• Revenue and Operating Profit by Area of Operation</li><li>• Quarterly Revenue and Operating Profit</li></ul>	<ul style="list-style-type: none"><li>• Investment in Current Assets</li><li>• Efficient Operation of Production Facilities</li></ul>	<ul style="list-style-type: none"><li>• Key Capacity</li><li>• Percentage of Sales to Non-affiliates</li></ul>

## Key issues of the review

**KEY ISSUE 01** Capacity to generate profit and the level of efficiency in the use of assets

**KEY ISSUE 02** Whether continuous profit may be generated

## Review Guidelines

**KEY ISSUE 01** Capacity to generate profit and the use of assets

**KEY POINT**

An analysis of cost and profit structure by main area of operation must indicate an increasing tendency of profit.)

When verifying profitability, the KRX aggregates sales and operating profit figures for each product to obtain a quarterly overview of the



percentage of less profitable operations and products against total revenue of the listing applicant.

For each of less profitable operations and products, the KRX additionally verifies its feasibility and examines changes in the ratio of cost of sales in connection with changes in inventories to determine whether the profitability may subsequently improve.

If the sales and operating profit of a particular operation have suddenly increased, verification is made to determine whether such profit is non-recurring and whether continuous profit could be generated in the future.

If profitability has improved despite that sales for the most recent fiscal year have not greatly increased from the preceding year, a comparison is made between the listing applicant and its competitor in terms of unit sale price to examine the reason for higher unit prices and the likelihood of deterioration in the rate of the profit in the future.

Unit sale prices and unit purchase prices for each supplier or customer are also compared to examine whether profit has been generated by, *inter alia*, raising purchase or sale prices applicable to affiliates or particular trade partners with interests in the applicant.



### KEY POINT

Profits must be generated by efficient use of assets.



It is desirable for the listing applicant to generate profit by making efficient use of its cash, deposits, real property *etc.*

Certain companies operate their retained earnings in the form of cash; deposits *etc.* and are not interested in developing financial strategies for appropriate portfolios. Although it is important to prevent loss by

managing assets in a prudent manner, it is also important to generate profit by appropriate asset management and return profit to investors.

For the purpose of managing assets, it is advisable to set up a *funds management committee* or any other similar sub-organization within the Board of Directors to ensure transparent and fair decision-making processes.



## Whether continuous profit may be generated

### KEY POINT

**Continuous profit must be generated by developing and retaining key capacity.**

The KRX examines whether a listing applicant has key capacity sufficient to maintain profitability. As for key capacity, not only product research and development but also the corporate philosophy and vision of management may play an important role.

As the corporate philosophy and vision of management are factors not readily quantifiable and presentable by the listing applicant, the KRX confirms these factors through interview sessions with the CEO.

## **Responsive Measures by the Listing Applicant**

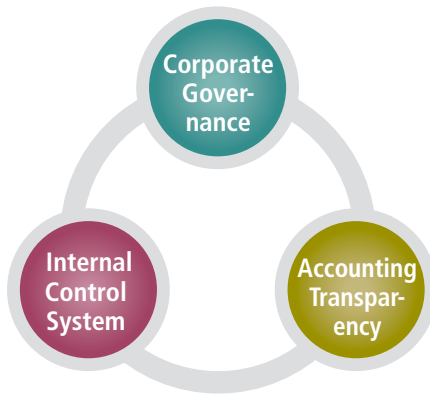
A listing applicant must develop remedial plans for less profitable operations and products. If the applicant has recently experienced a sudden increase and decrease in operating profit, the applicant must prepare documents specifically identifying its cause.

It is also necessary to develop key capacity on an ongoing basis and make efforts to improve profitability by generating profit through efficient asset management.



# Criteria for the Operational Transparency Test

## < Operational Transparency >



### a. Corporate Governance

Largest Shareholder	Executive management	Outside Directors	Full-time Statutory Auditors and the Audit Committee
<ul style="list-style-type: none"> <li>• Change of the Largest Shareholder</li> <li>• Compliance by the Largest Shareholder with the Law</li> <li>• Dividends Payable to the Largest Shareholder</li> <li>• Double-tier Governance</li> </ul>	<ul style="list-style-type: none"> <li>• Multiple Directorship</li> <li>• Composition of the board</li> <li>• Illegal Acts by Members of Executive Management</li> </ul>	<ul style="list-style-type: none"> <li>• Satisfaction of Qualifications Under the Commercial Act</li> <li>• Expertise and Independence</li> <li>• Interlocking Outside Directors</li> <li>• Fiduciary Duty</li> </ul>	<ul style="list-style-type: none"> <li>• Qualifications under the Commercial Act</li> <li>• Expertise and Independence</li> <li>• Fiduciary Duty</li> </ul>

# 1) Largest Shareholder

## a) Change of the Largest Shareholder (See Appendices 3 and 4.)

### Key issues of the review



Any change of the largest shareholder within one year prior to the application for listing eligibility review

### Review Guidelines

#### KEY POINT

In order to ensure stable corporate governance, there must be no change of the largest shareholder within the year preceding the application for listing eligibility review.

In the FSCMA, the term “largest shareholder” is defined as “any person who holds the greatest number of outstanding voting shares in a corporation on his/her own account, whether in his/her own name or the names of any specially-related persons.”

The KOSPI Market, therefore, recognizes the notion of the largest collective shareholder being not only a single major shareholder holding the largest number of shares but also a group of a shareholder and his or her specially-related persons collectively holding the largest number of shares to be regarded as the largest shareholder.

In calculating the number of shares held by the largest shareholder *et al.* for this purpose, shares held by accredited investors under the FSCMA for investment purposes are excluded, and the listing applicant must personally substantiate the purpose of shareholding.

In the KOSDAQ Market, on the other hand, reflecting the fact that the influence of a single largest shareholder on the company is more important than any other factors, only the single shareholder holding the largest number of shares collectively with his or her specially-related persons is recognized as the largest shareholder which reflects the characteristics of the KOSDAQ Market.

It is required that there be no change of the largest shareholder of a listing applicant within one-year preceding the application for listing eligibility review. As this requirement restricts changes in corporate control resulting from the change of the largest shareholder, the number of shares held by the largest shareholder may be changed insofar as the same person maintains his/her status as the largest shareholder.

As, however, any potential decrease in the shareholding of the largest shareholder below 15% (20% in the case of the KOSDAQ Market) following a public offering and public listing may undermine operational stability, the listing applicant is also required to submit for review a proposed measure for stabilizing corporate control exerted by the largest shareholder.

It is also recommended to enumerate, in detail, any risk factors associated with the stabilization of corporate control in a securities registration statement.



## Recommended statements in a securities registration statement

- ❖ A breakdown of shareholding ratio of the largest shareholder *et al.*
- ❖ The risk of changes in corporate control potentially arising from the relatively low shareholding ratio
- ❖ Future plans of the applicant to stabilize corporate control

### Responsive Measures by the Listing Applicant

A listing applicant must monitor, beginning from one year prior to submission of application for listing eligibility review, whether any changes in the shareholding of the largest shareholder occur and submit an application for listing eligibility review after the expiry of one year from the date on which the change of the largest shareholder has occurred, if any.

### b) Double-tier Governance Structure

#### Key issues of the review



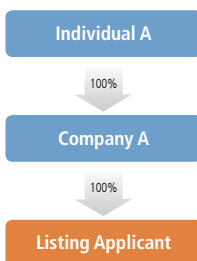
How well minority investors are protected from adverse conditions arising from a double-tier governance structure

## Review Guidelines

### KEY POINT

A company with double-tier governance structure must have justification for such structure and make efforts to improve its governance.

< Example of a double-tier governance structure >



Double-tier governance refers to a governing structure where the largest shareholder of a listing applicant is a corporation whose shares are held by a natural person or another corporation. Certain foreign-invested companies in Korea are controlled by shell corporations incorporated in the Cayman Islands or other tax havens to enjoy tax benefits such as acquisition tax and other taxes.

Although, in this case, the largest shareholder, in effect, may differ from the largest shareholder as stated in the register of shareholders, this might not affect the outcome of the listing review provided that the inevitability of the incorporation of such shell corporation is verified in the course of the review.

The KRX allows as a matter of principle only recognizes a single shell corporation in a double-tier corporate governance structure. This is because if two or more shell corporations exist between the listing applicant and the largest beneficial shareholder, the largest shareholder of the parent company has no disclosure obligations under the Listing Regulations, potentially creating complications for the protection of minority shareholders. In this case, the KRX intensively examines the corporate governance of the company.

Additionally, if the largest shareholder of a listing applicant with double-tier governance is a shell corporation satisfying certain requirements, the largest individual shareholder of such shell corporation and specially-related persons are also subject to lock-up obligations.



### Requirements for a shell corporation

- ❖ The company must not be a listed company.
- ❖ The aggregate amount of shares in the investee company must exceed 50% of its total assets.
- ❖ The company must be engaged exclusively in, *inter alia*, the management of the operation of its investee.

Although it is basically required that there be no change of the largest shareholder within one year preceding the submission of application for listing eligibility review, the *such restriction* is not applicable if the largest shareholder of such shell corporation becomes the largest shareholder of the listing applicant through, *inter alia*, the liquidation of such shell corporation. This requirement for exception, however, is exclusively

applicable to the case where the largest shareholder of the shell corporation is an individual.

It is, therefore, advisable for the listing applicant and the lead managing underwriter to re-examine the double-tier governance structure and make improvements, if any, prior to filing for listing eligibility review with the KRX.

## **Responsive Measures by the Listing Applicant**

The listing applicant must justify the inevitability of double-tier corporate governance and have in place measures to disclose information on any change of the largest beneficial shareholder or any other important operational matters to minority shareholders.

## **c) Dividends to the Largest Shareholder**

### **Key issues of the review**



Adequacy of the measures to address excessive dividend payment to the largest shareholder

## Review Guidelines

### KEY POINT

Prior to listing, the largest shareholder must refrain from excessive dividend payment that undermines the growth potential of the listing applicant and comply with appropriate procedures in returning dividends.

The largest shareholder of an applicant applying for listing of foreign securities, as opposed to domestic companies, sometimes has 100% or a high percentage of shareholding in the company and pay excessive dividends to the largest shareholder.

Although dividends are a primary means allowing shareholders to achieve legitimate gains, excessive dividends, in a sense, constrains growth opportunity of a company due to insufficient retained earnings (capacity for additional investment) and thus are given consideration in conducting a listing review.

There are cases in which a listing applicant, with such fact taken into account, deems dividend payment excessive and procures the return of dividends already paid out to the largest shareholder.

In this case, the KRX examines, *inter alia*, the auditor's report and copies of deposit slips to verify whether the procedure for the return of dividends has complied with the laws of the jurisdiction in which the applicant is incorporated and the Articles of Incorporation of the company and whether the dividends have actually been paid to the company. The KRX also requires and verifies a legal opinion related to dividends, if necessary.



## Responsive Measures by the Listing Applicant

A listing applicant must make available the minutes of a board of directors meeting and other supporting documents that may verify the adequacy of dividend payment.

If excessive dividend payouts to shareholders have previously undermined the corporate value or are highly likely to undermine the corporate value under the current governance, it is desirable to consult with the lead managing underwriter to have in place measures to improve corporate governance prior to filing for listing eligibility review.

In addition, if any payouts have been returned, documents related to the return procedure, copies of deposit slips *etc.* must be made available in advance.

## d) Legality of the Largest Shareholder

### Key issues of the review

KEY ISSUE  
01

Whether the listing of a Chinese company on an overseas exchange requires the approval of the China Securities Regulatory Commission (the "CSRC")

KEY ISSUE  
02

Whether shares held by the largest shareholder of Chinese nationality and specially-related persons are in their own names

KEY ISSUE  
03

Whether there are any option contracts *etc.* exploiting loopholes in the law in case shares held by a Chinese national is transferred to a foreigner

## Review Guidelines

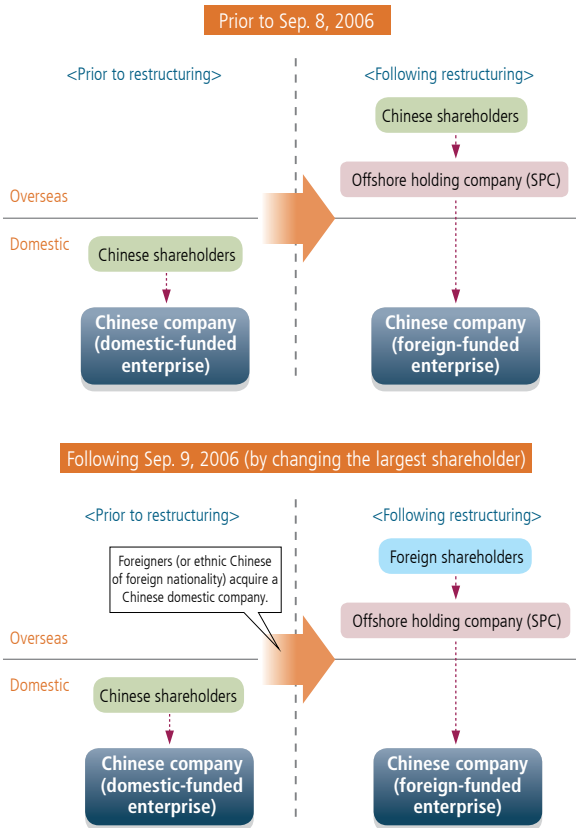


### Whether the listing requires the approval of the CSRC

#### KEY POINT

The KRX, in principle, grants eligibility clearance only where the listing of the Chinese company does not require the approval of the CSRC.

#### < Listing Structure of a Chinese company on an Overseas Exchange >



Under the Chinese M&A regulations (effective as of September 2006), any offshore holding company (special purpose company) incorporated in the Cayman Islands or any other offshore jurisdiction in or after August 2006 to be controlled directly or indirectly by a Chinese national may not be listed on an overseas exchange without the approval of the CSRC.

The KRX, therefore, conducts listing reviews on Chinese companies which are not subject to CSRC approval.



### CSRC approval is not required for:

- ❖ any foreign funded enterprise newly incorporated within China;
- ❖ any foreign funded enterprise which completed restructuring prior to the effective date of the Chinese M&A regulations; or
- ❖ any Chinese domestic company (domestic-funded enterprise) acquired by foreigners and listed on an overseas exchange.



### KEY POINT

**Whether a company is subject to the approval of the CSRC is determined based on an objective legal opinion.**

As China requires CSRC approval for the listing of domestic companies on foreign exchanges in order to develop its capital markets and prevent wealth from being drained out of the country, the KRX does not approve the listing of a Chinese company unless a legal opinion, documents evidencing

the nationality of controlling shareholders, an official communication from the Chinese government approving changes in shareholdings, registration documents issued by the State Administration for Industry and Commerce of China *etc.* state that no CSRC approval is required.

As it is difficult to determine facts and compliance regarding share transfer if the largest shareholder of the offshore holding company differs from that of the company operating within China, the KRX relies on a legal opinion to verify whether the largest shareholder as stated in the application for listing eligibility review is the actual and lawful largest shareholder.

The KRX also advises the listing applicant to ensure that the registration statement contains, under the heading of Risk Factors, information on any share purchase agreements, agreements authorizing one party to exercise shareholder rights of the other, *etc.* entered into between the largest shareholder of the offshore holding company and that of the company operating within China.



## Provisions of the Chinese M&A regulations related to listing on an overseas exchange

### ➤ Background

As a number of private companies in mainland China had listed their shares by way of red chips without the approval of the CSRC before these regulations took effect, the Chinese financial supervisory authority enforced these regulations on September 8, 2006 to regulate the listing of private companies on overseas exchanges and to make the development of securities exchange within the country a top priority.

### ➤ Relevant provisions

**Article 2.** The term “merger or acquisition of a domestic enterprise by a foreign investor” as used in these Regulations shall mean (i) where a foreign investor acquires shares in a non-foreign funded enterprise within China (hereinafter referred to as a “domestic enterprise”) held by other shareholders or newly issued shares in a domestic enterprise to transform such domestic enterprise into a foreign funded enterprise (hereinafter referred to as an “acquisition of stock”); (ii) where a foreign investor incorporates a foreign funded enterprise and at the same time uses such enterprise to acquire and manage assets of a domestic enterprise; or (iii) where a foreign investor acquires assets of a domestic enterprise and at the same time uses such assets to incorporate and operate a foreign funded enterprise (hereinafter referred to as an “acquisition of assets”).

**Article 11.** Where a domestic company, enterprise or natural person intends to merge with or acquire its domestic affiliate in the name of a company that is lawfully incorporated or controlled by such domestic company, enterprise or natural person, such domestic company, enterprise or natural person shall be subject to the examination and approval of the MOFCOM. Such domestic company, enterprise or natural person shall not avoid the aforesaid requirement by way of investments made by a foreign-funded enterprise or any other means.

**Article 39.** The term “offshore holding company” shall mean an offshore company directly or indirectly controlled by a domestic company or natural person to ensure that equity interests in another domestic company beneficially held by it is listed on an offshore exchange.

**Article 40.** The trading of securities in an offshore holding company listed on an offshore exchange shall be subject to the approval of the securities regulatory body of the State Council.

**Article 55.** Any foreign investor intending to acquire outstanding equity in a domestic foreign-funded enterprise held by other shareholders or subscribe to newly issued equity therein shall be subject to the then-current laws and administrative regulations governing foreign-funded enterprises as well as the Regulations on Changes in Equity Interests Held by Investors of Foreign-Funded Enterprises; except where otherwise provided in the aforesaid laws, these Regulations shall be applicable as well.



## Whether the largest beneficial shareholder hold shares in its own name

### KEY POINT

The largest shareholder and their specially-related persons must hold shares in their own names.

The largest shareholder and their specially-related persons must hold shares in the listing applicant on their own account and in their own names. As the Listing Regulations of the KRX prohibit any change of the largest shareholder within one year prior to the submission of application for listing eligibility review, the largest shareholder might, in an attempt to evade this restriction, choose to effectively transfer shares under a *sub-rosa* shareholders agreement but not have the transfer recorded in the register of shareholders, resulting in inconsistency between the actual owner and the owner recorded in the register.

This may give rise to a dispute over corporate control and a class action brought by minority shareholders which is detrimental to operational stability.

In the course of a listing review, the KRX conducts interviews with shareholders, check the changes in shareholdings and use other means to examine whether any shares are registered in a name different from the name of the *de facto* shareholder. Upon discovery of such fact, the listing applicant and the lead manager must immediately inform the KRX.

## The existence of a loophole-exploiting option contract

### KEY POINT

**Any loophole-exploiting option contracts entered into to facilitate a listing must be addressed before filing for listing review.**

If a shareholder of Chinese nationality has transferred or assigned all or part of his or her shares to a non-Chinese to evade the requirement for CSRC approval for listing on an overseas exchange, the KRX focuses on whether such transfer has been lawfully effected.

This is because if a Chinese national transfers his or her shares to a non-Chinese and signs an option contract in order to retrieve the ownership of the shares, potential disputes over corporate control arising after listing as well as CSRC sanctions leading to cancellation of the change in governance might create issues for the protection of minority shareholders in Korea.

In the course of a listing review of a Chinese company, therefore, the KRX requires the submission of a legal opinion of a law firm verifying that actual owners of the company are identical to those recorded in the register of shareholders. The lock-up period for all shares in a Chinese company held by large shareholders may be additionally extended from the otherwise applicable six-month period (one-year period in the case of KOSDAQ Market) after listing in order to protect Korean investors.

It is also important to make detailed statements on the rights of the largest shareholder in the registration statement and the prospectus.

## Responsive Measures by the Listing Applicant

A Chinese applicant must make available a legal opinion of a law firm on whether listing on an overseas exchange requires CSRC approval, and verify whether shares of the largest shareholder or specially-related persons are held in a third party's name. If such shares are held in a third party's name, such shares must be registered in the name of *de facto* shareholders prior to filing for listing eligibility review. The applicant must also make available a register of shareholders, a legal opinion *etc.* verifying that the largest shareholder is the lawful owner of the shares.

## 2) Executive Management

### Key issues of the review

- 01** **KEY ISSUE** Whether any director of the listing applicant also serves as a director of another company that has a trading or equity relationship with the applicant
- 02** **KEY ISSUE** Whether the board of directors primarily consists of the largest shareholder and specially-related persons
- 03** **KEY ISSUE** Whether a illegal act committed by the CEO for which his or her term of office is not completed, if any, may affect the listing applicant in any manner



## Review Guidelines

KEY ISSUE

01

### Multiple Directorship

#### KEY POINT

It is desirable to address the issue of multiple directorship in connection with other companies that might be in conflict of interest, preferably prior to filing for listing eligibility review.



As a director of a listing applicant also serving as a director of its affiliate may, depending on the policy of the affiliate, undermine the operational independence of the applicant or lead to transfer of wealth *etc.*, the KRX examines any conflict of interest possibly resulting from multiple directorship.

In the case of affiliates of conglomerates, pursuant to the relevant under the human resource policy, holding multiple directorship is common, while directors of a parent company with a number of subsidiaries often sit on the boards of the subsidiaries in order to effectively control them. Multiple directorship is also commonly found in companies having no clear relationship of control with a listing applicant.

Under the Commercial Act, holding multiple directorship with companies engaged in the same line of business requires prior approval of the board of directors or a procedure for subsequent ratification in the absence of prior approval. In the course of a listing eligibility review, therefore, the KRX examines whether applicable internal control procedures have been followed.

The question of conflict of interest is determined in comprehensive consideration of, *inter alia*, whether directors with multiple directorship hold shares in the companies concerned, whether the companies are competitors, and whether the companies have a trading relationship.

If any director of the listing applicant is in the board of an affiliate that has a competitive relationship or a large trading volume with the applicant, such director must resign from his or her position as director in the affiliates regardless of whether the applicant or the director holds shares in the affiliate. It is also advisable to consider resigning from his or her directorship even when the trading volume with the affiliate is relatively small.



## Criteria for determining a competitive relationship and a large transaction volume

- ❖ **Competitive relationship:** where companies are in a competitive relationship or are likely to be in such competitive relationship due to, *inter alia*, expansion of the market in the future in light of the characteristics of products, sources of demand, *etc.*
- ❖ **Large trading volume:** Where the trading volume accounts for *10% or more of the gross revenue or purchase* of the listing applicant

In accordance with the guidelines above, issue of multiple directorship must be resolved prior to filing for listing eligibility review. If certain circumstances render the listing applicant unable to comply with the above guidelines, it is important to discuss it with the KRX in advance.

In addition, since the CEO serves a key role in corporate management, it is not desirable for the CEO to serve as a full-time director of any other company.

The KRX identifies directors who left the applicant company within the last three years to additionally examine their former roles with the applicant, reasons for resignation, whether they took positions with competitors *etc.*

KEY ISSUE

02

### **Board primarily consisting of the largest shareholder and their specially-related persons**

#### KEY POINT

**The Board of Directors must consist of directors who are capable of making decisions independent of the largest shareholder or the CEO.**

The separation of ownership and management is a significant trend in the modern capital market, which is considered as the most ideal corporate governance structure, even though certain agency costs will be incurred.

In the listing review, the KRX examines the composition of the board of directors of the listing applicant. Even if the members of the board satisfy the requirements under the Commercial Act, a board primarily consisting of relatives and specially-related persons of the largest shareholder would be incapable of maintaining its independence.



#### KEY POINT

**If the independence of the board cannot be maintained, the percentage of outside directors must be increased.**



As interests of the largest shareholder or the CEO may undermine the corporate value if the board of directors is incapable of making independent decisions, it is necessary to ensure the independence of the board by increasing the percentage of outside directors within the board. Ensuring that a majority of the board is comprised of outside directors, for example, could be a viable option to ensure transparent corporate governance.



### Illegal Acts of the CEO

#### KEY POINT

**It is necessary to minimize the influence of illegal acts committed by management, if any, on minority shareholders and the operation of the listing applicant.**

In the event of any illegal act (breach of trust, embezzlement *etc.*) committed by a listing applicant or any of its directors, the KRX generally examines its cause, development, influence on minority shareholders upon listing *etc.*

It is desirable for the listing applicant to wait for the completion of any sentences, have in place internal controls to prevent the occurrence of similar cases, and undergo a “watching period” before filing for listing eligibility review.

## Responsive Measures by the Listing Applicant

A listing applicant must (i) verify whether any illegal acts have been committed by it or any of its directors, whether the term of the applicable sentence has been completed and whether a conflict of interest may arise from multiple directorship and (ii) have in place appropriate measures to address the issues discovered.

It is desirable for any listing applicant with a board consisting primarily of the largest shareholder and their specially-related persons to have in place remedial measures in early phases, even though no material issues with the operation of the company have occurred.

### 3) Outside Directors

#### a) Domestic Companies

##### Key issues of the review



Whether outside directors meet the qualifications under the Commercial Act and their expertise and independence have been secured



Whether any outside director serves as an outside director of another company

## Review Guidelines



### Qualifications

#### KEY POINT

**Qualifications for Outside director under the Commercial Act are the minimum requirements that must be fully satisfied.**

Qualifications for outside directors are verified in the Statement of Compliance with Outside Director Qualifications submitted by the listing applicant and its lead managing underwriter as well as, if necessary, résumés of applicable outside directors.

A listed company is required to appoint outside directors equal to no less than one fourth of the total number of directors. In the case of any listed companies with assets exceeding 2 trillion won, it is also required that the number of outside directors be no less than three and no less than one half of the total number of directors. In the case of the KOSDAQ Market, however, a venture company is not obligated to appoint outside directors unless its total assets exceed 100 billion won.

Although, outside directors are only required to be appointed prior to the first annual general meeting of shareholders after initial listing, under the Commercial Act, the applicant will be considered to have desirable corporate governance if outside directors are appointed prior to filing for listing eligibility review.

If self-serving interests of the largest shareholder or the CEO have resulted in the corporate value being damaged, it is necessary to fill the majority of the board with outside directors and strengthen their independence by, *inter alia*, electing outside directors through the nomination committee for outside directors.



### KEY POINT

Outside directors must maintain expertise and independence.



The expertise and independence of outside directors are indirectly verified by requiring the submission of, *inter alia*, the minutes of board of directors meetings held for the last three years.

The applicant should be aware that poor attendance by outside directors at board meetings may be seen as low level of objectivity and independence in the operation of the board.



## Multiple directorship for outside directors

### KEY POINT

An outside director of a listed company may hold no more than one directorship at another company.

Under the current Commercial Act, an outside director of a listed company may hold no more than one outside or non-management director position at another company.

The listing applicant must prevent any non-compliance with the Commercial Act in advance by rigorously examining whether any elected outside director serves as a board member of another company.

### Responsive Measures by the Listing Applicant

The listing applicant must prepare supporting documents verifying qualifications of outside directors under the Commercial Act, their expertise and independence and replace any outside director whose expertise or actual independence is in question.

## b) Foreign Companies

### Key issues of the review

KEY ISSUE  
**01**

Whether outside directors of an applicant applying for listing of foreign securities satisfy qualifications under the Commercial Act

KEY ISSUE  
**02**

Whether any outside director of an applicant applying for secondary listing of foreign securities serves as an outside director of number of companies

KEY ISSUE  
**03**

Whether an outside director may fulfill his or her fiduciary duty when serving a number of companies

KEY ISSUE  
**04**

Whether the appointed outside directors are fluent in Korean

### Review Guidelines

01

#### Qualifications of outside directors

##### KEY POINT

It is desirable for outside directors of an applicant applying for listing of foreign securities to satisfy qualifications under the Commercial Act of Korea as well.

Although outside directors of an applicant applying for listing of foreign securities are only required, in principle, to satisfy the requirements under the laws of the jurisdiction of its incorporation, it is desirable to satisfy

the qualification, independence and expertise requirements under the Commercial Act of Korea as well. Due to differences in the legal system and understanding on the notion of transparency with respect to internal controls, a foreign company may appoint former officers and employees as outside directors.

As this is an issue that may create material problems in the internal control system in terms of corporate transparency, the applicant must check in advance and replace them with eligible outside directors.

**KEY ISSUE**  
**02**

**Outside directors of an applicant applying for secondary listing of foreign securities who serve as directors of other companies**

**KEY POINT**

**Outside directors of an applicant applying for listing of foreign securities may serve as directors of at a number of companies, provided that the local laws of the jurisdiction of in which the company is primarily listed are not violated and corporate governance is deemed transparent under such laws.**

Although the Commercial Act prohibits an outside director from holding positions of outside director with three or more listed companies, it may be acceptable for an applicant applying for listing of foreign securities to have outside directors holding more than three outside directorships if the applicant is listed on a foreign exchange and duties of the outside directors are performed under exemplary governance.

If the local laws of the jurisdiction of in which the listing applicant is incorporated do not contain the notion of outside director (also known as non-executive director, independent director, and external director), the applicant must specify the position of outside director in its Articles of Incorporation or by-laws so that outside directors may effectively perform internal controls.

KEY ISSUE  
**03**

### Fiduciary Duty

#### KEY POINT

Fiduciary duties must be fulfilled when serving as outside directors at a number of companies.



The role of an outside director As serving in a number of companies may give rise to issues of conflict of interest and fiduciary duty, and the KRX,

in the course of a listing review, comprehensively considers attendance by outside directors at board meetings, compensation made, *etc.* to determine whether problems arising from multiple directorship should be addressed.



#### **Outside directors who are fluent in Korean**

##### **KEY POINT**

**Any applicant applying for listing of foreign securities with insufficient transparency in governance and accounting is advised to appoint outside directors with expertise and fluency in Korean.)**

Certain applicants applying for secondary listing of foreign securities that have recently been listed on the KRX have boards primarily consisting of relatives and in-laws and they also have vulnerable accounting systems.

As this might undermine the confidence of Korean investors in the company, it is necessary to appoint outside directors with professional knowledge and fluency in Korean to enhance the company's understanding of the domestic market and to improve communication with domestic investors.

It could, therefore, be a viable option for improving governance for an applicant applying for listing of foreign securities to appoint outside directors with fluency in Korean and expertise required to protect domestic investors.

As the issues of language and liabilities, however, may limit the pool of candidates capable of serving as outside director of an applicant applying for listing of foreign securities, the applicant may utilize officers and employees of the lead manager who understand the applicant well.

### **Responsive Measures by the Listing Applicant**

The applicant must identify outside directors serving other companies and verify outside directors meet necessary qualifications under the Commercial Act of Korea. The applicant must also verify attendance by outside directors at board meetings, their activities *etc.* to prepare documents supporting the performance of their fiduciary duties.

In the process of preparing for application, the applicant should discuss with the lead manager whether it is necessary to appoint outside directors fluent in Korean and consider such appointment if deemed necessary.

## 4) Full-Time Statutory Auditors and the Audit Committee

### Key issues of the review

KEY ISSUE  
**01**

Whether full-time statutory auditors and the audit committee satisfy qualifications under the Commercial Act

KEY ISSUE  
**02**

Whether their expertise and independence are secured

### Review Guidelines

KEY ISSUE  
**01**

#### Qualifications for full-time statutory auditors

##### KEY POINT

Qualifications for full-time statutory auditors prescribed under the Commercial Act are minimum requirements that must be fully satisfied.

Any listed company with assets exceeding 100 billion won or 2 trillion won is obligated to, either appoint full-time statutory auditors or establish an audit committee. The audit committee must be composed of outside directors who make up at least two thirds of the total number of members of the audit committee which shall include one or more professionals.

It should be noted that an audit committee is only required under the Commercial Act to be set up prior to the first annual general meeting of

shareholders convened after initial listing whereas full-time statutory auditors must be appointed prior to the date of initial listing. In the case of the KOSPI Market, full-time statutory auditors must be appointed prior to the date of original listing, whereas in the case of the KOSPI Market, an applicant may not file an application for listing eligibility review unless full-time statutory auditors have been appointed.

Although the notion of full time is yet to be clearly defined, the minimum requirements to be satisfied to determine a person as a full-time statutory auditor is for him or her to have office space, the authority to take part in the operation of the company at all times; and be compensated for such activities.



### In the case of an applicant applying for listing of foreign securities

The laws of the jurisdiction in which the applicant applying for listing of foreign securities is incorporated may not contain the notion of full-time statutory auditor. Unless in conflict with the laws of the jurisdiction of incorporation, the applicant must specify the position of full-time statutory auditor in its Articles of Incorporation or other by-laws and appoint full-time statutory auditors capable of maintaining internal controls.

KEY ISSUE

02

### Ensuring expertise and independence

#### KEY POINT

**Full-time statutory auditors with expertise and independence must be appointed.**





The expertise and independence of full-time statutory auditors are indirectly verified in, *inter alia*, the minutes of board meetings held for the last three years and audit and inspection records.

In case the full time statutory auditors have not played a significant role in the company or are deemed to have insufficient expertise and independence of full-time statutory auditors, the KRX examines the internal control system of the applicant more strictly.

### **Responsive Measures by the Listing Applicant**

The listing applicant must prepare supporting documents verifying qualifications of full-time statutory auditors as required under the Commercial Act, their expertise and independence and replace any statutory auditor whose expertise or substantial independence is in question.

## b. Internal control system

### Internal accounting controls and the internal control system

- Establishment and operation of internal accounting controls
- Establishment and operation of the internal control system
- Establishment of the code of conduct

### Transactions with specially-related persons

- Establishment of and compliance with by-laws
- Establishment of internal controls
- Provision of adequate compensation and fringe benefits
- Adequacy of transactions

### Transactions with the largest shareholder

- Management consulting fees
- Trademark license fees
- Royalties etc.

## 1) Internal Accounting Controls and Internal Control System

### Key issues of the review

KEY ISSUE  
**01**

Whether the applicant has established and continues to operate an efficient internal control system including but not limited to internal accounting controls and a code of conduct

### Review Guidelines

KEY POINT

**An efficient internal control system must be designed and operated.**

Any applicant with assets totaling 100 billion won or more is required by the Act on External Audit of Stock Companies (the “AEASC”) to design

and operate internal accounting controls. The CEO of the listing applicant is responsible for the management and operation of internal accounting controls and is required to appoint one statutory auditor as internal auditor.

The internal auditor must report on the operation of internal accounting controls to the board of directors and statutory auditors or the audit committee each fiscal year, while statutory auditors or the audit committee must evaluate the operation of internal accounting controls and submit an evaluation report to the board of directors for each fiscal year and make such report for public access for five years.

An independent auditor also reviews the applicant's report on the operation of internal accounting controls and provide his or her its general opinion in the auditor's report.

Establishment of internal accounting controls are mandatory under the current law, hence it is necessary for a company preparing for listing to design internal accounting controls in advance and operate such controls in a substantial, as opposed to perfunctory, and continuous manner.

In the course of a listing review, the KRX requires the submission of and examines the report submitted by the internal auditor to the board of directors and the audit committee as well as the report submitted by the audit committee to the board of directors and, if the KRX has identified areas of improvements suggested or indicated in such reports, verifies the applicant's plan for remedial measures and whether such plan has been

actually implemented.

Although any applicant with assets less than 100 billion won is not required to operate internal accounting controls, the adoption and efficient operation of internal accounting controls may facilitate the recognition of the stability of its internal controls.

Although the obligation for internal accounting controls is only applicable to domestic companies and not to applicants applying for listing of foreign securities, these applicants must have in place an internal control system similar in effect to the internal accounting controls required for domestic companies.

If, in particular, the laws of the jurisdiction in which such applicants were incorporated has no requirement similar to the requirement in Korea with respect to internal accounting controls or the Sarbanes-Oxley Act of the US, the applicant must arrange its internal control system to ensure functional differentiation of accounting activities, establishment of accounting-related rules, a reporting system, a systematic control system for accounting *etc.*

The applicant should also make efforts to communicate with Korean investors by employing Korean-speaking employees prior to the applying for listing review and launch a Korean website after obtaining approval for listing.



## Measures to Arrange an internal control System

### ➤ **Functional differentiation of accounting-related activities**

- Functional separation of accounting and cashier activities and bookkeeping and cashier activities must not be handled by the same person
- Functional separation of preparing for statements/slips and approval of the expenditures: The front line department prepares statement/slips based on original documents immediately upon the occurrence of a transaction, whereas the accounting department is responsible only for approving expenditures, aggregating statement/slips and preparing financial statements.
- Functional separation of the approval of expenditures and cashier activities: Enhance transparency in disbursements of funds by separating employees responsible for approving disbursements and those responsible for cashier activities

### ➤ **Establishment of accounting regulations and a reporting system**

- Regulations on delegation of decision-making authority: Have in place and thoroughly enforce regulations on delegation of decision-making authority in consideration of the importance and the amount of accounting activities
- Establishment of a prompt reporting system: Build a system allowing accounting errors and other accounting information to be promptly reported to the executive management.

### ➤ **Systematic control of accounting data**

- Preparation and approval for daily cash books: Prepare daily cash books each day and prepare and retain a trial balance with a certificate of deposit balance as approved by the applicable officer each month.
- Building of a system preventing falsification and tampering In order to prevent accounting books from being tampered with, the accounting team controls access to accounting records (including books and computing equipment) and maintain such records in locked places.



## KEY POINT

**It is necessary to improve ethics of officers and employees by, *inter alia*, establishing a code of conduct and ensure they are thoroughly monitored by the internal audit team.**

An established code of conduct and vigorous activities of the internal audit team intended to improve ethics of officers and employees of a listing applicant and prevent their dishonest acts may be indicators of stability of its internal control structure.

### **Responsive Measures by the Listing Applicant**

In order to design and ensure efficient operation of internal control system, it is desirable to introduce internal controls, establish a code of conduct and encourage the internal audit team to conduct vigorous internal audits.

## **2) Transactions with Specially-related Persons**

### **Key issues of the review**

- 01** Whether the regulations of board of directors and other by-laws are adequately put in place and are complied with
- 02** Whether internal controls are in place to prevent embezzlement by the largest shareholder and from them being given inappropriate loans *et al.*
- 03** Whether compensation, fringe benefits *etc.* are provided to the largest shareholder *et al.* in an adequate manner
- 04** Whether transactions with specially-related persons, if any, are based on reasonable terms and motivations

## Review Guidelines



### Establishment of and compliance with by-laws

#### KEY POINT

The regulations of the board of directors, accounting regulations *etc.* must be established and thoroughly complied with.

In a listing review, the KRX focuses on whether major transactions and decisions of a listing applicant have been in compliance with by-laws.

Prior to filing for listing eligibility review, the applicant must establish regulations of the board of directors, accounting committee of internal transactions, *etc.* in a systematic manner and even in the event that they have already been established, arrange them in a manner appropriate for a listed company.

All by-laws must be capable of serving as guides for transparent operation of the applicant; if the applicant fails to comply with these by-laws in a thorough manner, it is difficult to recognize transparent operation.

The committee of internal transaction must exclude, in its membership, specially-related persons and be chaired by an outside director.

Given the difficulty for an applicant applying for listing on the KOSDAQ

Market to establish the committee of internal transaction due to its size, if unfair transactions with specially-related persons have occurred, the applicant must make efforts to prevent recurrence by establishing or rearranging regulations of the board of directors regulations or on transactions with specially-related persons.

KEY ISSUE  
**02**

**Establishment of internal controls**

**KEY POINT**

**Thorough internal controls must be established as a listed company even if there have been no material flaws of operation.**



Prior to filing for listing eligibility review, internal controls must be examined by the lead managing underwriter via thorough due diligence review and improved if necessary.



< Review criteria for internal con >

Improvement of the board and establishment of an internal control system	Material flaws of operation		Review directions
Completed	Yes	➔	Verification required
	No	➔	Approval without verification
Planned	Yes	➔	Verification required after establishing programs and procedures
	No	➔	Approval without verification after establishing programs and procedures

It is desirable for the applicant to have a certain period of time to operate and verify its internal control system prior to fling for listing eligibility review.



### Adequacy of compensation and fringe benefits

#### KEY POINT

**Prior approval is required to pay adequate compensation and fringe benefits to the largest shareholder and their specially-related persons.**

In the course of a listing review, the KRX examines whether any inappropriate loans have been extended to the largest shareholder or specially-related persons in light of the by-laws of the applicant as well as whether transactions with interested parties have exceeded the maximum amount prescribed under the Commercial Act.

Even if compensation and fringe benefits paid to the CEO *et al.* have



been disbursed within the prescribed maximum amount pursuant to the regulations regarding compensation and the board of directors, the maximum amount must be revised if it is deemed excessive or may affect the financial stability of the listing applicant.

KEY ISSUE  
**04**

### Transactions with specially-related persons

**KEY POINT**

Transactions with specially-related persons are allowed only under inevitable circumstances, the terms of which must be at arm's length.

Transactions with specially-related persons are an important indicator of operational transparency of a listing applicant. If there are transactions with specially-related persons, the appropriateness of such transactions is examined as a matter of priority.

Although transactions with specially-related persons may be deemed appropriate if such transactions are inevitable due to specificities of the industry as in the case with the automobile industry, the reasonableness of transfer prices is additionally examined to determine the appropriateness of the transactions if products involved are not specific to customers and thus may be sold to other customers as well.



As the wealth of the applicant may be deemed to have been unfairly transferred if the transfer price applied to specially-related persons is different from the price applied to other customers or suppliers, the applicant must use due care in trading with specially-related persons.



#### KEY POINT

**In the event of any unfair transactions with specially-related persons, such transactions must be disclosed in a registration statement *etc.*, and unjust enrichment must be returned.**

If any past inappropriate transactions are discovered in preparing for listing, the company wishing to be listed must discuss with the lead managing underwriter and implement the following remedial measures.

❖ **Disclosure**

The transactions must be disclosed in an auditor's report *etc.* to inform all shareholders. The lead manager must state facts discovered during the due diligence in the general opinion of the lead managing underwriter and subsequently disclose the same in the registration statement *etc.* Disclosure allows investors to make informed investment decisions, knowing what past events have drained wealth out of the company and what risks result from such events.

❖ **Restitution of unjust enrichment**

Unjust enrichment may be returned by nullifying and restituting unfair transactions or any unjust enrichment deemed to have been transferred by the transactions may be returned to the company.

❖ **Watch period**

If it is deemed impossible to resolve the issue by returning and disclosing unjust enrichment due to the continued recurrence of unfair transactions and their being deemed of material importance, it is necessary to verify, for a certain period after rectifying unfair transactions, whether transactions are effected in an appropriate manner.

❖ **Prevention of the likelihood of recurrences**

Although it is important to rectify past events, it is no less important to prevent the likelihood of subsequent recurrences. This may be done by rearranging internal control regulations as described above and remove elements which made the occurrence of unfair transactions possible.

## Responsive Measures by the Listing Applicant

The adequacy of transactions with specially-related persons must be determined using the internal control system. The listing applicant and the

lead manager must verify whether the regulations on compensation, the board of directors regulations and other by-laws are established and effectively enforced. It is also necessary to examine whether excessive compensations are paid to specially-related persons in comparison with other companies engaged in the same line of business as well as whether fringe benefit paid to payments have ever exceeded the prescribed maximums for interested parties under the Commercial Act.

If there have been any sale or purchase transactions with specially-related persons, the applicant must check the changes in unit prices so as to make available supporting documents that may verify the adequacy of such transactions.

### 3) Transactions with the Largest Shareholder

#### Key issues of the review



Whether any fees are paid to the controlling company

#### Review Guidelines

##### KEY POINT

Fee payments must be universal and warrantable according to domestic and international standards and adequately paid in an objective manner.



If a listing applicant pays any fees for the use of trademark, royalties or any other similar fees to its controlling company and/or affiliates, the applicant must submit to the KRX objective supporting documents to verify the adequacy of the amounts.

It is practically difficult to determine the adequacy of fees, which together with dividends are typical means allowing the controlling company to reap capital gains from the applicant.

If the applicant pays any fees to affiliates and other specially-related persons, the KRX examines whether payments of such fees are generally accepted market practice according to domestic and international standards and whether relevant regulations on payment and internal control systems are put in place on the basis of independence and self-discipline, and analyzes transactions with specially-related persons in terms of their impact on operational activities and profitability of the applicant.

If the transparency of transactions with the largest shareholder is less than satisfactory, it is desirable to fill the majority of the board with outside directors and establish a committee of internal transactions, the majority members of which are outside directors. In such case, the committee must exclude specially-related persons as its members and be chaired by an outside director.

Given the difficulty for an applicant applying for listing on the KOSDAQ Market to establish a committee of internal transaction due to its size, if unfair transactions with specially-related persons have occurred, the applicant must develop and present measures to prevent recurrence by establishing or rearranging regulations of the board of directors or of transactions with specially-related persons.

### **Responsive Measures by the Listing Applicant**

The listing applicant must rearrange the regulations based on which the payments are made, calculation criteria and payment procedures for fees and present supporting documents that may verify the adequacy of amounts paid.

## c. Accounting transparency

Establishment of an accounting system	Accounting standards and independent auditors	Auditor's opinion	Accounting review
<ul style="list-style-type: none"><li>Well-organized and transparent accounting system</li><li>Ensure accounting transparency for the secondary-listed company</li></ul>	<ul style="list-style-type: none"><li>Adoption of IFRS</li><li>Cases of accounting errors</li><li>Replacement of independent auditors</li><li>Differences in accounting methods with competitors</li></ul>	<ul style="list-style-type: none"><li>Types of the auditor's opinion</li></ul>	<ul style="list-style-type: none"><li>KICPA review</li><li>Measures taken by the SFC</li></ul>

### 1) Establishment of an Accounting System

#### Key issues of the review

KEY ISSUE  
**01**

Whether a transparent and well-organized accounting system is established and maintained.

KEY ISSUE  
**02**

Whether an applicant applying for secondary listing of foreign securities has ensured accounting transparency

#### Review Guidelines

KEY ISSUE  
**01**

**Establishment and maintenance of an accounting system**

#### KEY POINT

Accounting transparency must be maintained to establish transparent and well-organized accounting system.





Certain listing applicants have vulnerable in-house accounting systems and insufficient internal controls on accounting and cashier activities.

A case in point would be a company that only makes use of a bookkeeping application without adopting an accounting system capable of handling enterprise-wide business processes (an ERP system), where the finance department prepare statement/slips in batches without the purchasing department, the sales department and other front offices entering source data in the computing system.

Another example would be a case in which only three to four employees of a subsidiary responsible for accounting matters are given the authority to use the accounting system, leading to insufficient sharing of data and monitoring between the holding company and the subsidiary regarding the internal accounting and cashier activities of the subsidiary.

If an ERP system or any other well-organized accounting system has not

been introduced, it is necessary to have in place an internal audit system and an internal control system allowing the employees of the subsidiary and the holding company to share and report financial data among relevant departments.



**Measures to ensure accounting transparency of an applicant applying for secondary listing of foreign securities**

**KEY POINT**

The submission of a comfort letter is one of the means to ensure accounting transparency.

In the case of an applicant applying for secondary listing of foreign securities, an internationally recognized accounting firm (having member firms in thirty or more countries that collectively employ 2,000 or more professionals) conducts an accounting audit and issues an auditor’s report, which is translated by a Korean accounting firm before being submitted. In such case, the KRX requires the submission of a comfort letter\* to the effect that the content of the auditor’s report has been faithfully reflected on the application for listing eligibility review. The KRX also receives an accounting review report prepared by the lead managing underwriter to make further verification of accounting transparency.

\* Comfort letter: a document prepared by an auditor not having performed the audit to assure that the financial information in the auditor’s report is consistent with the information in the application for listing eligibility review

## Responsive Measures by the Listing Applicant

The applicant must establish a transparent and well-organized accounting system and procure an independent auditor to conduct an accounting audit to ensure accounting transparency before filing for listing review.

Any applicant preparing for secondary listing of foreign securities must ensure accounting transparency by procuring an accounting audit conducted by an internationally recognized accounting firm and obtain a Korean translation of the auditor's report and a comfort letter from a domestic accounting firm before submitting the same to the KRX. The lead manager must also submit a review report on key accounting issues of the company.

## 2) Accounting standards and independent auditors

### Key issues of the review



- 01** Whether the domestic company has adopted K-IFRS
- 02** Accounting standards used by the applicant applying for listing of foreign securities
- 03** Whether any audit performed by the independent auditor has led to the discovery of a material accounting errors within the last three years
- 04** Whether the independent auditor has been replaced, excluding any replacement with the designated auditor

KEY ISSUE

05

Whether there are any differences in accounting methods in comparison with other companies in the same industry and the competitors

KEY ISSUE

06

Whether any tax audits resulted in material findings within the last five years

## Review Guidelines

KEY ISSUE

01

### Adoption of K-IFRS by a domestic company

#### KEY POINT

From the preparation phase for listing, a system for settlement of accounts in accordance with K-IFRS must be established.

Effective from 2011, a listing applicant is required to prepare and submit its financial statements for the last three fiscal years in accordance with K-GAAP or K-IFRS.

For instance, if an applicant having adopted K-IFRS in 2010 files for listing eligibility review in 2011, the applicant is allowed to submit financial statements for 2008 and 2009 as prepared in accordance with K-GAAP and those for 2010 in accordance with K-IFRS. A listing applicant having adopted K-IFRS in 2011, on the other hand, is allowed to submit all financial statements for 2008, 2009 and 2010 as prepared in accordance with K-GAAP.

If, however, the first half of 2011 ends after filing for listing eligibility review or an application for listing eligibility review is submitted after such period, semiannual financial statements as prepared in accordance with K-IFRS must invariably be submitted.

Also in the event that quarterly financial statements are audited by an independent auditor whose designation was requested in 2011, quarterly financial statements must be prepared in accordance with K-IFRS as well.

**< Examples of accounting standards applied depending on the date of application >**

Classification	A listing eligibility review filed in the first quarter of 2011 (K-GAAP may be used.)	A listing eligibility review filed for after the first quarter of 2011 (A semiannual review report for 2011 must be based on K-IFRS.)
Financial statements in accordance with K-IFRS	No	Yes
Separate financial statements in accordance with K-IFRS (If the applicant has consolidated subsidiaries)	No	Yes
Disclosure of notes on a switch to K-IFRS	Yes	No

In applying K-IFRS, separate financial statements of the listing applicant should be prepared if it has subsidiaries to be consolidated, while individual financial statements should be prepared if the applicant has entities only subject to the equity method.



## KEY POINT

Considering that it is in an early stage of the adoption of K-IFRS, the listing review is based on separate financial statements, whereas consolidated financial statements will be exclusively used starting from 2013.)

Under K-IFRS, primary financial statements are consolidated financial statements. However, in order to mitigate burdens on corporations resulting from the sudden change in the accounting system, minimize confusion caused by the stay of disclosure\* of certain consolidated financial information and enhance the level of comparability with previous financial statements, however, the KRX plans to conduct listing reviews based on K-IFRS separate financial statements in 2011 and 2012 even for listing applicants who have subsidiaries to be consolidated, allowing for the fact that the adoption of the K-IFRS is still in the early stage. Listing Reviews based on K-IFRS consolidated financial statements are planned to be conducted from 2013 on.

\* Stay of disclosure: Disclosure of quarterly and semiannual financial statements of a listed company that has assets totaling less than 2 trillion won and subsidiaries is stayed until 2013.

In examining profit requirements *etc.* for any company with subsidiaries, however, there is a problem of the profit and loss of subsidiaries not being accounted for in K-IFRS separate financial statements as opposed to K-GAAP; therefore, financial information in consolidated financial statements will be used.

Under the AEASC, the following companies are required to adopt K-IFRS:

1. any listed company;
2. any corporation intending to become a listed company in the current or next fiscal year, with the exception of any corporation falling within the scope as set forth in any of the following items:
  - a. any KOSPI-listed company intending to become a company having issued shares listed on the KOSDAQ Market under the FSCMA; hereinafter the same shall apply(KOSDAQ-listed company);
  - b. any KOSDAQ-listed company intending to become a KOSPI-listed company; or
  - c. any corporation intending to have its shares listed on the KRX which has securities listed on an overseas exchange market designated by the SFC (such markets shall be limited to securities exchange which allow the listing of securities issued by companies whose financial information is reliable)
3. any financial holding company under the Financial Holding Companies Act;
4. any bank under the Banking Act;
5. any investment dealer, investment broker, collective investment service provider, trust service provider or merchant bank under the FSCMA;
6. any insurers under the Insurance Business Act; or
7. any credit card issuer under the Specialized Credit Financial Business Act.



#### KEY POINT

**The applicant should pay attention to changes taking effect in 2011 as a result of the adoption of K-IFRS**

The following requirements are applicable if financial statements for 2010 have been prepared in accordance with K-IFRS, not in the case of K-GAAP.

< Comparison of accounting standards in terms of applicable financial requirements >

• Non-holding company (subject to consolidated financial statements)

Classification	Accounting standards applied in the most recent fiscal year	
	K-GAAP	K-IFRS
Equity capital	Individual	Separate (consolidated: excluding non-controlling shareholdings)
Revenue	Individual	Separate
Earnings and ROE	Individual	Separate (consolidated: excluding non-controlling shareholdings)
Auditor's opinion	Individual	Separate, consolidated
Operating cash flow	Individual	Separate

• Holding company

Classification	Accounting standards applied in the most recent fiscal year	
	K-GAAP	K-IFRS
Revenue	Consolidated	Consolidated
Earnings and ROE	Consolidated (excluding minority shareholdings)	Consolidated (excluding non-controlling shareholdings)
Auditor's opinion	Consolidated	Consolidated
Operating cash flow	Consolidated	Consolidated

In applying the equity capital test to an applicant having subsidiaries, the equity capital as specified in K-IFRS consolidated financial statements is used, and non-controlling shareholdings are excluded. This is intended to maintain the principle the KRX applies to listing reviews to focus on individual entities. The equity capital as specified in K-IFRS separate financial statements will be used if the applicant has no subsidiaries.

As for the revenue test, only the earnings for the *sale of goods and provision of services* in the income statement are recognized as revenue, and other earnings are excluded.



As for the earnings and ROE test, if the applicant has subsidiaries, each earnings figure (operating profit, net profit before corporate income tax, and current net income) must all be positive, and the amount of current net income excluding non-controlling shareholdings as in consolidated financial statements is used. This is because operating profit and net profit before corporate income tax do not distinguish controlling and non-controlling shareholdings and are thus unusable.

As for the K-IFRS operating profit used for the earnings and ROE test, only the figures resulting from primary operations are recognized, and non-operating profit and loss generated in other operations are excluded.

In examining the requirement for an auditor's opinion, in case there are subsidiaries, the auditor's opinion on consolidated financial statements are taken into account as well, allowing for the fact that financial information as provided in consolidated financial statements are used for review purposes.



#### KEY POINT

**If there are intangible assets and goodwill as a result of the evaluation of the value of business combination, the assumptions made and valuation criteria used in calculating their fair market value must be presented in an objective manner.**

As for a business combination arising under IFRS, intangible assets and goodwill are evaluated by performing purchase price allocation, or PPA. The KRX examines the adequacy of evaluated amounts of intangibles and goodwill by making reference to a PPA report prepared by an independent professional. Intangible assets evaluated by performing PPA are accounted for as either amortizable intangibles and non-amortizable intangibles. Although K-GAAP provided that goodwill, if any, be amortized using the straight-line method over a period of twenty years or less, K-IFRS require that goodwill be reassessed for impairment and the impairment loss is recognized as an expense.

**< Comparison of K-GAAP and K-IFRS in terms of amortization of goodwill >**

K-GAAP	K-IFRS
Amortized using the straight-line method within twenty years	Subject to an impairment test each year
Annual average amortization expenses are recognized	Goodwill is evaluated, and the impairment loss is recorded as an expense (The impairment loss may not be restored.).

In examining goodwill-related issues, the KRX makes reference to the Analysis of Key Financial Effect of K-IFRS Adoption as prepared by an accounting firm and verifies in relevant reports whether the applicant ceased the amortization of goodwill and started impairment tests at the time of the switch to K-IFRS.



## Understanding of the potential for impairment of goodwill

- ❖ Identification of assets with a potential for impairment: Any goodwill acquired in a business combination is subject to an impairment test each year, where an asset is deemed to have been impaired if its carrying amount exceeds its recoverable amount.
- ❖ Measurement of a recoverable amount: The recoverable amount of a cash-generating unit is deemed to be either a fair value less costs to sell or a value in use, whichever is greater.
  - \* Fair value less costs to sell: the price under a binding sale agreement between knowledgeable, willing and independent parties, less the direct added costs of disposal
  - \* Value in use: the discounted present value of the future cash inflows and outflows expected to arise from the continuing use of an asset and from its disposal at the end of its useful life
- ❖ Recognition and measurement of an impairment loss: The carrying amount of an asset is reduced to its recoverable amount whenever its carrying amount exceeds its recoverable amount. The decrement arising from such reduction is recognized as an impairment loss (current loss). The restoration of an impairment loss is seen as an internally generated increase in goodwill and therefore not permitted.

Any evaluator assessing goodwill must have qualifications, experience, competence and eligibility required of an independent expert.

The KRX examines the methodology and basic assumptions used in assessing goodwill in order to verify the adequacy of goodwill as assessed by the evaluator. The KRX also examines similar corporate M&A cases to examine the adequacy of the fair value less costs and reviews a range of data relating to estimation of future cash flows to assess the adequacy of the value in use.



## Checklist for the KRX in examining the adequacy of goodwill assessment

- ❖ Whether the scope of activities performed by the evaluator is appropriate and sufficient for the purpose of the audit etc.
- ❖ The substantiality and accuracy of sources of data used for estimation
- ❖ Whether an appropriate assessment model has been applied to the asset
- ❖ Whether estimations and parameters of the company are consistent with past experience as well as the assumptions made in the previous fiscal year
- ❖ Whether changes in the business and economic environment that may materially affect the assumptions and parameters have occurred and appropriately accounted for in the assessment model



### KEY POINT

**The influence of redeemable preferred shares, if any were issued, on financial stability must be identified.)**

Although redeemable preferred shares are recognized as capital under K-GAAP as is the case with ordinary preferred shares, they are recognized as liabilities under K-IFRS if the issuer is liable to redeem the shares or if shareholders have the option to require the shares to be redeemed.

This may lead to a decrease in equity capital and an increase in liabilities, which would in turn result in higher debt ratio; thus the KRX examines whether changes in the accounting of redeemable preferred shares may lead to capital impairment or a sudden decrease in the level of financial stability.



## Notes on the adoption of K-IFRS

- If accounting methods applied after the adoption of K-IFRS are different from those of competitors in the same industry, such difference must be supported in an objective manner. Although there are a number of options for a listing applicant to select and decisions to make when applying K-IFRS, a significant part of the accounting methods need to be disclosed, resulting in a higher level of comparability with competitors in the same industry. Therefore, if the criteria for the recognition of earnings, methods of depreciation, useful lives *etc.* applied by the applicant differ from those of the competitors, the KRX make reference to the report on the impact of K-IFRS adoption, notes to the auditor's report *etc.* as prepared by the independent auditor, an accounting firm, to examine the adequacy of the accounting methods used.

Such examination of the adequacy of accounting methods primarily encompass the following procedures:

- verification as to whether K-IFRS requires the accounting methods to be supported or places any restrictions (application of the declining-balance method *etc.*);
- review of data supporting different accounting methods than used in the same industry (economic substantiality *etc.*);
- verification as to whether differences resulting from the use of the same accounting methods as in the same industry would materially affect the financial statements of the applicant; and
- comparative review of cases overseas in which IFRS are applied by those in the same industry

- Any accounting procedures different than as specified in K-IFRS 1101, First-Time Adoption of K-IFRS must be supported.

Upon first-time adoption of K-IFRS, any impact arising from the adoption of K-IFRS other than optional items as presented in K-IFRS 1101 must, in principle, be retrospectively applied. If the listing applicant adopts K-IFRS for the first time in a manner different than as specified in K-IFRS 1101, the KRX reviews supporting materials for the accounting procedures used. The review includes: examination of the adequacy of items not retrospectively applied, if any, and the impact of retrospective application on the financial statements of the listing applicant, *etc.*

- Be careful in preparing notes to the auditor's report on K-IFRS adoption.

Any listing applicant who has adopted K-IFRS to enhance the level of comparability and to provide appropriate information to users of financial statements must disclose the rationale supporting accounting choices as a result of K-IFRS adoption in notes to the auditor's report. The KRX examines the adequacy of K-IFRS note disclosure based on the note disclosure of other listed companies and standard K-IFRS note forms used by larger accounting firms. Such review includes the following procedures:

- examination of the adequacy of note disclosure of the rationale for accounting choices;
- examination of the adequacy of note disclosure regarding first-time K-IFRS adoption;
- verification as to whether K-IFRS consolidated financial statements contains information on subsidiaries to be consolidated; and
- verification as to whether the assumptions and basis used in valuation of unlisted shares, severance benefit liabilities and other fair market values.

## Accounting standards used by the applicant applying for listing of foreign securities

### KEY POINT

It is desirable for an applicant applying for listing of foreign securities to prepare financial statements in accordance with IFRS.

With growing concerns in the domestic securities market on accounting transparency of applicants applying for listing of foreign securities, such applicant must make thorough preparations for accounting transparency before filing for listing eligibility review.

The financial statements of an applicant applying for listing of foreign securities may be prepared in accordance with IFRS, K-GAAP, US GAAP, or equivalents of IFRS adopted by each country (including K-IFRS), since there are prescribed rules on the IFRS.

It is also desirable for applicant applying for listing of foreign securities to have an independent audit performed by an eligible domestic or foreign accounting firm.

If any applicant applying for secondary listing of foreign securities has not procured an independent audit by a larger accounting firm, such applicant is advised to obtain a comfort letter from an accounting firm in Korea to ensure accounting transparency and protection of domestic investors.

## Material accounting errors

### KEY POINT

**In the event of any material accounting errors, the listing applicant must identify their cause and provide a solution.**

Maintaining accounting transparency is one of the most basic requirements for a listing applicant. Although minor accounting errors may always arise in the course of corporate business, any errors leading to a change in the auditor's report or findings in a tax audit are intensively examined in the course of a listing review.

## Replacement of independent auditors

### KEY POINT

**Replacement of the independent auditor, excluding any replacement with the designated auditor, must be justified.**

If the independent auditor has been replaced with another auditor other than the designated auditor within the last three years, the KRX examines the justification for such replacement in an interview with the listing applicant. From a long-term perspective, it is necessary for a company preparing for listing to maintain accounting transparency and appoint an independent auditor.

When having semiannual financial statements reviewed after the year-end audit by the designated auditor, it is desirable to have the financial statements reviewed by the same auditor in order to ensure accounting transparency and continuity.



### **Differences in accounting methods compared to those used in the same industry**

#### **KEY POINT**

**In the event of differences in accounting methods compared to those used in the same industry, their cause and future plans must be presented.**

If not only a listing applicant having adopted K-IFRS but also a listing applicant having prepared financial statements in accordance with K-GAAP has differences in earnings recognition criteria, depreciation methods *etc.* in comparison with its competitors in the same industry, the representative of the applicant is requested to present their cause; if the applicant has a plan to adopt the same accounting methods as those of its competitors after listing, the impact of such change on financial stability is examined.

For example, with respect to the recognition of earnings for a department store, if the seller assumes most of the risk associated with the goods in question even after the transaction, such transaction is not deemed, in principle, a sale.

Even in the event that there are terms allowing the goods to be returned to



the seller, however, such transaction may be recognized as a sale, provided that all of the following conditions are met:

- The sale price, as a matter of fact, is finalized.
- The payment obligation of the purchaser is not affected by whether the goods are resold.
- The seller is not effectively liable for resale.
- The amount of subsequent returns may be estimated in a reliable manner.

Such transaction may also be recognized as earnings if the seller assumes certain risk that is not important.

KEY ISSUE  
**06** Findings in a tax audit *etc.*

**KEY-POINT**

**If findings in a tax audit *etc.* exist, measures to address the same must be presented.**

In the course of a listing review, the KRX makes reference to the outcomes of tax audits conducted by the National Tax Service (the “NTS”) and investigations by the FTC.

The KRX first identifies whether the results of such investigations are applicable to the entire industry to which the listing applicant belongs or to the applicant only.

If such findings are applicable to the applicant only and have arisen from non-transparent decision making, the KRX examines their cause and whether they have been resolved as well as such resolution are reflected on the financial statements, auditor's report *etc.* of the applicant.

In addition, if the tax penalty imposed by the NTS or the civil penalty imposed on the applicant by the FTC is in an amount that may aggravate the operating cash flow of the listing applicant, the KRX intensively examines the operation stability and transparency of the applicant.

### **Responsive Measures by the Listing Applicant**

The listing applicant must establish a year-end closing system in compliance with K-IFRS. The accounting effect of changes in accounting standards, despite the corporate entity remaining the same, must be subject to variance analysis from the perspective of business continuity. The applicant must also analyze in advance whether it uses different accounting methods than its competitors in the same industry and how such differences affect its financial statements.

Furthermore, if there have been accounting errors or findings in tax audits, the applicant must make sure if remedial measures have all been reflected on its financial statements, auditor's report *etc.*

### 3) Auditor’s Opinion (See Appendices 3 and 4.)

#### Key issues of the review

**KEY ISSUE 01** Why the applicant received a qualified opinion, if any, for any of the two fiscal years preceding the most recent year although it received an unqualified opinion for the most recent year.

#### Review Guidelines

**KEY POINT**

The listing applicant must meet the auditor’s opinion requirement.

**< The listing applicant must meet the auditor’s opinion requirement. >**

Non-holding company	Holding company
An unqualified opinion for the most recent year and unqualified or qualified opinion for the two years preceding the most recent year, excluding, however, qualified opinions resulting from limitation on scope of audit	Same as left (based on the auditor’s report on consolidated financial statements)

\* In the case of a non-holding company having adopted K-IFRS, auditor’s opinions on individual and consolidated financial statements and may all be applicable.

**< Requirement in terms of auditor’s opinion in the KOSDAQ Market >**

Ordinary company	Venture company
An unqualified opinion for the most recent year	Same as left

An applicant applying for listing on the KOSPI Market may not have its shares listed unless it has received an unqualified opinion for the most recent year and unqualified or qualified opinion for the two years preceding

the most recent year. Any qualified opinion resulting from limitation on scope of audit, however, is not deemed to meet the listing requirement. This is because the influence of limitation on scope upon the financial statements of the applicant cannot be identified.

The KOSDAQ Market, in distinction from the KOSPI Market, focuses on the auditor's opinion for the most recent fiscal year only, where an unqualified opinion for the year is required.

If the result of an accounting review is finalized after filing for listing eligibility review but prior to filing for original listing and a modified auditor's report is issued, the KRX additionally reviews whether the opinion presented in the modified report fails to meet the above requirement.

Although no restrictions are placed on the auditor's opinion on consolidated financial statements, the auditor's opinion on consolidated financial statements must be unqualified in order to ensure accounting transparency and investor protection.



#### KEY POINT

**For any applicant applying for listing of foreign securities, the auditor's opinion on consolidated financial statements is applicable.**

If an applicant applying for listing of foreign securities prepares its financial statements in accordance with US GAAP or IFRS but not with

K-GAAP, the auditor's report on consolidated financial statements is applicable.

### **Responsive Measures by the Listing Applicant**

The company planning for listing must file with the FSS for the designation of an auditor, and make preparations to obtain an unqualified opinion in an independent audit performed by the designated auditor.

## 4) Accounting Review

### **Key issues of the review**



Whether the applicant is designated as subject to KICPA review and whether the result of the review is finalized

### **Review Guidelines**

#### **KEY POINT**

**If the applicant is designated as subject to KICPA review, the result of the review must be finalized before the listing review is completed.**

The auditor's report on a company preparing for listing is subject to KICPA review under the AEASC.

The lead managing underwriter of the listing applicant submits to the KRX a listing eligibility review application plan no later than two months prior to filing for listing eligibility review, which plan is forwarded by the KRX to the FSS.

The FSS provides the KICPA with a list of companies planning for listing eligibility review application to allow the KICPA to perform accounting reviews.

Any findings discovered in the accounting review by the KICPA may materially affect the result of the listing review by the KRX and renders the applicant unable to file a registration statement with the FSS.

In the course of a listing review, the KRX examines whether the listing applicant is subject to accounting review and, in the case of the KOSPI Market, notifies the applicant of the result of the KICPA review after such result is finalized.

In the case of the KOSDAQ Market, however, if the result of the accounting review is not finalized during the listing review period, such result is considered prior to original listing.

Any listing applicant wishing for earlier notification of the result of the listing review, therefore, must take advance measures to prevent delays in the listing review schedule by requesting the KICPA to early finalization of the accounting review.

## **Responsive Measures by the Listing Applicant**

The listing applicant is advised to make preparations for early finalization of accounting review by finding out if it is subject to KICPA review before filing for listing eligibility review. The applicant must also pay attention to the KICPA review so that the review is completed before deliberation by the Listing Committee of the KRX. Any applicant applying for listing on the KOSDAQ Market, however, must have a review result prior to filing for original listing.

# Chapter 04 | Criteria for the Investor Protection Test



For the purpose of investor protection, the KRX verifies that the listing applicant has put in place a system to ensure transparency in disclosure and a measure to secure liquidity of shares after listing, as well as minority shareholder protection and expertise of the lead manager.



# a. Transparency in Disclosure

<b>Personnel Specializing in disclosure</b> <ul style="list-style-type: none"><li>• Training closing specialists</li><li>• Developing IFRS experts</li></ul>	<b>Organization specialized for disclosure</b> <ul style="list-style-type: none"><li>• Systematic organization for disclosure</li></ul>	<b>Identifying companies in noncompliance with disclosure requirements</b> <ul style="list-style-type: none"><li>• Companies listed on the KOSDAQ Market</li><li>• Companies listed on foreign exchanges</li></ul>
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## 1) Securing of Personnel and Organization Specializing in Disclosure

### Key issues for the review

<b>KEY ISSUE 01</b>	whether the applicant has secured personnel and organizations to perform K-IFRS closing as a listed company
<b>KEY ISSUE 02</b>	whether it has put in place systematic organization and personnel specialized for disclosure
<b>KEY ISSUE 03</b>	in case of a company listed on the KOSDAQ Market, whether it has a history of being found to be noncompliant with listing requirements

### Review Guidelines

<b>KEY ISSUE 01</b>	<b>Personnel to carry out disclosure and organization</b>
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## KEY POINT

**The applicant must secure personnel and organization equipped with expertise to perform closing in accordance with K-IFRS.**

Effective as of 2011, a publicly traded company is required to prepare its financial statements in accordance with K-IFRS. As main financial statements under K-IFRS are not separate, but consolidated financial statements, the listing applicant must secure in advance personnel and organization capable of preparing financial statements in accordance with K-IFRS, and subsidiaries to be listed on consolidated financial statement are also required to equip themselves with personnel and organization capable of preparing quarterly and biannual financial statements in accordance with K-IFRS.

It should be noted that the failure to disclose operating and biannual reports with attachment of audit report and biannual review report containing consolidated financial statements within 90 and 45 days respectively after the close of the fiscal year may cause the company's issues to be suspended from dealings or delisted. However, considering that the grace period of 2 years from the initial introduction of K-IFRS (until 2012) is granted, the time limit for quarterly and biannual report submission has been extended from 45 to 60 days from the end of quarterly and biannual periods.

Considering that listed companies with assets exceeding 2 trillion won and those with assets less than 2 trillion won are required to prepare and disclose quarterly and biannual financial statements in the form of consolidated statements from 2011 and 2013 respectively, the listing applicant must establish a complete K-IFRS closing system.

## Securing organization and personnel specialized for disclosure

### KEY POINT

The applicant must secure organization and personnel to ensure compliance with disclosure requirements.



As a publicly traded company is required to comply with requirements such as periodic, timely and fair disclosure to the KRX and the FSS upon it being listed, it must set up a systematic organization specialized for disclosure and appoint a disclosure officer and a disclosure agent from the stage of listing application

## Identifying companies in noncompliance with disclosure requirements

## KEY POINT

If a company has a history of being found in noncompliance with disclosure requirements, the company must review its disclosure system and develop improvement measures.



In case of switching between domestic exchanges (e.g. switching from the KOSDAQ Market to the KOSPI Market) and secondary listing of foreign securities, the KRX also verifies whether the applicant has been subject to any penalty or the like for noncompliance with disclosure requirements in the exchange it has been listed, as an indirect way to ensure transparency in disclosure.

### Responsive Measures by the Listing Applicant

It is recommended to carry out closing in accordance with K-IFRS prior to submission of application for listing eligibility review, and train

accountants to build expertise in K-IFRS. The applicant is also required to put in place organization and personnel specialized for disclosure to fully comply with disclosure requirements for investor protection after listing.

## 2) Foreign Companies

### Key issues for the review



whether it is feasible for a company with a double-tier governance structure to disclose change of the de facto largest shareholder



whether a line of communication with domestic minority shareholders has been set up

### Review Guidelines

Currently, most of the foreign securities which have been listed or are being prepared for listing on the Korean markets have a double-tier governance structure. As for Chinese holding companies, some incorporated in Cayman and other tax havens to evade the requirement for CSRC approval are listed on the KRX.

Although only those companies incorporated in Cayman and Hong Kong are now currently listed, the KRX allows holding companies incorporated in countries other than Cayman and Hong Kong to be listed.

However, given the fact that countries other than Cayman and Hong Kong do not have well-organized laws and regulations on investor protection, the law firm and the lead manager engaged in the listing application need to review local regulations that may affect domestic investor protection and take appropriate measures prior to application for listing eligibility review.

As for an applicant applying for listing of foreign securities, the KRX has implemented a variety of protection measures, and regulates governance structure, accounting transparency and corporate disclosure of an applicant applying for listing of foreign securities in accordance with applicable laws and the Listing Regulations.

**<Investor protection measures for an applicant applying for listing of foreign securities>**

Applicable Laws	Protective Measure	Details by type
Capital Market Act	Corporate disclosure	Registration statement, operating/biannual/quarterly reports <i>etc.</i>
	Disclosure of changes in corporate control	Public tender offer, 5% rule, reporting on shares held by officers <i>etc.</i>
	Prohibition of unfair transactions	Market manipulation, insider trading, fraud transactions <i>etc.</i>
	Exceptions allowed for listed companies' financial structure	Financial management standards, FSC's corrective action standards
Listing Regulations	Requisite provisions in the AOI	Outside directors, audit committee, restriction of private offering <i>etc.</i>
	Enhancing accounting transparency	Strict qualifications for accounting auditor, restriction of revising accounting standards <i>etc.</i>
	Prior consultation	Prior consultation for listing application, appointment of listing agent <i>etc.</i>
Disclosure Regulations	Corporate disclosure	Timely disclosure of major corporate operation

Among the investor protection measures listed above, the time limits for operating and biannual/quarterly reports submission required for an applicant applying for listing of foreign securities are relaxed to 120 and 60 days respectively from the close of the fixed date rather than 90 and 45 days as applied to domestic companies to account for the characteristics of the applicant applying for listing of foreign securities.

In addition, an applicant applying for listing of foreign securities is required to submit its operating and biannual/quarterly reports to the KRX within 10 days after turning in those documents to the relevant foreign exchange.

**KEY ISSUE**  
**01** **establishing a disclosure system for disclosure of change of the de facto largest shareholder**

**KEY-POINT**

**A company with a double-tier governance structure must set up a system to disclose change of the de facto largest shareholder.**

If two or more shell corporations exist between the listing applicant and the de facto largest shareholder, the largest shareholder of the top-level parent has no disclosure obligations under the Listing Regulations, potentially creating complications with minority shareholder protection. In such case, the KRX intensively examines the corporate governance of the company, and the listing applicant needs to develop specific action plans in this regard.

## Building a line of communication with domestic investors

### KEY POINT

It is important to hire a disclosure agent fluent in Korean and open a website in Korean.



Because an applicant applying for listing of foreign securities has different linguistic and cultural backgrounds from Koreans, it is important to build a system to clearly communicate on its corporate operation with domestic minority shareholders. For instance, hiring a disclosure agent fluent in Korean or opening a webpage in the Korean language may help the applicant in delivering correct information to and clearly communicating with domestic minority shareholders.



## Responsive Measures by the Listing Applicant

The applicant needs to simplify the double-tier governance structure to make it easy to identify the *de facto* largest shareholder of the listing applicant, and to establish a disclosure system to inform domestic investors of change of the *de facto* largest shareholder on a real time basis. It is also recommended to hire a disclosure agent fluent in Korean and set up a website in the Korean language in advance.

## b. Minority Shareholder Protection

Excess control rights held by the largest shareholder	Issue of convertible bond etc.	Exercise of minority shareholders' Subscription rights	Lock-up of shares of largest shareholder
<ul style="list-style-type: none"><li>• Countermeasures against the self-serving interests of the largest shareholder</li><li>• Toughening requirements for special resolution of general shareholders meeting</li></ul>	<ul style="list-style-type: none"><li>• Conditions for issue</li><li>• Potential loss for minority shareholders</li></ul>	<ul style="list-style-type: none"><li>• Potential exercise of shareholder rights</li><li>• Supplementation of AOI and regulations</li></ul>	<ul style="list-style-type: none"><li>• Compliance with lock-up requirement</li><li>• Voluntary lock-up</li></ul>

### 1) Protection of Investors from the Self-serving Interests of the Largest Shareholder

#### Key issues for the review

**KEY ISSUE**  
**01**

Whether minority shareholders may suffer loss due to the self-serving interests of the largest shareholder

## KEY POINT

**In the event the corporate value has been undermined by the self-serving interests of the largest shareholder, the company must put in place preventive measures.**

If the corporate value of the listing applicant has been undermined or is highly likely to be harmed owing to the largest shareholder's unilateral offering of payment guarantees and security interests to affiliates without internal control procedures, and the shareholding percentage of the largest shareholder exceeds what is required for a special resolution of the shareholders meeting, improving existing internal control system alone may not be sufficient to protect minority shareholders.

As the Listing Regulations for the KOSPI Market provides that at least 10% of the total number of shares issued (25% for the KOSDAQ Market) shall be offered publicly for listing, the shareholding percentage of the largest shareholder after listing may be at maximum 90% (75% for the KOSDAQ Market).

In this case, the applicant must set up protective measures for minority shareholders by amending its AOI to provide tougher requirements for a special resolution of the shareholders meeting than what is prescribed under the Commercial Act (which requires consent of two thirds or more of the total number of shares issued), and include provisions in its AOI that are stricter than the prohibition of credit extension set forth in the Commercial Act.

## Responsive Measures by the Listing Applicant

If corporate value has been undermined by the self-serving interests of the largest shareholder in the past, then investors may suffer loss when such practice occurs again. Accordingly, the applicant must come up with and implement measures prior to the submission of application for listing eligibility review to prevent unilateral decision making by the largest shareholder and protect minority shareholders.

## 2) Foreign-invested Companies

### Key issues for the review



Whether shareholders' agreement, technology transfer agreement and other agreements of a foreign-invested company contain provisions that may create complications in terms of minority shareholder protection

### Review Guidelines

#### KEY POINT

Shareholders' agreement and technology transfer agreement must be executed from the perspective of protecting minority shareholders.

In some cases, foreign-invested companies set forth provisions on unreasonable appointment of directors that may undermine operational

independence and excessive dividend rates which has the potential to weaken rights of minority shareholders in their shareholders' agreement, while also setting forth payment of excessive royalties in their technology transfer agreements. As such, the KRX closely reviews joint venture agreements and examines whether there are any issues as to protection of minority shareholders.

However, it can be deemed that appropriate protective measures are put in place, if the shareholders' agreement sets forth provisions on appointing an independent director and the appointed director performs independently in the board of directors meeting *etc.*

### **Responsive Measures by the Listing Applicant**

The listing applicant and the lead manager must identify provisions in their joint venture agreements that may allow excessive transfer of wealth or undermine minority shareholder protection, and implement effective action plans against such provisions in advance.

### 3) Issuance of Convertible Bonds *etc.* and Exercise of Rights by Minority Shareholders

#### Key issues for the review

KEY ISSUE  
**01**

whether excessive issuance of convertible bonds and bonds with warrants could incur loss for minority shareholders

KEY ISSUE  
**02**

whether rights offerings, bonus issues, and transfer of shares of the largest shareholder at a discount prior to listing eligibility review could incur loss for minority shareholders

KEY ISSUE  
**03**

whether shareholders rights such as the right of inspection of books and records could be exercised

#### Review Guidelines

KEY ISSUE  
**01**

##### Issuance of convertible bonds and bonds with warrants

#### KEY POINT

Convertible bonds and subscription rights must be issued to the extent that their issuance does not dilute the price of stocks held by existing shareholders, and must not be exercised during the period from the application date of listing eligibility review until the date of original listing.

The listing applicant needs to be cautious when issuing convertible bonds and bonds with warrants. Convertible bonds and bonds with warrants *etc.* issued to raise funds prior to listing application are converted

to shares after listing and dilute stock prices, undermining the value of shares held by minority shareholders. Accordingly, it is recommended not to issue convertible bonds *etc.* and if inevitable, to minimize the number of issuance and specify the issuance in detail in the registration statement and prospectus, in order to ensure that investors buying the public offering shares are fully aware of the issuance in advance.

Convertible bonds and subscription rights must be issued in accordance with regulations and procedures prescribed in the AOI and the Commercial Act, and their options must not be exercised in principle during period from the application date of listing eligibility review until the date of original listing.

Upon issuing convertible bonds *etc.*, the listing applicant must also be careful in deciding the time of option exercise. In the KOSDAQ Market, convertible bond holders are required to submit a certificate confirming that they will not exercise the conversion option before the original listing, in case when the time of exercise arrives within 6 months after the approval of the listing eligibility review.



### **Rights offerings, bonus issues, and transfer of shares of the largest shareholder at a discount**

#### **KEY POINT**

**Rights offerings, bonus issues, and transfer of shares of the largest shareholder prior to application for the listing review must be conducted in a fair manner based on reasonable valuation.**

In some cases, the listing applicant may have raised capital from a third party prior to listing due to lack of technology development and operation funding, and in such case, the price of shares issued must be based on a fair value principle.

For instance, the applicant may be subject to intensive review, in case of private offering at a significantly lower price than an expected public offering price without reasonable valuation, despite being able to estimate the expected public offering price in the process of preparing for listing, or transfer of shares at a discount by offering bonus issues after rights offerings at the expected public offering price.

This is because minority shareholders may suffer loss due to price difference between public offering and rights offerings or bonus issues prior to listing.

Although there is no lock-up requirement in the KOSPI Market, in the case where the capital raised from rights offerings or bonus issues (including convertible bonds and bonds with warrants) within one year of the date of the submission of application for listing eligibility review exceeds 100% of the capital as of the end of the fiscal year when the date two years prior to the application date of listing eligibility review falls, the shareholders holding shares from relevant rights offerings or bonus issues are required to lock up the excess shares for one year after the listing.

## Exercise of rights by shareholders

### KEY POINT

**Rights of shareholders under the Commercial Act must be protected and must be exercisable.**

The KRX also examines whether the right of inspection of books and records, the right to injunction against unfair new share issuance, and the right to injunction on directors' contravention as granted to shareholders by the Commercial Act could be exercised in effect. In case of an applicant applying for secondary listing of foreign securities which is not subject to the local Commercial Act, it also verifies that the AOI and policies contain provisions to ensure exercise of the shareholder rights above.



### KEY POINT

**An applicant applying for secondary listing of foreign securities may be exempted from specifying some of requisite statements on the AOI after prior consultation with the KRX, upon consideration of the regulations of the country of incorporation.**

An applicant applying for secondary listing of foreign securities must set forth requisite provisions in the AOI as requested by the KRX if deemed by the KRX necessary for investor protection considering the Commercial Act and applicable regulations of the country of incorporation. However, if the



requirement is in conflict with regulations of the country of incorporation or the applicant has already been listed in a qualified foreign exchange including NYSE and such exchange regulates requisite provisions in the AOI, it may be exempt from specifying some of the requisite provisions in the AOI after prior consultation with the KRX.

## **Responsive Measures by the Listing Applicant**

The listing applicant must minimize the number of convertible bonds *etc.* issued after listing as they may dilute stock price. In addition, it needs to examine whether conversion requirements contain any provisions that may undermine the interests of minority shareholders, and come up with measures to prove in the listing eligibility review that there is no concern for loss by minority shareholders in that regard.

### 4) Lock-up of Shares held by the Largest Shareholder *et al.* (Appendices 3 and 4)

#### **Key issues for the review**



Whether shares held by the largest shareholder and their specially-related persons have complied with the lock-up requirement

## Review Guidelines



### Overview of lockup and mandatory safekeeping

Lockup refers to restricting certain shareholders from selling their own shares for a certain period in accordance with regulations or agreements. The measure is to temporarily prohibit sale of shares held by shareholders who meet certain criteria, in order to realize a fair stock price by ensuring stable supply and demand of shares during an IPO or M&A and protect the majority of minority shareholders from unfair arbitrage transactions carried out by insiders or venture capitalists while not completely or permanently banning share transfer nor requiring the approval of the board of directors for share transfer, and therefore is different from compulsory restriction of transfer.

Mandatory safekeeping refers to safekeeping shares held by shareholders subject to sale restriction for lockup in the Korea Securities Depository (KSD) for a period determined by regulations of the FSC and the KRX, and precluding return of the shares unless any of reasons set forth by the regulations occur.

Mandatory safekeeping means keeping stock certificates at the request of the holder in the KSD and returning the certificates after a safekeeping period, which corresponds to a simple deposit. The stocks under safekeeping cannot be traded on exchanges, but only by exchanging their certificates.

Prior to applying for listing eligibility review, the listing applicant and the lead manager must comply with the mandatory safekeeping provided in the Listing Regulations, and when necessary, they may opt to conduct voluntary safekeeping and voluntary restriction of sale, although they are not required under the Commercial Act.

The voluntary safekeeping and voluntary restriction of sale are carried out by shareholders for the purpose of securing corporate control and investor protection.

Voluntary safekeeping is a method in which shares are deposited in the KSD, as is the case with mandatory safekeeping, and a safekeeping certificate is issued, whereas voluntary restriction of sale is a method in which shares are deposited in the lead manager's account only, not in the KSD, and the lead manager is responsible for restricting the transfer of shares.

Under the previous system, the voluntary safekeeping period after deposit in the KSD was managed by the lead manager at their discretion and the shares deposited under the voluntary restriction of sale were deposited only in the account of the lead manager. However, effective as of 2011, the system has been revamped to set an expiration date for voluntary safekeeping and to have the shares deposited and managed in the KSD as well for voluntary restriction of sale.

**< Improvement in lockup system >**

Type		As-Is	To-Be
Mandatory safekeeping		Deposited in the KSD	Same as left
Voluntary safekeeping		Deposited in the KSD	Same as left
Voluntary restriction of sale	Recommended by the KRX	Deposited in the account of the lead manager	Deposited in the KSD
	Determined by the lead manager	Deposited in the account of the lead manager	Same as left

In addition, the KRX and the KSD plan to cross-check expiration dates and publish the information on safekeeping status and scheduled return of stocks on their websites for investor



## KEY POINT

The largest shareholder and their specially-related persons must deposit all of their shares for a certain period after listing in the KSD.

### < Requirements for lock-up in the KOSPI Market >

General company	Holding company
<ul style="list-style-type: none"> <li>- For a period of six months starting on the date of listing for equity securities held by the largest shareholder and their specially-related persons</li> <li>- For a period of six months starting on the date of listing if equity securities are acquired in a private placement or equity securities held by the largest shareholder and their specially-related persons are acquired within one year of the date of submission of application for listing eligibility review. Whereas as for equity securities acquired in a private placement, for Max (6 months, 1 year starting on the issue date)</li> </ul>	<p>Same as left</p> <ul style="list-style-type: none"> <li>- Whereas the requirement is not applied for changing the largest shareholder to acquire another company as a complete subsidiary by setting up or converting to a holding company, or swapping shares of a holding company</li> </ul>



### Requirements for lock-up in the KOSDAQ Market

- ❖ Largest shareholder *et al.*: For a period of one year starting on the date of listing (Up to 5% may be sold in each month after six months have elapsed since the date of listing.)
- ❖ Any person having acquired new shares or shares held by the largest shareholder *et al.* in a private placement within one year preceding the date of submission of application for listing eligibility review: for a period of one year starting on the date of listing
- ❖ Any venture capitalist or accredited investor: for a period of one month starting on the date of listing if the duration of investment as of the date of application is less than two years (not applicable to any new growth engine company)
- ❖ Any over-allotted shares in a rights offering or bonus issue: for a period of one year starting on the date of listing

The largest shareholder and their specially-related persons in the KOSPI Market must lock up their shares held for 6 months at least, and shareholders

who acquired shares in private placement must lock up their shares for a period of 1 year starting on the issue date or 6 months starting on the listing date in the KSD, whichever is longer. The KOSDAQ Market applies stricter requirements than the KOSPI Market.

The lock-up period should be decided at an appropriate level that is sufficient for valuation of stock price of a listed company yet does not undermine the largest shareholder's right to dispose of personal property. The period deemed reasonable is 6 months in the KOSPI Market and 1 year in the KOSDAQ market, and the KSD performs the lock-up activities. To ensure credibility, the laws stipulate that the lead manager shall take the initiative in the process.

There may be controversies over banning the largest shareholder and their specially-related persons from disposing of their shares for a certain period after listing, in that this may undermine the right to dispose of personal property. But the KRX runs this system for the following reasons:



First, it is to prevent minority shareholders from suffering loss, when the largest shareholder disposes of massive amounts of shares in order to obtain listing gains immediately after listing through the use of internal business intelligence.

Second, it aims at holding the largest shareholder more accountable for corporate management, because investors acquiring equity securities in a public placement make decisions based on their trust in the capabilities of the management, not just on the quantitative scale of a company.

In the KOSPI Market, unregistered officers (executive officers, advisors, and senior advisors) of the listing applicant are excluded from the scope of specially-related persons, and therefore, not subject to lock-up requirements. However, in the KOSDAQ Market, such individuals are categorized as specially-related persons for the purpose of minority shareholder protection from temporary increase in supply.

Even in case when specially-related persons (officers) resign after the date of applying for listing eligibility review, withdrawal and disposal of locked-up shares are prohibited.

The purpose is to protect investors in the public offering market and the secondary market, considering that the system may be abused as a way to evade lock-up requirement after listing, if they are allowed to withdraw locked-up shares in line with changes in their status.



## KEY POINT

**As for an applicant applying for initial listing of foreign securities, the same lock-up requirement as domestic companies is applied, whereas an applicant applying for secondary listing of foreign securities is exempted from such requirement.**

An applicant not listed in a foreign exchange and applying for listing of foreign securities (hereafter “initial listing”) must comply with lock-up requirements for the same period as domestic applicant as it seeks to be listed on the KRX.

However, in case when some complications are expected in minority shareholder protection, or when the largest shareholder of a newly-established offshore holding company and that of the existing company are not identical and therefore the former may replace the latter, it is recommended that the listing applicant should voluntarily extend the lock-up period.

Furthermore, when there is a change in the largest shareholder after the lock-up period expires, it can be acknowledged as normal change in control rights.

The KOSPI Market does not apply the requirement to an applicant applying for secondary listing of foreign securities from lock-up requirement, whereas the KOSDAQ Market exempts only an applicant applying for secondary listing of foreign securities who are listed in a qualified foreign exchange market\*.

\* NYSE, Euronext, NASDAQ, Tokyo, London, Deutsche, Hong Kong and Singapore

## KEY POINT

**Convertible bonds and subscription rights are locked up based on the time of exercise, not the time of issuance.**

Holders of convertible bonds and subscription rights must lock up all of their shares exercised, if the time of exercise, not the time of initial issuance, is within one year of the date of applying for listing eligibility review.

If convertible bonds and subscription rights are exercised after listing to evade the lock-up requirement, resulting stock price dilution may incur loss for minority shareholders. As such, when issuing convertible bonds *etc.*, the listing applicant must adjust the time of exercise to take place after a reasonable amount of time passes after listing.



## KEY POINT

**The lock-up requirement is also applied to redeemable convertible preferred shares.**

In general, the listing applicant lists common shares for original listing, with almost no preferred shares listed so far. The KRX closely reviews this as well, given that shareholders with redeemable convertible preferred shares may obtain capital gains in a short period by converting those shares into common shares immediately after listing and listing them again.





## Overview of redeemable convertible preferred shares

Convertible shares offer the option to convert them into other types of shares, while redeemable shares can be bought back by the seller company after a certain period of time has passed from the issuance. Redeemable convertible preferred shares have both the features of convertible and redeemable shares.

Investors opt for redeemable convertible preferred shares, because they reduce investment risk with options of conversion and redemption. They are widely adopted by venture capitalists in recent days, and mostly contain provisions on conversion ratio adjustment.

The KRX imposes the lock-up requirement on redeemable convertible preferred shares, the same as with common shares, and precludes those exempted from the requirement under the Listing Regulations from exercising the conversion option until the date of original listing. However, the redemption option can be exercised during listing review.

The KOSDAQ Market restricts rights offerings and bonus issues of redeemable convertible preferred shares. It applies requirements for rights offering restriction for issuance of redeemable convertible preferred shares, and requirements for bonus issue restriction in case when the required conversion ratio is not 1 to 1.

**< Restrictions on rights offerings and bonus issues of  
redeemable convertible preferred shares in the KOSDAQ Market >**

Case	Bonus issue restriction applied	Rights offering restriction applied
Issuance of redeemable convertible preferred shares	×	○
Exercising conversion option of redeemable convertible preferred shares	○	×

Restrictions on bonus issues are applied when the required conversion ratio is not 1 to 1, because in that case, capital reserves may be transferred into capital with the exercise of conversion option, resulting in a change in capital.

In the KOSDAQ Market, in case when the conversion claim period arrives within 6 months of the approval of listing eligibility review, shareholders holding redeemable convertible preferred shares are required to submit confirmation that they will not exercise conversion option *etc.* prior to the original listing.



**KEY POINT**

**The lead manger must lock up shares by each shareholder.**

If shares are deposited in another investment company, and not the lead manager, transferring such shares from the account of the investment company to that of the lead manager is allowed in so far as the procedures are in compliance with applicable regulations on such transfer.

In addition, the lead manager must lock up shares in the KSD by each shareholder, which is to monitor changes in shareholding percentage of the largest shareholder (shareholding percentage of shareholders as of the date which is 1 year prior to the date of listing application and that of current shareholders as of the listing application date) and to confirm changes in locked-up shares of each shareholder during the lock-up period.



#### KEY POINT

**Shares paid in goods to the government are not subject to the lock-up requirement.**

Among shares subject to the lock-up requirement, those under performance of statutory obligation are exempted from the requirement. Accordingly, shares paid in goods to and now held by the government within one year prior to the date of applying for listing eligibility review are not included in lock-up shares, as they are deemed to be under performance of statutory obligation.

Shareholders who acquired the shares which were paid in goods to the government and disposed by public sale are not required to lock up the shares, but if the largest shareholder *etc.* acquires from disposition by public sale the shares paid in goods to the government prior to the application of listing eligibility review, then such shares are subject to the lock-up requirement after listing.



**KEY POINT**

**If the remaining lock-up period is 6 months or longer for companies listed on the KOSDAQ Market and to be switched to the KOSPI Market, they may comply with the lock-up requirement for the remaining period only.**

The largest shareholders and their specially-related persons (including registered and unregistered officers) of companies listed in the KOSDAQ Market are required to lock up their shares for a longer period (one year) than in the KOSPI Market, and it may mean that switching to the latter during the period could result in a shorter lock-up period. As such, companies switching to the KOSPI Market and whose remaining lock-up period is 6 months or longer are required to comply with the remaining lock-up period imposed in the KOSDAQ Market.

**KEY POINT**

**The shares can be temporarily withdrawn during the lock-up period as an exception approved by the KRX only in case of sale of secondary shares, replacement of shares *etc.***

Regulations do not list cases when locked-up shares can be withdrawn or transferred. However, they allow withdrawal on a case-by-case basis so long as the withdrawal is for sale of secondary shares or replacement of shares (change in company name, stock split, exercise of CB conversion option, replacement of shares into uniform size *etc.*). After serving the purpose, the shares must be locked up again without delay and a lock-up certificate of deposit issued by the KSD must be submitted to the KRX.

When locking up shares held by shareholders who are not subject to the lock-up requirement as prescribed in regulations for the purpose of investor protection, the same procedures are applied as those who are subject to the requirement under regulations.

## **Responsive Measures by the Listing Applicant**

Working with the lead manager, the listing applicant must confirm the scope of specially-related persons and clearly identify shares to be locked up and required period to comply with the lock-up requirement.

# **c. Liquidity; Stability of the Securities Market**

## **1) Distribution Requirement (Appendices 3 and 4)**

### **Key issues for the review**



- 01** whether the applicant is compliant with distribution requirements after public offering
- 02** whether it publicly offered 5% or more of shares and 1 billion won, even if it has already met the distribution requirements
- 03** whether the required number of minority shareholders has been met on the basis of voting shares
- 04** whether the minority shareholder requirement has been met in case of secondary listing

## Review Guidelines



### complying with distribution requirements after public offering

#### KEY POINT

Distribution requirements are decided by taking into account the number of shares issued and the number of voting shares after public offering.

As distribution requirements are determined on the basis of voting shares, and voting preferred shares, if any, are counted as common shares. Distribution requirements for public offering should be met before applying for original listing, and the listing applicant may distribute its shares via public offering after obtaining the approval from the listing eligibility review.

For public offering, both or either one of offering of newly issued shares and secondary distribution may be adopted.



#### Offering of newly issued shares and secondary distribution

- **Offering of newly issued shares**
  - A type of public offering where the listing applicant issues new shares and sells them to 50 or more members of the general public, resulting in capital increase for the listing applicant
- **Secondary distribution**
  - A type of public offering where existing shareholders of the listing applicant sell their shares to 50 or more members of the general public, resulting in redemption of the shareholders' investment

Secondary distribution used to be restricted to protect minority shareholders, but now it is widely allowed. The KRX comprehensively reviews targets, purposes, and scales of secondary distribution, in case when the listing applicant intends to opt for secondary distribution, and also examines whether secondary distributions may undermine control of the largest shareholder over the listing applicant.

Completely banned in the KOSDAQ Market since August 1999, secondary distributions were allowed for the largest shareholder and their specially-related persons from July 2007 to induce blue chip companies which do not need to raise new capital to be listed on the KOSDAQ Market, and then expanded to venture capitalists and accredited investors. However, to prevent them from realizing excessive short-term gains, the transaction is allowed only when the investment has been put in place for as long as its lock-up period.



#### KEY POINT

**Legitimately acquired treasury shares can be sold by means of secondary distribution.**

The Commercial Act acknowledges that treasury shares acquired by merger *etc.* are legitimate. Although it is recommended to cancel treasury shares which are not acquired in a legitimate transaction, without delay, regardless of whether the company is listed or not, treasury shares legally acquired by a listed company are required to be disposed of within a

reasonable period. In addition, listed companies acquiring treasury shares with distributable profits are required to cancel them within 3 years under the Commercial Act.

There may be a variety of methods for the listing applicant to cancel treasury shares, including cancellation in the process of IPO and original listing. This is because it is not easy for the non-listed applicant to cancel treasury shares in its current position in terms of counterparty selection and price valuation.

Accordingly, it may be a good option for the listing applicant to cancel treasury shares via secondary distribution in the process of IPO and original listing, during which the “capital adequacy doctrine” stated in the Commercial Act, must be complied with as well.



#### KEY POINT

**The compliance with distribution requirements of the listing applicant going public is confirmed through post-issuance reporting.**

Share distribution status of the listing applicant as of the date of listing eligibility review is confirmed through the application for listing eligibility review and register of shareholders closed at the close of the latest fiscal year (the relevant register in case of closing the register prior to the date of submission of application for listing eligibility review after the close of the



latest fiscal year), and after being approved in the eligibility review, public offering result is confirmed through post-issuance reporting.

In practical terms, close examination is required in the stage of due diligence by the lead manager in terms of changes in shares held by shareholders other than the largest shareholder *etc.* after the closing of register of shareholders at the close of the latest fiscal year.



### KEY POINT

**Distribution requirement may be decided depending on the amount of equity capital or market capitalization of the listing applicant.**

#### < Requirements for share distribution in the KOSPI Market >

General company	Holding company
<p>The number of shares held by minority shareholders must meet any of the followings.</p> <ul style="list-style-type: none"> <li>① shareholding percentage of minority shareholders of 25% or higher</li> <li>② 25% or higher of the number of publicly offered shares</li> <li>③ 10% or higher of the number of publicly offered shares, and the number of publicly offered shares by equity capital (or by base market capitalization) meets the following conditions. <ul style="list-style-type: none"> <li>- 50 to 100 billion won (base market cap of 100 to 200 billion won) <ul style="list-style-type: none"> <li>: 1 million or more shares</li> </ul> </li> <li>- 100 to 250 billion won (base market cap of 200 to 500 billion won) <ul style="list-style-type: none"> <li>: 2 million or more shares</li> </ul> </li> <li>- 250 billion won or more (base market cap of 500 billion won or more) <ul style="list-style-type: none"> <li>: 5 million or more shares</li> </ul> </li> </ul> </li> <li>④ 10% or more shares for dual public offering on domestic and foreign exchanges, and 1 million or more shares publicly offered for domestic exchange (par value of 5,000 won)</li> </ul>	<p>Same as left</p> <p>In case when a bank holding company whose largest shareholder is the Korea Deposit Insurance Corporation, it is deemed in compliance with the requirements if minority shareholders meet any one of the followings.</p> <ul style="list-style-type: none"> <li>① 10 million or more shares held</li> <li>② 5% or higher shareholding percentage</li> </ul>

### < Distribution requirements on the KOSDAQ Market >

<b>Share Distribution (Either of the options)</b>	<ul style="list-style-type: none"><li>• Public offering (issuance + distribution)<ol style="list-style-type: none"><li>1. When minority shareholders hold less than 25% as of the application date<ul style="list-style-type: none"><li>- public offering ratio of 10% or higher, shareholding percentage of minority shareholders of 25% or higher as of the application date, and 500 or more minority shareholders as of the listing application date</li></ul></li><li>2. When minority shareholders hold 25% or more shares as of the application date<ul style="list-style-type: none"><li>- public offering ratio of 5% or higher, offering price of 1 billion won or higher, and 500 or more minority shareholders as of the listing application date</li></ul></li></ol></li><li>• Differentiated public offering requirements by amount<ul style="list-style-type: none"><li>- 50 billion or more in equity capital or 100 billion or more in base market capitalization</li><li>- public offering ratio of 10% or higher and 500 or more minority shareholders as of the application date</li></ul></li><li>• public offering ratio of 25% or higher and 500 more minority shareholders</li><li>• Direct listing with distribution completed (listing without offering)<ul style="list-style-type: none"><li>- 500 or more minority shareholders as of the application date, and</li><li>- shareholding percentage of 25% or higher held by the minority shareholders from offering, or shareholding percentage of 10% or higher and complying with distribution requirements by equity capital or base market capitalization</li></ul></li></ul>
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On the KOSDAQ Market, the basic requirement is 20% or more of the number of dual listing shares on domestic and foreign exchanges and 300,000 or more shares for domestic public offering.

The listing applicant intending to meet the shareholding percentage of minority shareholders of 25% among distribution requirements need to be careful in deciding the number of publicly offered shares. Companies opting for 25% or 10% requirement may meet the distribution requirement by deciding the number of public offering shares in accordance with the Listing Regulations. However, in meeting the minority shareholding percentage requirement, the distribution ratio may be lower than expected, considering that the number of shares held by shareholders owning 1% or more are not counted in estimating the minority shareholder ratio, despite their shares being distributed through public offering.

For example, in case when a company with a distribution ratio of 10% as of the application date for listing eligibility review is approved in the listing eligibility review and publicly offers 15% of its shares in order to meet the shareholding percentage of minority shareholders of 25%, the applicant cannot meet the percentage requirement, because shareholders to whom 1% or more shares are distributed in the public offering are not counted as minority shareholders.



### **when having already complied with distribution requirement**

#### **KEY POINT**

**Even when distribution requirements have already been met, the applicant must meet the requirement of 5% or more share percentage and offering price of 1 billion won.**

Even when distribution requirements have been met via public offering prior to the application date of listing eligibility review; the applicant must meet the percentage of 5% or more and the offering price of 1 billion won. However, such requirements do not apply if a company switched from the KOSDAQ Market to the KOSPI Market went public when listed on the KOSDAQ Market or one year has passed since the listing, or the applicant seeks dual listing on domestic and foreign exchanges at the same time.

KEY ISSUE  
**03**

## Number of minority shareholders

### KEY POINT

The number of minority shareholders required is 1,000 in the KOSPI market on a voting-share basis, and over 500 in the KOSDAQ Market.

Criteria for the required number of minority shareholders in the distribution requirement takes into account voting shares only, unlike other distribution requirements.

#### < Number of minority shareholders on the KOSPI Market >

General company	Holding company
1,000 or more	Same as left

#### < Number of minority shareholders on the KOSDAQ Market >

General company	Holding company
500 or more	Same as left

Minority shareholders are defined as shareholders who are not the largest shareholder *etc.* and own less than 1% of the total number of outstanding shares. In case when accredited investors own 1% or more, their shares are not counted as those held by minority shareholders.

The number of minority shareholders can be confirmed in the register of shareholders closed most recently and statement of share distribution, and offering results are also taken into account in case of public offering.

## KEY POINT

**If shares of an applicant applying for secondary listing of foreign securities are held by a certain number of domestic minority shareholders, it is exempted from distribution ratio requirements.**

In case when an applicant applying for secondary listing of foreign securities is listed on the KOSPI Market, it is exempted from distribution ratio requirement including the minority shareholding percentage of 25% or higher if the number of its minority shareholders which have acquired the shares from domestic public offering is 1,000 (500 for the KOSDAQ Market).



### Distribution requirement for companies whose shares are listed in foreign exchanges

In case when some portion of shares issued by the listing applicant on foreign exchanges are listed, the requirement is applied based on the number of shares issued and the number of voting shares, by taking into account only those shares listed on the KOSPI Market.

Ex) The number of shares issued of the listing applicant A is 10 million (including non-voting preferred shares of 3 million), and it listed only 2 million of common shares on foreign exchanges. It intends to list all of the rest of common shares on the KOSPI Market.

⇒ When applying distribution requirements, the number of shares issued is 8 million (plus the number of publicly offered shares) which does not include 2 million common shares listed on foreign exchanges, and the number of voting rights amounts to 5 million (plus the number of publicly offered shares).



### KEY POINT

Employee stock ownership association is regarded as minority shareholders, regardless of its shareholding percentage, and counted as one shareholder in estimating the number of shareholders.

While the shareholding percentage of the employee stock ownership association is mostly over 1%, the entity is regarded as minority shareholder when it comes to distribution requirement, considering the fact that the shares are held by a multitude of employees. However, it is counted as one shareholder in estimating the number of shareholders.



### KEY POINT

In case when accredited investors own shares of less than 1%, they are regarded as minority shareholders, and the *de facto* shareholder needs to be identified if there are unclaimed shares.

In the KOSPI Market, accredited investors and investment association are deemed as minority shareholders if their shareholding percentage does not exceed 1%, whereas in the KOSDAQ Market, all of the shares owned by accredited investors are counted as minority shareholding percentage, with no regard to their shareholding percentage, and shares of investment associations are included in minority shareholding percentage within the limit of 5%.

When there are unclaimed shares (whose ownership is not transferred after the shares are sold), the *de facto* owner is identified and it is confirmed whether the owner is a minority shareholder.



### Definition of unclaimed shares

- ❖ **broad terms** : shares whose owners are not registered on a specific date designated by the issuer to confirm shareholders in order to grant rights concerning shareholders meeting, new share issuance, dividend payout *etc.* and whose owners cannot exercise their rights
- ❖ **Narrow terms** : shares whose ownership is not transferred after sale as of a specific date and which are distributed to shareholders as listed on the register of shareholders
- ❖ **Unclaimed shares owned by the KSD** : shares for which the KSD is registered as shareholder as of a specific date, as the shareholders to whom the shares are returned by the KSD have yet registered themselves as owner

## Responsive Measures by the Listing Applicant

Other than in cases when the listing applicant is exempted from distribution requirements, it must verify whether it has fulfilled distribution requirements, required public offering ratio, and minority shareholder requirements.

## 2) Stability of the Securities Market

### Key issues for the review



Whether there is any financial oneness in the listing applicant with its listed affiliates

## Review Guidelines

### KEY POINT

**If there is financial oneness between listed affiliates, the applicant must apply for listing review after addressing the issue by taking measures including revamping its corporate governance structure.)**

In case when the listing applicant operating businesses and a holding company that is dedicated to managing subsidiaries are listed on the exchange at the same time, there is a concern that the listing may just result in the increase of market capitalization to twice the amount under two identical entities and operations.

In case there is financial oneness between a listed parent company and its subsidiaries preparing for listing, they must apply for listing review after addressing the issue by taking measures including revamping its corporate governance structure.



### Criteria for judging financial oneness

- ❖ Businesses of parent and subsidiary company should be clearly separated.
  - Subsidiary operations are not deemed as a division of the parent company.
- ❖ Independent operation of subsidiaries from the parent company should be ensured.
  - Subsidiaries' corporate operation can be managed on its own, not relying on the parent company.

To address the financial oneness issue, a parent company must maintain its stakes in subsidiaries below 75% at least. And revenues, share ratio and



gains on equity method valuation considering the stakes held by the parent company in subsidiaries should be less than 50% at least.

## Responsive Measures by the Listing Applicant

If financial oneness is found to exist, the applicant must address the issue by means of share distribution *etc.* and have prior consultation with the KRX before applying for listing review.

## d. Expertise of the Lead Manager

### Key issues for the review



whether the lead manager has fulfilled its fiduciary duty for the listing applicant such as identifying risk factors and presenting countermeasures



whether public offering pricing criteria is objective and reasonable

### Review Guidelines



#### Role of the lead manager

#### KEY POINT

In case when the lead manager carries out thorough due diligence, listing review of the KRX can proceed easily.

The lead manager conducts due diligence of the listing applicant. If it identifies any risk factors concerning corporate management of the listing applicant and investor protection during the due diligence period, it is recommended to develop preventive measures and execute them in advance.

The lead manager must facilitate communication with a law firm and an accounting firm in the due diligence process. In addition, it is required to participate in thorough legal due diligence conducted by the law firm, so that it may detect legal issues in an early stage and fulfill its responsibility to protect investors.

Intensive due diligence by the lead manager saves time for the KRX in reviewing listing eligibility after all, and helps the listing applicant proceed with listing eligibility review by the KRX.



#### KEY POINT

**Specialized human resources should be assigned when conducting due diligence for an applicant applying for listing of foreign securities.**

An applicant applying for listing of foreign securities faces different due diligence conditions compared to domestic companies, and finds it relatively difficult to gather required information for listing eligibility review. In addition, it is more difficult to access reliable reference that can verify the objectiveness of data.

Therefore, the lead manager must retain capable human resources to conduct due diligence for an applicant applying for listing of foreign securities, and conduct due diligence for a reasonable period to verify operating stability and financial stability as well as internal control system to confirm those subject to lock-up requirement and compliance with interlocking directorate.

The lead manager is required to prevent trials and errors that the listing applicant may face in the process of listing review by conducting due diligence in earnest.



#### **Issues to be noted for public offering pricing**

##### **KEY-POINT**

**For pricing of public offering, it is important to select an appropriate company for comparison and ensure the objectiveness of the pricing.**

The public offering price estimated by the lead manager and the listing applicant is not subject to the KRX review for listing. However, the KRX verifies the objectiveness of pricing criteria applied by the lead manager, as a way to protect investors.

In estimating a fair public offering price, it is required to select a company which operates business in the same industry and offers the same type of products as the listing applicant. For instance, if a company publishing study materials for students compares its PER with that of a company



specialized in online learning to price its public offering shares, it may incur loss for investors when its price drops after listing.

In cases when there is no such company offering the same products, the lead manager is recommended to choose the most comparable company in a similar type of business as possible, and price the shares in an objective and conservative manner. In addition, it is required to clearly describe pricing assumptions and selection criteria to the KRX.

The listing applicant is recommended to appoint a lead manager which is capable of pricing its public offering shares in a fair manner to protect investors, rather than those who offer low fees.

### **Responsive Measures by the Listing Applicant**

It is recommended that the lead manager fully prepare and conduct intensive due diligence to shorten the listing eligibility review of the KRX. The listing applicant is also required to present fair criteria for selecting a reference company for pricing in consultation with the lead manager.





## Part 4 | Appendices

- [ Appendix 1 ] Listing Schedule
- [ Appendix 2 ] Required Filings to be Submitted when Applying for Listing Eligibility Review
- [ Appendix 3 ] Original Listing Requirements for Shares
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- [ Appendix 5 ] Exceptions in Listing Eligibility Review in the KOSDAQ Market
- [ Appendix 6 ] Requisite Provisions in the Articles of Incorporation of an Applicant Applying for Listing of Foreign Securities
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- [ Appendix 11 ] Comparison of Relevant Provisions of Corporate Laws between Korea and Hong Kong

## [Appendix 1] Listing Schedule

Schedule	Procedure	Details	Performed by	Subject
Advance pre-preparations	Designate an auditor.	File for the designation of an auditor with the FSS.	SFC	Listing applicant
	Independent audit	Audit financial statements for the most recent fiscal year.	Auditor	Listing applicant
	Sign a principal underwriting agreement.	Sign the agreement in consideration of the preparatory period for listing eligibility review.	Listing applicant	Lead manager
	Hold a board meeting.	Finalize a listing plan, organize an employee stock ownership association <i>etc.</i>	Listing applicant	Board of Directors
	Hold a shareholders meeting.	Approve financial statements, modify the Articles of Incorporation <i>etc.</i>	Listing applicant	Shareholders meeting
	Sign a transfer agent agreement and issue uniform stock certificates.	The transfer agent issues uniform stock certificates for and on behalf of the applicant.	Listing applicant	Transfer agent
	Submit a listing eligibility review application plan.	Comply with submission deadlines.	Lead manager	KRX
	Perform an accounting review.	Perform an accounting review on the financial statements for the most recent fiscal year	FSS KICPA	Accounting firm Listing applicant
	Lock-up of shares	Have shares held by the largest shareholder and their specially-related persons locked up.	Listing applicant	KSD
	Organize an employee stock ownership association.	enter into a stock ownership servicing agreement after a general meeting of the association and a board meeting.	Employee stock ownership association	Financial security company
D	File for listing eligibility review.	Submit an application for listing eligibility review and supporting documents.	Listing applicant	KRX
D+1~60	Listing eligibility review	Listing eligibility review	KRX	-
	Deliberation on eligibility	The Listing Committee deliberates on listing eligibility.	KRX	-
	Eligibility clearance	The FSC and the listing applicant are notified within two months of the date of application for listing eligibility review.	KRX	Listing applicant and the FSC
D+61	Sign a firm commitment underwritten offering and distribution agreement.	Matters concerning offering, subscription, allocation <i>etc.</i>	Listing applicant	Lead manager
D+62	Set an IPO price band.	Determine an IPO price band to be presented in the registration statement, preliminary prospectus, book building <i>etc.</i>	Listing applicant/ lead manager	-

D+65	Submit a registration statement and a preliminary prospectus.	Subscription allowed after the registration statement is declared effective.	Listing applicant	FSC
D+81	Registration statement declared effective	Fifteen days after receipt of the registration statement	FSC	Listing applicant
	Make available and distribute the prospectus.	Make available and distribute the prospectus to investors.	Listing applicant/ lead manager	FSC,
D+82~88	Hold IR events.	Hold IR events for investors before book building (approx. one week)	Listing applicant	Investors
D+88	Book building notification	Publish a public notice of matters concerning book building.	Lead manager	Newspapers
D+89,90	Perform book building.	Forecast institutional investor demand, determine the offer price and make preparations for allocation (two days).	Lead manager	Institutional investors
D+92	Finalize the offer price.	The lead manager and the issuer refer to book building results and determine the offer price.	Lead manager	Institutional investors/ securities companies
D+92	Submit an offer price notice and a prospectus.	Submit with corrections three days prior to the first day of the subscription period.	Lead manager and the listing applicant	FSC
D+94	Subscription notice	Publish matters concerning subscription in newspapers	Lead manager	Newspapers
D+94,95	Subscription	The lead manager and the underwriting syndicate receive subscription orders (for two days).	Underwriting syndicate	Investors
D+98	Allocation notice	Publish a notice of allocation and refund details (on the Internet).	Lead manager and the underwriting syndicate	-
	Refund and additional payment	Refund or additional payment depending on allocation results	Underwriting syndicate	Subscribers
	Payment for shares	Pay for allocated shares.	Lead manager	Bank
	File for original listing.	Submit an application for listing review and supporting documents no later than the date of payment for shares.	Listing applicant	KRX
D+ 99	Blanket deposit notice	A blanket deposit notice for the KSD and the transfer agent	Lead manager	Transfer agent
	Register the increase in capital stock.	Register matters concerning the increase in capital stock. (the day following the date of payment for shares)	Listing applicant	Competent registry office
	Post-issuance report	Submit a post-issuance report to the FSC	Listing applicant	FSC
D+ 102	Original listing approval notification and disclosure	Promptly upon filing for original listing, the applicant is notified of whether approval is granted.	KRX	Listing applicant
D+ 105	Commencement of trading	Choose a date within three business days of the date of listing approval.	Listing applicant	KRX



# [Appendix 2] Required Filings to be Submitted when Applying for Listing Eligibility Review

## 1. Non-holding companies and holding companies in the KOSPI Market

Required filings	Non-holding company	Holding company
Application for listing eligibility review for shares	○	○
Financial statements for the three most recent fiscal years and semiannual financial statements	○	○ <sup>2)</sup>
Auditors' reports for the three most recent fiscal years and a semiannual review report	○	○ <sup>2)</sup>
Opening statement of financial position and an auditor's review of quarterly financial information (where it has been less than one fiscal year since incorporation or conversion)	—	○
Consolidated financial statements and auditors' reports for the three most recent fiscal years	○	○
Lock-up agreement on equity securities held by the largest shareholder <i>et al.</i> and lock-up certificates of deposit	○	○
Lock-up agreement and lock-up certificates of deposit when acquiring shares in a private placement or shares held by the largest shareholder	○	○
In the case of a holding company meeting certain requirements <sup>1)</sup> , business plans and statements of estimated receipts and disbursements of the holding company and its subsidiaries	—	○
Specimen of each set of uniform stock certificates or a certificate of issuance of uniform stock certificates	○	○
<i>Certificate of entry in the depositor's ledger</i>	○	○
Corporate register transcript	○	○ <sup>2)</sup>
Articles of Incorporation	○	○
The register of shareholders and register of beneficial shareholders as of the close of the most recent fiscal year	○	○
Photocopy of the transfer agent agreement	○	○
Photocopy of the registration statement filed with the FTC or the permit issued by the FSC	—	○

Notes 1) Any holding company meeting all of the following requirements:

- The holding company must own all issued and outstanding shares in each subsidiary listed on the KOSPI Market.
- The aggregate book value of shares in subsidiaries listed on the KOSPI Market as valued in the opening statement of financial position must be 75% or more of the aggregate value of all subsidiaries.
- If the aggregate value of shares in any privately held subsidiary is greater than the aggregate value of shares in any subsidiary listed on the KOSPI Market, such privately held subsidiary must have income exceeding listing requirements and comply with the requirement for auditor's opinions and restrictions on the change of the largest shareholder.

Note 2) Including any documents for subsidiaries

## 2. Foreign companies and foreign holding companies in the KOSPI Market

Required filings	Foreign company	Foreign holding company
Application for listing eligibility review for shares	○	○
Financial statements and auditors' reports of the holding company and its subsidiaries for the three most recent fiscal years as well as consolidated financial statements and auditor's report on consolidated financial statements of the holding company	○ <sup>1)</sup>	○ <sup>2)</sup>
Semiannual financial statements and semiannual review reports of the holding company and its subsidiaries for the three most recent fiscal years	○ <sup>1)</sup>	○ <sup>2)</sup>
Opening statement of financial position and an auditor's review of quarterly financial information (where it has been less than one fiscal year since incorporation or conversion)	—	○ <sup>3)</sup>
Lock-up agreement on equity securities held by the largest shareholder <i>et al.</i> (not applicable to any applicant listed on a foreign exchange)	○	○
Lock-up agreement executed when acquiring shares in a private placement or shares held by the largest shareholder	○	○
Articles of Incorporation	○	○
Photocopy of the minutes of a shareholders meeting or board meeting that resolved to issue foreign securities and procure listing on the KRX	○	○
Registration documents relating to incorporation	○	○ <sup>4)</sup>
Documents evidencing listing on a foreign exchange, if any	○	○
Documents evidencing trading of shares within the last one year if the shares are listed on a foreign exchange	○	○
Photocopy of the depositary agreement in the case of original listing of depositary receipts representing foreign shares	○	○
Photocopy of the listing agent agreement	○	○

Attorney's opinion on the authentication of the listing application and supporting documents	○	○
Certificate of entry in the depositor's ledger or any document evidencing such entry	○	○
The register of shareholders and register of beneficial shareholders as of the close of the most recent fiscal year	○	○
Photocopy of the transfer agent agreement (may be filed at the time of filing for original listing in the case of offering or sale)	○	○
Certificate of requisite provisions in the Articles of Incorporation	○	○

Note 1) Prepared on a consolidated basis only in the case of any company applying IFRS or US GAAP,

Note 2) In the case of any company applying IFRS or US GAAP, to be prepared on a consolidated basis only, but excluding data relating to subsidiaries.

Note 3) Any company applying IFRS or US GAAP is exempt from the submission requirement

Note 4) Including subsidiaries

### 3. Domestic companies and foreign companies in the KOSDAQ Market

Required filings	Domestic company	Foreign company
Application for listing eligibility review.	○	○
Articles of Incorporation	○	○
Corporate register transcript	○	○ <sup>1)</sup>
Minutes of a board meeting consenting to listing	○	○
Financial statements and an auditor's report for the most recent fiscal year (or the recent quarterly or semiannual financial statements and auditor's report for the current fiscal year)	○	○ <sup>2)</sup>
Certificate of issuance of stock certificates by the transfer agent	○	○ <sup>3)</sup>
The register of shareholders as of the close of the most recent fiscal year and as of the date of application	○	○
Statement of changes in shareholdings of the largest shareholder <i>et al.</i> occurring within a one-year period preceding the date of application and a statement of private offerings made within the same period	○	○
Due diligence checklist	○	○
Letter of undertaking issued by the listing underwriters	○	○
Agreement on the submission of lock-up agreements entered into by those subject to a lock-up obligation (the largest shareholder <i>et al.</i> )	○	○
Lock-up agreements entered into by those subject to a lock-up obligation (the largest shareholder <i>et al.</i> )	○	○
Certificate of lock-up of shares held by those subject to a lock-up obligation	○	○ <sup>1)</sup>
Certificate of absence of affiliate or any other special relationships	○	○

Opinion of the principal creditor bank	○	
Certificate of venture company	○	
Certificate of investments made by interested parties (venture capitalists and the listing coordinator)	○	○
Certificate of absence of equity securities held by the independent auditor	○	
Transfer agent agreement	○	○ <sup>1)</sup>
Assessment of operational risk	○	○
Photocopy of a notice of designation of an independent auditor	○	
Certificate of performance of the undertaking of the listing underwriters	○	○
Listing agent agreement		○
Documents evidencing listing on a foreign exchange, if applicable		○
Legal opinion issued by an attorney-at-law		○
Depository agreement in the case of depository receipts		○

Note 1) Including subsidiaries in the case of a holding company

Note 2) On a consolidated basis in the case of IFRS or US GAAP

Note 3) May be filed at the time of filing for original listing if offering or sale is effected after application.

## [Appendix 3] Original listing Requirements for Shares

### 1. Original listing requirements for non-holding companies and holding companies in the KOSPI Market

Requirement	Non-holding company	Holding company	Holding company meeting certain requirements
Operating history	Three years or more - The substantial operating history is considered in the case of a merger, consolidation, demerger, demerger and merger, parent-subsiidiary merger, asset transfer or business transfer	<Same as left> For a holding company, the substantial operating history of the key subsidiary is considered.	-

	Size of the company etc.	10 billion won or more in equity capital or 20 billion won or more in base market capitalization (or 30 billion won or more in base market capitalization for any company listed on the KOSDAQ Market)	<Same as left>	<Same as left>
	No. of shares to be listed	1 million shares or more	<Same as left>	<Same as left>
Share distribution	No. of shares held by minority shareholders etc.	<p>The applicant must meet any of the following (any of ①, ②, ③ or ④):</p> <p>① 20% or more of shares are held by minority shareholders.</p> <p>② Offered shares account for 25% or more of total shares.</p> <p>③ Shares offered account for 10% or more of total shares, and the number of shares offered is as follows, depending on the amount of equity capital or base market capitalization:</p> <ul style="list-style-type: none"> <li>- 50 billion – 100 billion won (or 100 billion – 200 billion won): 1 million shares or more</li> <li>- 100 billion – 250 billion won (or 200 billion – 500 billion won): 2 million shares or more</li> <li>- 250 billion won or more (or 500 billion won or more): 5 million shares or more</li> </ul> <p>④ The shares concurrently offered in domestic and foreign markets account for 10% or more of total shares, and the shares offered in the domestic market are 1 million shares or more (based on a par value of 5,000 won)</p>	<p>&lt;Same as left&gt;</p> <p>For any bank holding company whose largest shareholder is the Korea Deposit Insurance Corporation, the requirements stated on the left are deemed to have been satisfied if minority shareholders:</p> <p>① collectively hold 10 million shares or more or</p> <p>② hold shares accounting for 5% or more of total shares.</p>	-
	Mandatory public offering	5% or more of shares are offered, and the amount of the shares offered is 1 billion won or more	<Same as left> Any financial holding company is exempt from this requirement	-
	No. of minority shareholders	1,000 persons or more	<Same as left>	-

<p style="text-align: center;">Operating performance</p>	<p>The applicant must meet any of the following (any of a, b or c):</p> <p>a. Satisfy all of ①, ② and ③</p> <p>① Revenue 30 billion won or more for the recent year and 20 billion or more for three years on average</p> <p>② Earnings The applicant must have realized an operating profit, a profit before income tax from continuing operations and a current net income.</p> <p>③ ROE and profit (any one of the following)</p> <p>i. ROE: 5% for the most recent and 10% in total for three years</p> <p>ii. Amount of profit: 2.5 billion won for the most recent and 5 billion won in total for three years</p> <p>iii. Any company with equity capital of 100 billion won or more: - 3% ROE or 5 billion won or more in profit - Positive operating cash flow</p>	<p>&lt;Same as left&gt;</p> <p>&lt;Concept of revenue&gt; "The revenue shown on the separate financial statement of the holding company + <math>\sum</math>(revenue of each subsidiary <math>\times</math> shareholding percentage)"</p> <p>&lt;Concept of earnings and ROE&gt; <i>As recorded in consolidated financial statements</i> but less than three years since incorporation - Duration of time since incorporation: based on consolidated financial statements - Duration of time prior to incorporation: based on <math>\sum</math>(earnings of each subsidiary <math>\times</math> shareholding percentage) as in then current individual financial statements of subsidiaries - Less than one year since incorporation: (positive) recent earnings of each subsidiary</p> <p>&lt;Concept of operating cash flow&gt; <i>As recorded in consolidated financial statements</i> - Less than one year since incorporation: based on <math>\sum</math>(operating cash flow of each subsidiary <math>\times</math> shareholding percentage)</p>	
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Auditor's opinion	An unqualified opinion for the most recent year and unqualified or qualified opinion for the two years preceding the most recent (excluding qualified opinions resulting from limitation on scope)	<Same as left> (based on individual financial statements and consolidated financial statements)	<Same as left>
Merger etc.	If a merger etc. has occurred, the closing statements thereafter must have been finalized. (If less than three months have elapsed as of the balance sheet date since the date of merger, the auditor's report on semiannual financial statements for the subsequent fiscal year must be submitted.)	<Same as left>	-
Restrictions on change of the largest shareholder	Any change of the largest shareholder within one year prior to the submission of application for listing eligibility review is prohibited.	<Same as left> Not applicable to the incorporation of or conversion to a holding company	-
Restrictions on shares transfer	No restrictions on shares transfer	Same as left	Same as left
Restrictions on shares transfer	- Largest shareholder <i>et al.</i> : six months starting on the date of listing - Any person having purchased equity securities from the largest shareholder <i>et al.</i> within one year prior to the date of submission of application for listing eligibility review: six months starting on the date of listing - Any person having acquired new shares in a private placement within one year prior to the date of submission of application for listing eligibility review: Max (six months and one year after issuance of new shares)	Same as left	Same as left
Review criteria	Business continuity, operational transparency, characteristics of a corporation under the Commercial Act, and investor protection	<Same as left>	<Same as left>
Outside directors	Reviewed during examination of operational transparency	To be appointed	<Same as left>
Audit committee	Reviewed during examination of operational transparency	To be established if assets amount to 2 trillion won or more	<Same as left>

## 2. Original listing requirements for ordinary companies and venture companies in the KOSDAQ Market

Requirements	Ordinary company	Venture company
	Three years or more	-
Operating history	3 billion won or more in equity capital	1.5 billion won or more in equity capital
	9 billion won or more in market capitalization	9 billion won or more in market capitalization

Share distribution (choose one)	<ul style="list-style-type: none"> <li>• Public offering (offering + sale)</li> <li>1. If shares held by minority shareholders as of the date of application account for less than 25%: <ul style="list-style-type: none"> <li>- 10% or more of shares publicly offered, 25% or more shares held by minority shareholders as of the date of application, and 500 or more minority shareholders as of the date of application</li> </ul> </li> <li>2. If shares held by minority shareholders as of the date of application account for 25% or more: <ul style="list-style-type: none"> <li>- 5% or more of shares publicly offered, shares publicly offered in the amount of 1 billion won or more, and 500 or more minority shareholders as of the date of application</li> </ul> </li> <li>• If different requirements for public offering are applied based on size: <ul style="list-style-type: none"> <li>- 50 billion won or more in equity capital or 100 billion won or more in base market capitalization</li> <li>- 10% or more of shares publicly offered, and 500 or more minority shareholders as of the date of application</li> </ul> </li> <li>• 25% or more of shares publicly offered, and 500 or more minority shareholders</li> <li>• Immediate listing (without an offering) <ul style="list-style-type: none"> <li>- The number of minority shareholders as of the date of application is 500 or more, and the minority shareholders have acquired (i) 25% or more of total shares in offerings or (ii) 10% or more where the applicant satisfies the equity capital requirement or the distribution requirement by base market capitalization.</li> </ul> </li> </ul>	
Status of capital	No capital impairment allowed	
Operational performance	The applicant must have realized a profit before income tax from continuing operations.	
Size of earnings, revenue or market capitalization (choose one)	<ol style="list-style-type: none"> <li>1. ROE of 10% or more</li> <li>2. 2 billion won in current net income</li> <li>3. 10 billion won or more in revenue for the most recent fiscal year and 30 billion won or more in market capitalization</li> </ol>	<ol style="list-style-type: none"> <li>1. ROE of 5% or more</li> <li>2. 1 billion won in current net income</li> <li>3. 5 billion won or more in revenue for the most recent fiscal year and 30 billion won or more in market capitalization</li> </ol>
Bonus issue	The total amount of capitalization within the last one year is 100% or less of the equity capital as of two years ago. (The requirement is deemed to be satisfied if the excess is locked up for one year.)	
Rights offerings	The total amount within the last one year is 100% or less of the equity capital as of two years ago. (The requirement is deemed to be satisfied if the excess is locked up for one year.)	
Auditor's opinion	An unqualified opinion for the most recent year	
Merger etc.	In the event of any merger, demerger, demerger and merger, the closing financial statements for the fiscal year containing the date of such merger etc. must have been finalized.	
Restrictions on shares transfer	No restrictions on shares transfer	
Restrictions on change of the largest shareholder	Any change of the largest shareholder within one year prior to the application for listing review is prohibited.	
Par value	Par value per share is 100 won, 200 won, 500 won, 1,000 won, 2,500 won or 5,000 won.	
Full-time statutory auditor	The appointment of full-time statutory auditors is required for any corporation with assets totaling 100 billion won or more as of the close of the most recent fiscal year.	
Outside directors	One fourth of all directors on the board	One fourth of all directors on the board only where assets total 100 billion won or more



# [Appendix 4] Original Listing Requirements for Foreign Shares

## 1. Original Listing Requirements for Foreign Companies and Foreign Holding Companies in the KOSPI Market

Requirement		Foreign company	Foreign holding company
Operating history		Three years or more - The substantial operating history is considered in the case of a merger, consolidation, demerger, demerger and merger, parent-subsidiary merger, asset transfer or business transfer	<Same as left> For a holding company, the substantial operating history of the key subsidiary is considered.
Size of the company etc.		10 billion won or more in equity capital or 20 billion won or more in base market capitalization (or 30 billion won or more in base market capitalization for any company listed on the KOSDAQ Market)	<Same as left>
No. of shares to be listed		1 million shares or more	<Same as left>
Share distribution	No. of shares held by minority shareholders etc.	Choose one of the following: ① 20% or more of shares are held by minority shareholder. ② Offered shares account for 25% or more of total shares. ③ Offered shares account for 10% or more of total shares, and the number of shares offered is as follows, depending on the amount of equity capital or base market capitalization: - 50 billion – 100 billion won (or 100 billion – 200 billion won): 1 million shares or more - 100 billion – 250 billion won (or 200 billion – 500 billion won): 2 million shares or more - 250 billion won or more (or 500 billion won or more): 5 million shares or more ④ The shares concurrently offered in domestic and foreign markets account for 10% or more of total shares, and the shares offered in the domestic market are 1 million shares or more (when having a par value of 5,000 won)	<Same as left>
	Mandatory public offering	5% or more of shares are offered, and the amount of the shares offered is 1 billion won or more	<Same as left>
	No. of minority shareholders	1,000 persons or more	<Same as left>

<p>Operating performance</p>	<p>Choose one of the following:  a. Satisfy all of ①, ② and ③</p> <p>① Revenue  30 billion won or more for the recent year and 20 billion or more for three years on average</p> <p>② Earnings  The applicant must have realized an operating profit, a profit before income tax from continuing operations and a current net income.</p> <p>③ ROE and profit (any of the following)</p> <p>i. ROE: 5% for the most recent and 10% in total for three years</p> <p>ii. Amount of profit: 2.5 billion won for the most recent and 5 billion won in total for three years</p> <p>iii. Any company with equity capital of 100 billion won or more:  - 3% ROE or 5 billion won or more in profit  - (Positive) operating cash flow</p> <p>* Any company applying K-IFRS: based on consolidated financial statements</p> <p>b. The revenue for the most recent fiscal year is 50 billion won or more, and the base market capitalization is 100 billion won or more.</p> <p>c. The revenue for the most recent fiscal year is 70 billion won or more, the base market capitalization is 50 billion won or more, and the operating cash flow for the most recent fiscal year is 2 billion won or more.</p>	<p>&lt;Same as left&gt;</p> <p>&lt;Concept of <i>revenue</i>&gt;  <i>revenue recorded in consolidated financial statements</i></p> <p>&lt;Concept of <i>earnings</i> and <i>ROE</i>&gt;  <i>As recorded in consolidated financial statements</i></p> <p>Less than three years since incorporation:  - Duration of time since incorporation: based on consolidated financial statements</p> <p>- Duration of time prior to incorporation:  based on <math>\frac{1}{M}</math>(earnings of each subsidiary <math>\times</math> shareholding percentage) as in the then current individual financial statements of subsidiaries</p> <p>- Less than one year since incorporation:  (positive) recent earnings of each subsidiary</p> <p>&lt;Concept of <i>operating cash flow</i>&gt;  <i>As recorded in consolidated financial statements</i></p> <p>- Less than one year since incorporation:  based on <math>\frac{1}{M}</math>(operating cash flow of each subsidiary <math>\times</math> shareholding percentage)</p> <p>* Any company applying K-IFRS: based on consolidated financial statements</p>
<p>Auditor's opinion</p>	<p>An unqualified opinion for the most recent year and unqualified or qualified opinion for the two years preceding the most recent year (excluding qualified opinions resulting from limitation on scope)</p> <p>* Any company applying K-IFRS: based on consolidated financial statements</p>	<p>&lt;Same as left&gt;  (based on individual financial statements and consolidated financial statements)</p> <p>* Any company applying K-IFRS: based on consolidated financial statements</p>
<p>Merger etc.</p>	<p>If a merger etc. has occurred, the closing statements thereafter must have been finalized. (If less than three months have elapsed as of the balance sheet date since the date of merger, the auditor's report on semiannual financial statements for the subsequent fiscal year must be submitted.)</p>	<p>&lt;Same as left&gt;</p>

Restrictions on change of the largest shareholder	Any change of the largest shareholder within one year prior to the submission of application for listing eligibility review is prohibited.	<Same as left>
Restrictions on share transfer	No restrictions on share transfer	<Same as left>
Lock-up	<ul style="list-style-type: none"> <li>- Largest shareholder <i>et al.</i>: six months starting on the date of listing</li> <li>- Any person having purchased equity securities from the largest shareholder <i>et al.</i> within one year prior to the date of submission of application for listing eligibility review: six months starting on the date of listing</li> <li>- Any person having acquired new shares in a private placement within one year prior to the date of submission of application for listing eligibility review: <i>Max</i> (six months and one year after issuance of new shares)</li> </ul>	<Same as left>
Review criteria	Business continuity, operational transparency, characteristics of a corporation under the Commercial Act, and investor protection	<Same as left>
Outside directors	Reviewed during examination of operational transparency	To be appointed
Audit committee	Reviewed during examination of operational transparency	To be established if assets amount to 2 trillion won or more

※ If the number of minority shareholders of an applicant applying for secondary listing of foreign securities exceeds 1,000, the applicant is exempt from the distribution requirements.

## 2. Original Listing Requirements for Foreign Companies and Foreign Holding Companies in the KOSDAQ Market

Requirement	Foreign company	Foreign holding company
Operating history	Three years or more	Three years or more (With the length of substantial operating histories of key subsidiaries taken into account)
Size of the company (choose one)	3 billion won or more in equity capital or 9 billion won or more in market capitalization	

Share distribution	<p>* As for listing in conjunction with an offering or sale (choose one)</p> <ol style="list-style-type: none"> <li>500 or more minority shareholders and their holdings accounting for 25% or more, and any of the following: <ul style="list-style-type: none"> <li>Holdings of minority shareholders as of the date of application account for 25% or more: no less than 5% and 1 billion won of shares to be offered or sold</li> <li>Holdings of minority shareholders as of the date of application account for less than 25%: no less than 10% of shares to be offered or sold</li> </ul> </li> <li>500 or more minority shareholders and 10% or more of total shares are offered or sold, and any of the following: <ul style="list-style-type: none"> <li>50 billion won – 100 billion won (or 100 billion – 200 billion) in equity capital (or market capitalization): 1 million shares or more</li> <li>100 billion won – 250 billion won (or 200 billion – 500 billion) in equity capital (or market capitalization): 2 million shares or more</li> <li>250 billion won (or 500 billion) or more in equity capital (or market capitalization): 5 million shares or more</li> </ul> </li> <li>The number of shares offered (or sold) accounting for 25% or more of total shares issued and outstanding, and 500 or more minority shareholders</li> </ol> <p>* In the case of an applicant applying for listing of foreign securities: - 500 or more minority shareholders (domestically offered) and 300 thousand shares or more (domestically offered) as of the date of application</p> <p>* In the case of concurrent public offerings in domestic and foreign markets: - 10% or more of shares concurrently offered in domestic and foreign markets, 300 thousand shares or more domestically offered and 500 or more minority shareholders (domestically offered) as of the date of application</p>	
Status of capital	No capital impairment allowed	Holding company: no capital impairment allowed Subsidiary: no complete capital impairment allowed
Operating performance	The applicant must have realized a profit before income tax from continuing operations.	<Same as left> * If the most recent fiscal year is less than one year: $\sum(\text{the profit from continuing operations of each subsidiary} \times \text{shareholding percentage})$
Size of earnings, revenue or market capitalization (choose one)	<ol style="list-style-type: none"> <li>ROE of 10% or more</li> <li>2 billion won or more in current net income</li> <li>10 billion won or more in revenue for the most recent fiscal year and 30 billion won or more in market capitalization</li> </ol>	<ol style="list-style-type: none"> <li>&lt;Same as left&gt;</li> <li>&lt;Same as left&gt;</li> <li>&lt;Same as left&gt;</li> </ol> * If the most recent fiscal year is less than one year: <ol style="list-style-type: none"> <li>based on <math>\frac{\text{the current net profit of each subsidiary} \times \text{shareholding percentage}}{\text{the total stockholder's equity at the time of incorporation (or conversion)}}</math></li> <li>based on <math>\frac{\text{the current net profit of each subsidiary} \times \text{shareholding percentage}}{\text{the revenue of subsidiaries}}</math></li> <li>based on the revenue of subsidiaries</li> </ol>
Bonus issue	The total amount of capitalization within the last one year is 100% or less of the equity capital as of two years ago. (The requirement is deemed to be satisfied if the excess is locked up for one year.)	<Same as left> * Not applicable to the incorporation of or conversion to a holding company or equity swapping
Rights offerings	The total amount of capitalization within the last one year is 100% or less of the equity capital as of two years ago. (The requirement is deemed to be satisfied if the excess is locked up for one year.)	<Same as left> * Not applicable to the incorporation of or conversion to a holding company or equity swapping

Auditor's opinion	An unqualified opinion for the most recent fiscal year	<Same as left> * If the most recent fiscal year is less than one year: Auditors' opinions on subsidiaries are included.
Merger etc.	In the event of any merger, demerger or demerger and merger, the closing financial statements for the fiscal year containing the date of such merger etc. must have been finalized.	
Restrictions on share transfer	No restrictions on shares transfer	
Restrictions on the changes of the largest shareholder	Any change of the largest shareholder within one year prior to the application for listing review is prohibited.	
Restrictions on the changes of the largest shareholder	Any company with assets totaling 100 billion won or more as of the close of the most recent fiscal year must appoint full-time statutory auditors.	
Outside directors	One fourth of all directors on the board - This requirement is deemed to be satisfied if the directors are appointed in the first annual general meeting of shareholders convened after original listing.	

※ If the number of minority shareholders of an applicant applying for secondary listing of foreign securities exceeds 500, the applicant is exempt from the distribution requirement.

## [Appendix 5] Exceptions in Listing Eligibility Review in the KOSDAQ Market

### a. Exceptions in Listing Eligibility Review for Venture Companies

The KOSDAQ Market applies different listing eligibility review requirements to venture companies than to non-venture companies.

# 1) Requirements for designation as a venture company (the Act on Special Measures for the Promotion of Venture Businesses and the Enforcement Decree of the same Act)

<p>Common requirement (Article 2-2 (1) 1 of the Act)</p>	<ul style="list-style-type: none"> <li>• A small or medium enterprise under Article 2 of the Framework Act on Small and Medium Enterprises</li> </ul>
<p>Individual requirements (Article 2-2 (1) 2 of the Act)</p>	<ul style="list-style-type: none"> <li>• A venture capital investee (①&amp;②)             <ul style="list-style-type: none"> <li>① The investment made by venture capital institutions amounts to 50 million won and account for 10% or more of total shares.</li> <li>② The status as set forth in ① is maintained for six consecutive months or more since the date of application for venture company declaration.</li> </ul> </li> <li>* Venture capital institutions: start-up investment companies (associations), companies financing new technology projects (investment associations), the Korea Venture Fund, Korea Development Bank, Korea Finance Corporation, Industrial Bank of Korea <i>etc.</i></li> <li>• A research and development company (①&amp;②&amp;③)             <ul style="list-style-type: none"> <li>① Annual research and development costs amount to 50 million won or more.</li> <li>② The percentage of research and development costs in annual total revenue is no less than 5% or the percentage as published by the Small and Medium Business Administration by line of business, whichever is higher (The requirement as set forth in ② is not applicable to any company for whom less than three years have elapsed since incorporation.).</li> <li>③ The company must be given good marks in a feasibility assessment conducted by Korea Technology Credit Guarantee Fund ("KTCGF"), Small and Medium Industry Promotion Corporation ("SMIPC") <i>et al.</i></li> </ul> </li> <li>• KTCGF, SMIPC (①&amp;②&amp;③&amp;④)             <ul style="list-style-type: none"> <li>① The company must obtain a technology loan guarantee or fully unsecured loan from KTCGF or SMIPC.</li> <li>② The company must be given good marks in a technology assessment conducted by KTCGF or SMIPC.</li> <li>③ The amount of the guarantee or loan must exceed 5% of total assets. (excluding any company with a history of less than one year since its incorporation or with assets totaling 1 billion won or more)</li> <li>④ The amount of the guarantee or loan must be 80 million won or more (or 40 million won or more for any company with a history of less than one year since its incorporation).</li> </ul> </li> </ul>
<p>The effective period of the venture company declaration (Article 18-4 of the Enforcement Decree of the Act)</p>	<ul style="list-style-type: none"> <li>• A venture capital investee or a company having obtained a technology loan guarantee or loan: one year</li> <li>• A research and development company: Two years</li> </ul>

## 2) Summary of customized listing requirements and exceptions to listing review (numerical) requirements for venture companies

Exceptions to listing review requirements	<ul style="list-style-type: none"><li>• Exemption from requirements<ul style="list-style-type: none"><li>- Exemption from the operating history requirement (three years or more for other companies)</li></ul></li><li>• Mitigated requirements<ul style="list-style-type: none"><li>- Equity capital: 1.5 billion won or more (3 billion won or more for other companies)</li><li>- ROE of 5% or more or 1 billion won or more in the current net profit</li><li>- 5 billion won or more in revenue for the most recent fiscal year or 30 billion won or more in base market capitalization (for other companies, ROE of 10% or more, or 2 billion won or more in the current net profit, or 10 billion won or more in revenue)</li></ul></li></ul>
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### b. Exceptions in Listing Eligibility Review for New Growth Engine Companies

Exceptions to KOSDAQ listing requirements are allowed for new growth engine companies, as is the case with venture companies, to support financing of companies with technological capabilities and growth potential.

#### 1) Scope of new growth engine companies

The KOSDAQ Listing Regulations define new growth engine company as a company engaged in a line of business eligible for the intensive promotion program of the government whose technological capabilities and growth potential are recognized by an accredited rating agency as demonstrated by, *inter alia*, a certain technological assessment rating or higher.

## 2) Exceptions to listing requirements for new growth engine companies

Requirement	History	Equity capital	Net profit before income tax	Size of earnings, revenue or market capitalization (choose one)
Other companies (Venture companies)	Three years or more (-)	3 billion won or more (150 million)	Applicable	① ROE of 10% or more (5%) ② 2 billion (1 billion) won or more in current net income ③ 10 billion won (5 billion won) in revenue and 30 billion won in market capitalization
New growth engine companies	Exempt	1.5 billion won or more	Exempt	Exempt

A new growth engine company, however, is required to perform milestone disclosures\* and hold IR events on a semiannual basis for three years after listing. Failure to perform this obligation will result in its issues being placed under surveillance and delisted.

### ➔ Content of milestone disclosure

- Matters concerning the content of the business plan, the progress and outlook for the business plan etc.
- Outlook or estimation of revenue, operating profit and loss, current net profit and loss relating to the business plan

## 3) Listing procedure for new growth engine companies





## 4) Technology assessment program

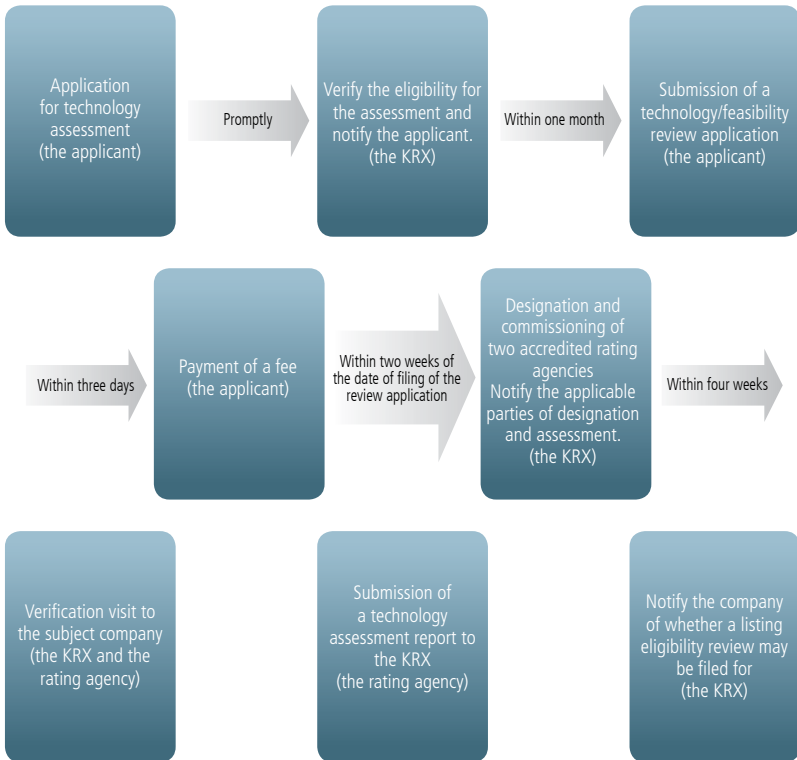
This program is designed to enhance the levels of objectivity and expertise of the listing review by reflecting the objective assessment conducted by a rating agency and opinions of an expert group on *technological capabilities and commercial viability of a new growth engine company*.

### a) Selection of a technology assessment agency etc.

Rating agencies are selected and pooled into a group based on staff capable of technology assessment, experience with technology assessment, the level of responsibility for assessment results etc. If an individual company applies for assessment, the KRX designates a rating agency by considering, *inter alia*, assessment staff, relevant assessment experience and any basis for excluding certain agencies.

Accredited rating agencies (13 institutions)	
① The Korea Research Institute of Bioscience and Biotechnology	⑥ The Korea Research Institute of Energy Technology Evaluation Planning
② The Electronics and Telecommunications Research Institute	⑦ The Korea Environmental Industry & Technology Institute
③ The Korea Research Environment Open Network	⑧ The Korea Institute of Planning and Evaluation for Technology of Food, Agriculture, Forestry and Fisheries
④ The Korea Health Industry Development Institute	⑨ The Korea Institute of Marine Science & Technology Promotion
⑤ Korea Technology Credit Guarantee Fund	⑩ The Korea Communications Agency
⑥ The Korean Evaluation Institute of Industrial Technology	⑪ The Korea Institute of Construction & Transportation Technology Evaluation and Planning
⑦ The Korea Institute for Advancement of Technology	

## b) Technology assessment procedure



## c) Assessment items

The technology assessment involves the following assessment items as provided in the Accredited Rating Agency Program Standards:

**<Technology assessment items >**

Classification	Assessment item	Details
Technological capability	Completeness of the technologies	Reliability of the technology Whether there is stable infrastructure necessary to implement the technology
	Competitive advantages of the technologies	Whether the subject possesses core technologies and what competitive advantages are provided by the technologies in possession Whether the subject holds intellectual property rights Life cycle of the technologies and their applications
	The level of engineering staff	Range and sufficiency of engineering staff Expertise and skills of engineering staff
	Competitive edge in the commercialization of the technologies	The level of cost leadership of the technologies incorporated into products (whether the subject has production facilities and factors necessary for the commercialization of the technologies) The level of standardization of the products incorporating the technologies The level of commercialization of the technologies The level of production factor requirement for the commercialization of the technologies Barriers to imitation of the products incorporating the technologies
Commercial viability	Size and growth potential of the market for the products incorporating the technologies	Size of the market for the staple products incorporating the technologies Growth rate of the market for the staple products incorporating the technologies Existence and size of alternative markets
	Competitive edge of the products incorporating the technologies	Market shares of the staple products incorporating the technologies Matters concerning competitors and the competitive edge Height of the entry barrier

**d) Assessment ratings**

In order to benefit from the exceptions to listing requirements for a new growth engine company, the applicant must procure technology assessment from a number of rating agencies. The applicant may file for listing eligibility review if any of these agencies grant a technology assessment rating of grade A or higher

**< Calculation of the overall assessment rating >**

Assessment rating	Definition of each rating
AAA	A company having utmost technological capabilities (very high Likelihood of success)
AA	A company having very high technological capabilities (enough that the company is not greatly affected by subsequent changes in the environment)
A	A company having high technological capabilities (enough that the company is not greatly affected by subsequent changes in the environment)
BBB	A company having good technological capabilities (The company may be somewhat affected by subsequent changes in the environment.)
BB	A company having good technological capabilities (The company may be significantly affected by subsequent changes in the environment.)
B	A company having good technological capabilities (The company is very likely to be affected by subsequent changes in the environment.)
CCC	Moderate level of technological capabilities (The company may be somewhat affected by subsequent changes in the environment.)
CC	Moderate level of technological capabilities (The company may be significantly affected by subsequent changes in the environment.)
C	Moderate level of technological capabilities (The company is very likely to be affected by subsequent changes in the environment.)
D	Moderate level of technological capabilities

**e) Submission of an opinion on commercial viability by the lead manager**

The lead managing underwriter of a new growth engine company is required to submit its opinion on the commercial viability of the applicant in filing for listing eligibility review. The opinion must include an overall analysis of the industry covering the industry, market size, growth potential *etc.* as well as an analysis of the company addressing its technologies, products, sales makeup *etc.*

# **[Appendix 6] Requisite Provisions in the Articles of Incorporation of an Applicant Applying for Listing of Foreign Securities**

## **1. Shareholders Meeting**

### **(1) When to convene**

- ① The General Meeting of Shareholders of the Company shall be of two types: ordinary and extraordinary.
  
- ② The Ordinary General Meeting of Shareholders of the Company shall be convened within three months (or four months in the case of the KOSDAQ Market) of the close of each fiscal year. The Extraordinary General Meeting of Shareholders may be convened at the request of a shareholder holding 3% or more of shares issued and outstanding, at the request of a statutory auditor or the audit committee or under a court order, if any.

### **(2) Procedure for convening (notices)**

No less than two weeks prior to convening of each General Meeting of Shareholders, the Company shall give all shareholders a notice, either in writing or electronically, stating the date, time, place and agenda of the meeting.

### **(3) Matters requiring a special resolution of the General Meeting of Shareholders**

① Any of the following matters require a special resolution of the General Meeting of Shareholders:

- a. any modification of the Articles of Incorporation of the Company, merger, demerger, stock split, repurchase and cancellation of shares, winding up, capital reduction, transfer of the whole or material part of operation, or acquisition of the entire operation of another company; or
- b. any merger, demerger, winding up, liquidation, change of corporate form, transfer of the whole or material part of operation of a subsidiary of the Company, or any private offering of shares therein.

**In the case of the KOSDAQ Market:**

- b. in the case of a holding company whose sole purpose is to hold shares in other companies, any merger, demerger, winding up, liquidation, change of corporate form, transfer of the whole or material part of operation of a subsidiary of the Company, or any private offering or disposal of shares therein.

② A special resolution of the General Meeting of Shareholders shall require the affirmative vote of two thirds or more of shares present at a meeting and representing more than one third of the total number of shares issued and outstanding.

### **(4) Place of meeting**

The General Meeting of Shareholders shall be held at the head office or at the exchange on which the shares in the Company is listed.

### **(5) Meeting of a particular class of shareholders**

① If the Company has issued classes of shares and intends to include special

provisions for particular classes of shares in these Articles of Incorporation or effect any modification of the Articles of Incorporation, equity swapping, share transfer, merger, demerger, demerger and merger, *etc.* that may adversely affect shareholders of a particular class, a resolution of a meeting of shareholders of such class, in addition to a resolution of the General Meeting of Shareholders, shall be required.

- ② A resolution of a meeting of shareholders of a particular class shall require the affirmative vote of two thirds or more of shares present at such meeting and representing more than one third of the total number of issued and outstanding shares of such class.
- ③ The provisions for the General Meeting of Shareholders, with the exception of those for non-voting shares, shall be applicable *mutatis mutandis* to a meeting of shareholders of a particular class.

## 2. Directors

### (1) Number of Directors and appointment of Outside Directors

- ① The Company shall have no less than three but no more than [       ] Directors and a number of Outside Directors who shall constitute one fourth or more of all Directors (or no less than three Outside Directors who shall constitute a majority of all Directors in the case of any company with assets totaling 2 trillion won or more as of the close of the most recent fiscal year).

- ② If an outside director nominating committee has been established, outside director candidates shall be nominated among those with qualifications as set forth in the applicable law of their respective country of citizenship.
- ③ The details regarding the nomination of outside director candidates and the examination of their qualifications shall be determined by the outside director nominating committee.

## **(2) Directors' compensation**

The compensation and severance benefits of the Directors shall be determined by resolution of the General Meeting of Shareholders, except where their amounts are provided for in these Articles of Incorporation.

## **(3) Minutes of board meetings and access by shareholders**

- ① The proceedings of each board meeting shall be recorded in minutes.
- ② The agenda, proceedings, conclusions of each board meeting as well as any objections and the reasons therefor shall be recorded in minutes, which minutes shall bear the names and the signatures and/or seals of the Directors and Statutory Auditors present at the meeting.
- ③ Any shareholder may request access to or photocopy of the minutes of a board meeting during business hours.
- ④ The Company may refuse the request of a shareholder for access to or photocopy of minutes, stating the reasons for such refusal.



#### **(4) Indemnity of Directors**

Directors may be indemnified and held harmless, with the consent of all shareholders, from and against any liability for damage to the Company arising from such Director's unlawful act in the performance of his or her duties.

### **3. Statutory auditors or audit committee**

(Any company with assets totaling two trillion won or more as of the close of the most recent fiscal year shall establish an audit committee.)

#### **<Where Statutory Auditors are appointed>**

##### **(1) Number and appointment of Statutory Auditors**

- ① The Company shall have no less than one but no more than [            ] Statutory Auditors, one or more of which shall serve as full-time Statutory Auditors.
- ② Statutory Auditors shall be appointed in the General Meeting of Shareholders, andw the proposals for the election of Directors and Statutory Auditors shall be resolved separately.
- ③ A resolution for the election of Statutory Auditors shall require the affirmative vote of a majority of shares present at a meeting and

representing more than one fourth of the total number of issued and outstanding shares.

## **(2) Term of office of Statutory Auditors**

The term of office of a Statutory Auditor shall expire within three years of the date of election at the close of the Ordinary General Meeting of Shareholders convened in respect of the last fiscal year.

## **(3) By-election of Statutory Auditors**

Any vacancy of Statutory Auditors shall be filled by an election at the General Meeting of Shareholders, except where the number of Statutory Auditors as set forth in the provisions of Article [ ] of these Articles of Incorporation is reached and such vacancy presents no difficulties in the performance of their duties.

## **(4) Duties of Statutory Auditors**

- ① A Statutory Auditor shall audit the business and accounting of the Company.
- ② A Statutory Auditor may be present and give his opinions at the Board of Directors meeting.
- ③ A Statutory Auditor may request the Board to convene an Extraordinary General Meeting of Shareholders by submitting to the Board of Directors

a written request stating the agenda of the meeting and the reasons for convening.

- ④ A Statutory Auditor may request any subsidiary of the Company to submit reports on its business activities if deemed necessary to perform his/her duties, in which case the Statutory Auditor may investigate the activities and assets of such subsidiary if such subsidiary fails to submit reports without delay or it is deemed necessary to verify the accuracy of such reports.

## **(5) Audit record**

A Statutory Auditor shall keep an audit record, containing information on audit tasks performed and the results thereof, to which the Statutory Auditor who has performed the audit shall write his or her name, sign and/or affix seals thereon.

## **(6) Compensation and severance benefits of Statutory Auditors**

The compensation and severance benefits of any Statutory Auditor shall be determined by resolution of the General Meeting of Shareholders, except where their amounts are provided for in these Articles of Incorporation. In which case, the proposals for the compensation and severance benefits payable to Directors and Statutory Auditors shall be resolved separately.

## <Where an audit committee is established>

### (1) Organization of Audit Committee

- ① The Company shall establish an Audit Committee in lieu of Statutory Auditors.
- ② The Audit Committee shall consist of three or more Directors, two thirds or more of which shall be Outside Directors.
- ③ The Audit Committee shall appoint a person to represent the Committee, in which case, the Chairman shall be an Outside Director.

### (2) Duties of Audit Committee

- ① The Audit Committee shall audit the business and accounting of the Company.
- ② The Audit Committee may request the Board to convene an Extraordinary General Meeting of Shareholders by submitting to the Board of Directors a written request stating the agenda of the meeting and the reasons for convening.
- ③ The Audit Committee may request any subsidiary of the Company to submit reports on its business activities if deemed necessary to perform its duties, in which case the Audit Committee may investigate the activities and assets of such subsidiary if such subsidiary fails to submit

reports without delay or it is deemed necessary to verify the accuracy of such reports.

- ④ The Audit Committee shall approve the appointment of an independent auditor.
- ⑤ The Audit Committee shall perform such activities as authorized by the Board of Directors other than as set forth in paragraph (1) through (4).

### **(3) Audit record**

The Audit Committee shall keep an audit record, containing information on audit tasks performed and the results thereof, to which the member of the Audit Committee who has performed the audit shall write his or her name, sign and/or affix seals thereon.

## **4. Preemptive rights**

- ① Each shareholder of the Company shall have preemptive rights to acquire any additional shares in proportion to such shareholder's shareholdings.
- ② Notwithstanding the above preemptive rights, new shares may be allotted to third persons other than existing shareholders, either by special resolution of the General Meeting of Shareholders or in any of the following cases:

1. ....
2. ....
3. ....

③ If any shareholder waives or forfeits its preemptive rights or any fractional shares are created from the allotment of new shares, such shares shall be disposed of in accordance with the resolution of the Board of Directors.

## **5. Right to request access to accounting books**

- ① Any shareholder holding 3% or more of the total number of shares issued and outstanding may request access to or photocopy of accounting books and documents in writing, stating the reasons therefor.
- ② The Company may not deny such request unless the Company proves that such request is unwarranted.

## **6. Approval of financial statements**

The Company shall submit financial statements prepared in accordance with the following standards to the General Meeting of Shareholders for approval.

- ① The financial statements (or modified financial statements reflecting qualifications, if any, in the independent auditor's report) shall be audited by an independent auditor.
- ② The financial statements shall have been prepared in accordance with the accounting standards adopted for the purpose of having the shares or depositary receipts listed on an exchange (or any accounting standards modified with the approval of the KRX under the listing agreement).

**In the case of the KOSDAQ Market:**

**Submission of auditor's report to General Meeting of Shareholders**

- ① The Company shall receive an auditor's report as audited by an independent auditor no later than one week prior to the date of the General Meeting of Shareholders and report thereon to shareholders at the meeting.
- ② The financial statements shall have been prepared in accordance with the accounting standards adopted for the purpose of having the shares or depositary receipts listed on an exchange (or any accounting standards modified with the approval of the KRX under the listing agreement).

## **7. Obligation to include requisite provisions in the Articles of Incorporation**

If deemed necessary by the KRX for investor protection purposes in consideration of the commercial laws and/or other regulatory requirements of the country of incorporation of a foreign company *etc.*, the foreign company *etc.* shall include the above requisite provisions in its Articles of Incorporation, which inclusion, however, may be omitted in respect of all or part of such requisite provisions in any of the following cases:

1. where any requisite provision is in conflict with the laws of the country of incorporation; or
2. where the inclusion of any provision in the Articles of Incorporation is restricted by an eligible foreign exchange on which shares in the company are listed.

\* NYSE Euronext, the NASDAQ Stock Market, the Tokyo Stock Exchange, the London Stock Exchange, the Frankfurt Stock Exchange, the Hong Kong Stock Exchange, and the Singapore Stock Exchange

## [Appendix 7] Comparison of Relevant Provisions of Corporate Laws between Korea and the Cayman Islands

<b>1. Shareholders meeting</b>	
<b>a. Types of shareholders meetings and when to convene meetings</b>	
<b>(1) Types of shareholders meetings</b>	
Classified into ordinary shareholders meetings and extraordinary shareholders meetings. Any shareholder holding 3% or more of total shares may request a shareholders meeting to be convened (Arts. 365 and 366 of the Commercial Act).	Under the Companies Law of the Cayman Islands, shareholders meetings are broken down into annual general meetings and extraordinary general meetings.
<b>(2) When to convene a shareholders meeting</b>	
<ul style="list-style-type: none"> <li>- Ordinary shareholders meeting: once a year. The Articles of Incorporation specifically provides for when to convene a meeting.</li> <li>- Extraordinary shareholders meeting:               <ol style="list-style-type: none"> <li>(i) Convened, in principle, by the Board of Directors (Art. 362 of the Commercial Act)</li> <li>(ii) Minority shareholder's right to request a meeting to be convened: Any shareholder holding 1.15% or more of total shares for a period of six months or more may request a shareholders meeting to be convened (Arts. 542-6 (1) of the Commercial Act).</li> </ol> </li> </ul>	Although an annual general meeting is convened as provided in the Articles of Association, it is, in general, convened by a company secretary by resolution of the Board of Directors.



<b>b. Procedure for convening a shareholders meeting and the place of meeting</b>	
Shareholders are notified, either in writing or electronically, stating the date, time, place and agenda of the meeting no later than two weeks prior to convening each shareholders meeting (Art. 363 of the Commercial Act).	Under the Companies Law of the Cayman Islands, the company may give a notice of a shareholders meeting as provided in its Articles of Association.
Convened at the head office (Art. 364 of the Commercial Act).	The Companies Law of the Cayman Islands stipulates that the Articles of Association shall provide for the place of a general meeting of shareholders.
<b>c. Matters requiring a resolution of the shareholders meetings and how a resolution is passed.</b>	
<b>(1) Matters requiring a resolution of the shareholders meeting</b>	
<ul style="list-style-type: none"> <li>- Ordinary resolution : Matters not requiring a special resolution or unanimous resolution.</li> <li>- Special resolution stock split, transfer of operation, retroactive incorporation, dismissal of directors, issuance of shares at discount, modification of the Articles of Incorporation, capital reduction, winding up, continuation of company, merger or demerger, and equity swapping and transfer.</li> <li>- Unanimous resolution <ul style="list-style-type: none"> <li>(i) Indemnification of promoters and directors</li> <li>(ii) Conversion of a corporation into a yuhanhoesa.</li> </ul> </li> </ul>	Under the Companies Law of the Cayman Islands, modification of the Articles of Association, capital reduction, the appointment of an investigator charged to investigate the activities of the company <i>etc.</i> require a special resolution of a general meeting.
<b>(2) How a resolution of the shareholders meeting is passed</b>	
An ordinary resolution requires the affirmative vote of a majority of shares present at a meeting and representing one fourth or more of total shares, while a special resolution requires the affirmative vote of two thirds or more of shares present at a meeting and representing one third or more of total shares (Arts. 434 and 368 of the Commercial Act).	<p>The Companies Law of the Cayman Islands stipulates that the Articles of Association shall provide for the quorum and affirmative vote requirement for an ordinary resolution.</p> <p>A special resolution of the general meeting requires two thirds or more of shares present; provided, however, that the Articles of Association may adjust the above requirement.</p>
<b>2. Directors and the Board</b>	
<b>a. Number of directors</b>	
Must consist of three directors or more while outside directors must represent one fourth or more (Arts. 383 and 542-8 of the Commercial Act).	The Companies Law of the Cayman Islands stipulates that the Articles of Association shall provide for matters concerning the appointment of directors.
<b>b. Appointment and dismissal of directors</b>	
Directors are appointed by ordinary resolution at the shareholders meeting (Art. 382 (1) of the Commercial Act) and dismissed by special resolution (Art. 385 (1) of the Commercial Act).	

<b>c. Board of Directors</b>	
The Board of Directors is a requisite body (Art. 361 of the Commercial Act).	
<b>(1) Procedure for convening board meetings</b>	
- Each director may convene a board meeting (Art. 390 of the Commercial Act).	The Articles of Association may include applicable provisions.
<b>(2) Procedure for the resolution of the Board of Directors</b>	
Requires the presence of a majority of directors and the affirmative vote of a majority of the directors present (the main clause of Art. 391 of the Commercial Act).	The Articles of Association may include applicable provisions.
<b>(3) Minutes of the board meeting</b>	
The board is obligated to prepare and maintain minutes of board meetings (Art. 391-3 (1) of the Commercial Act), while shareholders may have access to the minutes (Art. 391-3 (3) of the Commercial Act).	The Companies Law of the Cayman Islands stipulates that each company prepare and maintain minutes of all board meetings. On a separate note, although the Companies Law of the Cayman Islands does not provide for shareholders' access to minutes of board meetings, it is allowed to provide for such access in the Articles of Association.
<b>d. Directors' compensation</b>	
Determined at the shareholders meeting (Art. 388 of the Commercial Act).	The Companies Law of the Cayman Islands has no express provisions.
<b>e. Indemnity of directors</b>	
May be indemnified with the consent of all shareholders (Art. 400 of the Commercial Act).	The Companies Law of the Cayman Islands stipulates that a director may be held unlimitedly liable if so provided in the Articles of Association. The Articles of Association, however, commonly include provisions for indemnification of directors and provide that a director may not be indemnified from any liability arising from a fraudulent or dishonest act.
<b>3. Statutory auditors</b>	
Any listed company with assets totaling 100 billion won or more as of the close of the most recent fiscal year is required to appoint one or more full-time statutory auditors (Art. 542-10 (1) of the Commercial Act and Art. 15-1 of the Enforcement Decree of the same Act).	Under the Companies Law of the Cayman Islands, any tax exempt company is not required to have its accounting books audited or appoint auditors.
<b>4. Changes in capital</b>	
<b>a. Increase or decrease in equity capital</b>	
A rights offering (issuance of new shares) requires a resolution of the Board of Directors, while capital reduction requires a special resolution of the Commercial Act).	The Articles of Association of the applicant may include applicable provisions.

<b>b. Issuance of redeemable shares</b>	
May issue redeemable shares (Art. 345 of the Commercial Act).	The Companies Law of the Cayman Islands stipulates that shares redeemable by the company or shareholders may be issued, provided that the Articles of Association sets forth provisions for it.
<b>c. Share repurchase</b>	
Shares may be repurchased (Art. 341 of the Commercial Act and Art. 165-2 of the FSCMA).	The Companies Law of the Cayman Islands allows share repurchase as provided in the Articles of Association.
<b>d. Issuance of shares at discount</b>	
Allowed (Art. 330 of the Commercial Act and Art. 165-8 of the FSCMA).	Issuance of shares at discount is not allowed, except by an order issued by a court of the Cayman Islands as prescribed in Section 35 of the Companies Law of the Cayman Islands.
<b>5. Exercise of shareholder's rights</b>	
<b>a. Transfer of shares</b>	
No restrictions are placed on share transfer in the case of a listed company.	Under the Companies Law of the Cayman Islands, the company may provide for matters concerning restrictions on share transfer in its Articles of Association.
<b>b. Preemptive rights</b>	
Are held by shareholders, in principle, but may be transferred to non-shareholders as provided in the Articles of Incorporation (Art. 418 of the Commercial Act and Art. 165-6 of the FSCMA).	Although the Companies Law of the Cayman Islands does not have any provisions regarding this matter, it is allowed to provide for preemptive rights of shareholders in the Articles of Association.
<b>c. Shareholder derivative suit</b>	
Any shareholder holding 0.01% or more of total shares for six consecutive months or more or holding 1% or more may institute a shareholder derivative suit against any director, promoter or liquidator or a shareholder derivative suit claiming the return of benefits or holding a director liable if any person has provided benefits in relation to exercise of shareholder's rights (Arts. 403 and 542-6 (6) of the Commercial Act).	The Companies Law of the Cayman Islands has no express provisions. Cayman courts generally follow common-law precedents of the UK, under which a minority shareholder may lodge a shareholder derivative suit against or in the name of the company. A shares derivative suit may be filed: (a) where the company performs any unauthorized or tortious act; (b) where a controlling shareholder commits a fraudulent act against a minority shareholder; or (c) the procedure or content of a special resolution of the general meeting is unlawful or unjust.
<b>d. Right to injunction</b>	
Any shareholder holding 0.05% or more of total shares for six consecutive months or more or holding 1% or more may exercise the right to injunction (Arts. 402 and 542-6 (5) of the Commercial Act).	The Companies Law of the Cayman Islands has no express provisions. Upon the request of a shareholder holding one fifth or more of total shares issued and outstanding in a company (other than banks) with equity capital, the court may appoint an investigator to investigate the activities of the company and report findings in a manner as determined by the court.

<b>e. Right to request dismissal</b>	
Any shareholder holding 0.05% or more of total shares for six consecutive months or more or holding 3% or more may request a director or a liquidator to be dismissed (Arts. 385 and 542-6 (3) of the Commercial Act).	Cayman courts generally follow common-law precedents of the UK, under which a minority shareholder may lodge a shareholder derivative suit against or in the name of the company. A shares derivative suit may be filed: (a) where the company performs any unauthorized or tortuous act; (b) where a controlling shareholder commits a fraudulent act against a minority shareholder; or (c) the procedure or content of a special resolution of the general meeting is unlawful or unjust.
<b>f. Right to make a proposal</b>	
Any shareholder holding 1% or more of total shares for six consecutive months or more or holding 3% or more may propose to a director to place a certain item on the agenda of a shareholders meeting (Arts. 363-2 and 542-6 of the Commercial Act).	The Companies Law of the Cayman Islands has no express provisions.
<b>g. Right to access to accounting books</b>	
Any shareholder holding 0.1% or more of total shares for six consecutive months or more or holding 3% or more may request access to accounting books (Arts. 466 and 542-6 of the Commercial Act).	Although the Companies Law of the Cayman Islands does have any provisions regarding this matter, it is generally allowed to provide for such matters in the Articles of Association.
<b>6. Transactions with controlling shareholders and other interested parties</b>	
The company may not, in principle, extend credit (referring to lending of money or any other property with economic value, guarantees for the performance of obligations, purchase of securities of a financial assistance nature etc.) to or for the benefit of any controlling shareholder, his or her specially-related person or director (including any person instructing activities to be executed) (Art. 542-9 (1) of the Commercial Act).	<p>To the extent permitted by applicable law, a Cayman company may provide the directors and employees of the company or its subsidiary or holding company or another subsidiary of its holding company with such financial assistance as may be necessary to purchase shares in the company, the holding company or another subsidiary. To the extent permitted by applicable law, the company may provide financial support for a fiduciary purchasing shares in the company, its holding company or another subsidiary to hold shares for the benefit of the employees of the company or its subsidiary or holding company or another subsidiary of its holding company. Furthermore, under the laws of the Cayman Islands, if any third person intends to purchase shares in or make capital contribution to the company or its holding company, no legal restrictions are placed to prohibit financial support being rendered for such third person. Therefore, if a director has determined to provide financial support for a legitimate purpose in the interest of the company under the duty of care and diligence and the fiduciary duty, the company may provide financial support accordingly.</p> <p>Further, the Companies Law of the Cayman Islands has no express provisions prohibiting a company from extending loans to directors (4 (j) of a Summary of the Articles of Association and the Companies Law of the Cayman Islands).</p>

# [Appendix 8] Comparison of Relevant Provisions of Corporate Laws between Korea and Japan

<b>1. Shareholders meeting</b>	
<b>a. Types of shareholders meetings and when to convene meetings</b>	
<b>(1) Types of shareholders meetings</b>	
Classified into ordinary shareholders meetings and extraordinary shareholders meetings. Any shareholder holding 3% or more of total shares may request a shareholders meeting to be convened (Arts. 365 and 366 of the Commercial Act).	Identical to that of Korea, except that any shareholder holding 3% or more of total voting rights for six consecutive months or more may request a shareholders meeting to be convened (Arts. 296 and 297 (1) of the Company Act).
<b>b. Procedure for convening a shareholders meeting and the place of meeting</b>	
Shareholders are notified, either in writing or electronically, stating the date, time, place and agenda of the meeting no later than two weeks prior to convening each shareholders meeting, (Art. 363 of the Commercial Act).	Identical to that of Korea (Art. 299 (1) of the Company Act).
Convened at the head office (Art. 364 of the Commercial Act).	Identical; however, the Articles of Incorporation may be amended so that a meeting may be convened in Korea as well, if necessary.
<b>c. Matters requiring a resolution of the shareholders meetings and how a resolution is passed.</b>	
<b>(1) Matters requiring a resolution of the shareholders meeting</b>	
<ul style="list-style-type: none"> <li>- Ordinary resolution (Art. 368 of the Commercial Act) : Matters not requiring a special resolution or unanimous resolution.</li> <li>- Special resolution (Art. 344 of the Commercial Act) Stock split, transfer of operation, retroactive incorporation, dismissal of directors, issuance of shares at discount, modification of the Articles of Incorporation, capital reduction, winding up, continuation of company, merger or demerger, and equity swapping and transfer.</li> <li>- Unanimous resolution               <ul style="list-style-type: none"> <li>(i) Indemnification of promoters and directors.</li> <li>(ii) Conversion of a corporation into a yuhanhoses.</li> </ul> </li> </ul>	Identical for the most part, except in the case of a simple procedure (transaction amounting to less than 20% of total assets) or an informal procedure (transaction between a parent and its subsidiary).
<b>(2) How a resolution of the shareholders meeting is passed</b>	
An ordinary resolution requires the affirmative vote of a majority of shares present at a meeting and representing one fourth or more of total shares, while a special resolution requires the affirmative vote of two thirds or more of shares present at a meeting and representing one third or more of total shares (Arts. 434 and 368 of the Commercial Act).	An ordinary resolution requires the affirmative vote of a majority of shares present at a meeting and representing one fourth or more of total shares, while a special resolution requires the presence of one third or more of total shares, the affirmative vote of two thirds or more of shares present at a meeting and representing one third or more of total shares.

<b>2. Directors and the Board</b>	
<b>a. Number of directors</b>	
Must consist of three directors or more while outside directors must represent one fourth or more (Arts. 383 and 542-8 of the Commercial Act).	A listed company must have one or more directors (Art. 326 (1) of the Company Act).
<b>b. Appointment and dismissal of directors</b>	
Directors are appointed by ordinary resolution at the shareholders meeting (Art. 382 (1) of the Commercial Act) and dismissed by special resolution (Art. 385 (1) of the Commercial Act).	Directors are appointed by ordinary resolution at the shareholders meeting (Art. 329 (1) of the Company Act).
<b>c. Board of Directors</b>	
The Board of Directors is a requisite body (Art. 361 of the Commercial Act).	It is a requisite body in the case of any public company or any company requiring a committee or statutory auditor to be established (Arts. 327 (2) and 327 (1) of the Company Act).
<b>(1) Procedure for convening board meetings</b>	
Each director may convene a board meeting (Art. 390 of the Commercial Act).	A shareholder may request a board meeting to be convened in certain cases.
<b>(2) Procedure for the resolution of the Board of Directors</b>	
Requires the presence of a majority of directors and the affirmative vote of a majority of the directors present (the main clause of Art. 391 of the Commercial Act).	The resolution at a board meeting requires the presence of a majority (or a higher percentage of directors as provided in the Articles of Incorporation, if any) of directors with voting rights and the affirmative vote of a majority of the directors present (or a higher percentage of directors as provided in the Articles of Incorporation, if any).
<b>(3) Minutes of the board meeting</b>	
The board is obligated to prepare and maintain minutes of board meetings (Art. 391-3 (1) of the Commercial Act), while shareholders may have access to the minutes (Art. 391-3 (3) of the Commercial Act).	Minutes of board meetings must be prepared. A shareholder of a company required to appoint statutory auditors may request access to or photocopy of the minutes with the permission of the court. In which case, the company may not reject such request (Art. 30 of the Articles of Incorporation).
<b>d. Directors' compensation</b>	
Determined at the shareholders meeting (Art. 388 of the Commercial Act).	The compensation of directors is determined as provided in the Articles of Incorporation or by resolution of the shareholders meeting (Art. 361 (1) of the Company Act).
<b>e. Indemnity of directors</b>	
May be indemnified with the consent of all shareholders (Art. 400 of the Commercial Act).	Identical (Art. 424 of the Company Act).
<b>3. Statutory auditors</b>	
Any listed company with assets totaling 100 billion won or more as of the close of the most recent fiscal year is required to appoint one or more full-time statutory auditors (Art. 542-10 (1) of the Commercial Act and Art. 15-1 of the Enforcement Decree of the same Act).	Statutory auditors may be appointed as provided in the Articles of Incorporation.

<b>4. Changes in capital</b>	
<b>a. Increase or decrease in equity capital</b>	
A rights offering (issuance of new shares) requires a resolution of the Board of Directors, while capital reduction requires a special resolution of the shareholders meeting. (Arts. 416 and 438 of the Commercial Act).	Identical (Art. 309 (2) 9 of the Company Act).
<b>b. Issuance of redeemable shares</b>	
May be issued (Art. 345 of the Commercial Act).	Identical (Art. 108 (1) of the Company Act).
<b>c. Issuance of shares at discount</b>	
Allowed (Art. 330 of the Commercial Act and Art. 165-8 of the FSCMA).	Non-par value shares are, in principle, the norm in Japan.
<b>5. Exercise of shareholder's rights</b>	
<b>a. Transfer of shares</b>	
No restrictions are placed on share transfer in the case of a listed company.	Identical
<b>b. Preemptive rights</b>	
Are held by shareholders, in principle, but may be transferred to non-shareholders as provided in the Articles of Incorporation (Art. 418 of the Commercial Act and Art. 165-6 of the FSCMA).	Identical
<b>c. Shareholder derivative suit</b>	
Any shareholder holding 0.01% or more of total shares for six consecutive months or more or holding 1% or more may institute a shareholder derivative suit against any director, promoter or liquidator or a shareholder derivative suit claiming the return of benefits or holding a director liable if any person has provided benefits in relation to exercise of shareholder's rights (Arts. 403 and 542-6 (6) of the Commercial Act).	Any shareholder holding shares for six consecutive months may file a shareholder derivative suit (Art. 847 of the Company Act).
<b>d. Right to injunction</b>	
Any shareholder holding 0.05% or more of total shares for six consecutive months or more or holding 1% or more may exercise the right to injunction (Arts. 402 and 542-6 (5) of the Commercial Act).	Any shareholder holding shares for six consecutive months may file for injunction (Art. 360 of the Company Act).
<b>e. Right to request dismissal</b>	
Any shareholder holding 0.05% or more of total shares for six consecutive months or more or holding 3% or more may request a director or a liquidator to be dismissed (Arts. 385 and 542-6 (3) of the Commercial Act).	Any shareholder holding 3% or more of total voting rights for six consecutive months or more (excluding any shareholder who is also the company or the director in question) may exercise the right (Arts. 854 (1) and 479 (2) the Company Act).
<b>f. Right to make a proposal</b>	
Any shareholder holding 1% or more of total shares for six consecutive months or more or holding 3% or more may propose to a director to place a certain item on the agenda of a shareholders meeting (Arts. 363-2 and 542-6 of the Commercial Act).	Any shareholder holding 300 or more of voting rights for six consecutive months or more or holding 1% or more of total voting rights may exercise the right (Arts. 303 (1), 303 (2) and 305 (2) the Company Act).

g. Right to access to accounting books	
Any shareholder holding 0.1% or more of total shares for six consecutive months or more or holding 3% or more may request access to accounting books (Arts. 466 and 542-6 of the Commercial Act).	Any shareholder holding 3% or more of the total number of shares issued and outstanding may request access to or a photocopy of accounting books and documents in writing, stating the reasons therefor (Art. 44 of the Articles of Incorporation).

# [Appendix 9] Comparison of Relevant Provisions of Corporate Laws between Korea and the US

\* CCC: the California Corporation Code

1. Shareholders meeting	
a. Types of shareholders meetings and when to convene meetings	
(1) Types of shareholders meetings	
Classified into ordinary shareholders meetings and extraordinary shareholders meetings. Any shareholder holding 3% or more of total shares may request a shareholders meeting to be convened (Arts. 365 and 366 of the Commercial Act).	Broken down into annual meetings and special meetings. Any shareholder holding 10% or more of total shares may request a shareholders meeting to be convened (CCC 600(d)).
(2) When to convene a shareholders meeting	
- Ordinary shareholders meeting: Convened once a year (or once each accounting period if two or more accounting periods exist within a year). The Articles of Incorporation provides for when to convene a meeting.	- Annual meeting: Convened each year and at the time provided for in the by-laws. An annual meeting is convened to appoint directors and possibly pass certain resolutions on a date prescribed in the by-laws (CCC 600(b)).
- Extraordinary shareholders meeting: (i) Convened, in principle, by the Board of Directors (Art. 362 of the Commercial Act) (ii) Minority shareholder's right to request a meeting to be convened: Any shareholder holding 1.15% or more of total shares for a period of six months or more may request a shareholders meeting to be convened (Arts. 542-6 (1) of the Commercial Act).	- Special meeting: May be convened by the Board of Directors, the Chairman of the Board, or any shareholder holding 10% or more of total shares (CCC 600(d)).
b. Procedure for convening a shareholders meeting and the place of meeting	
Shareholders are notified, either in writing or electronically, stating the date, time, place and agenda of the meeting, no later than two weeks prior to convening each shareholders meeting, (Art. 363 of the Commercial Act).	Shareholders are notified, either in writing or electronically, no sooner than sixty days but no later than ten days prior to convening each shareholders meeting, (CCC 601(a)).
Convened at the head office (Art. 364 of the Commercial Act).	At the head office unless otherwise provided in the by-laws (CCC 600(a)).



<b>c. Matters requiring a resolution of the shareholders meetings and how a resolution is passed.</b>	
<b>(1) Matters requiring a resolution of the shareholders meeting</b>	
<ul style="list-style-type: none"> <li>- Ordinary resolution: Matters not requiring a special resolution or unanimous resolution.</li> <li>- Special resolution Stock split, transfer of operation, retroactive incorporation, dismissal of directors, issuance of shares at discount, modification of the Articles of Incorporation, capital reduction, winding up, continuation of company, merger or demerger, and equity swapping and transfer.</li> <li>- Unanimous resolution <ul style="list-style-type: none"> <li>(i) Indemnification of promoters and directors.</li> <li>(ii) Conversion of a corporation into a <i>yuhanhoesa</i>.</li> </ul> </li> </ul>	The Code draws no distinction between matters requiring an ordinary resolution from those requiring a special resolution.
<b>(2) How a resolution of the shareholders meeting is passed</b>	
An ordinary resolution requires the affirmative vote of a majority of shares present at a meeting and representing one fourth or more of total shares, while a special resolution requires the affirmative vote of two thirds or more of shares present at a meeting and representing one third or more of total shares (Arts. 434 and 368 of the Commercial Act).	Not applicable.
<b>2. Directors and the Board</b>	
<b>a. Number of directors</b>	
Must consist of three directors or more while outside directors must represent one fourth or more (Arts. 383 and 542-8 of the Commercial Act).	Directors are elected at an annual meeting, and the Code has no provisions with regards to outside directors.
<b>b. Appointment and dismissal of directors</b>	
Directors are appointed by ordinary resolution at the shareholders meeting (Art. 382 (1) of the Commercial Act) and dismissed by special resolution (Art. 385 (1) of the Commercial Act).	Directors are elected at an annual meeting.
<b>c. Board of Directors</b>	
The Board of Directors is a requisite body (Art. 361 of the Commercial Act).	
<b>(1) Procedure for convening board meetings</b>	
Each director may convene a board meeting (Art. 390 of the Commercial Act).	A board meeting may be convened by the chairman of the board, the president, any vice-president, any directors of general affairs, or two or more directors. An annual board meeting may be convened without notification if its date, time and place are prescribed in the by-laws or determined by the Board of Directors, while a special board meeting requires 4 day's prior notice by mail or 48 hours' prior notice in person or by telephone.

<b>(2) Procedure for the resolution of the Board of Directors</b>	
Requires the presence of a majority of directors and the affirmative vote of a majority of the directors present (the main clause of Art. 391 of the Commercial Act).	No particular provisions.
<b>(3) Minutes of the board meeting</b>	
The board is obligated to prepare and maintain minutes of board meetings (Art. 391-3 (1) of the Commercial Act), while shareholders may have access to the minutes (Art. 391-3 (3) of the Commercial Act).	Minutes of board meetings are prepared, but the Code does not provide for what to be stated in the minutes. Any shareholder may have access to minutes of board meetings during business hours (CCC 1601).
<b>d. Directors' compensation</b>	
Determined at the shareholders meeting (Art. 388 of the Commercial Act).	Commonly, directors are not compensated but are paid nominally for expenses incurred in attending board meetings.
<b>e. Indemnity of directors</b>	
May be indemnified with the consent of all shareholders (Art. 400 of the Commercial Act).	Not allowed unless otherwise provided in the Articles of Incorporation (CCC 204 (a)). Directors may not be indemnified in the case of willful misconduct, violations of the law, any act against the interest of the company, transactions with the company <i>etc.</i>
<b>3. Statutory auditors</b>	
Any listed company with assets totaling 100 billion won or more as of the close of the most recent fiscal year is required to appoint one or more full-time statutory auditors (Art. 542-10 (1) of the Commercial Act and Art. 15-1 of the Enforcement Decree of the same Act).	No particular provisions for statutory auditors.
<b>4. Changes in capital</b>	
<b>a. Increase or decrease in equity capital</b>	
A rights offering (issuance of new shares) requires a resolution of the Board of Directors, while capital reduction requires a special resolution of the shareholders meeting. (Arts. 416 and 438 of the Commercial Act).	Although the Board of Directors may make decisions, it may be determined by resolution of the shareholders meeting if so provided in the Articles of Incorporation.
<b>b. Issuance of redeemable shares</b>	
May be issued (Art. 345 of the Commercial Act).	May be issued if so provided in the Articles of Incorporation (CCC 402 (a)).
<b>c. Issuance of shares at discount</b>	
Allowed (Art. 330 of the Commercial Act and Art. 165-8 of the FSCMA).	No issuance of shares at discount is allowed. Par values, however, are commonly very small amounts, hardly presenting any issues with issuance at discount.

5. Exercise of shareholder's rights	
a. Transfer of shares	
No restrictions are placed on share transfer in the case of a listed company.	No restrictions are, in principle, placed on share transfer. A certain class of shares of which transfer is restricted, however, may be issued under the Articles of Incorporation (CCC 204).
b. Preemptive rights	
Are held by shareholders, in principle, but may be transferred to non-shareholders as provided in the Articles of Incorporation (Art. 418 of the Commercial Act and Art. 165-6 of the FSCMA).	Granting of preemptive rights to shareholders requires applicable provisions in the Articles of Incorporation (CCC 204 (a)(2)).
c. Shareholder derivative suit	
Any shareholder holding 0.01% or more of total shares for six consecutive months or more or holding 1% or more may institute a shareholder derivative suit against any director, promoter or liquidator or a shareholder derivative suit claiming the return of benefits or holding a director liable if any person has provided benefits in relation to exercise of shareholder's rights (Arts. 403 and 542-6 (6) of the Commercial Act).	Any person establishing his or her shareholder status, providing a guarantee for court costs incurred in connection with the suit and satisfying other requirements provided in the Code may institute derivative action (CCC 800).
d. Right to injunction	
Any shareholder holding 0.05% or more of total shares for six consecutive months or more or holding 1% or more may exercise the right to injunction (Arts. 402 and 542-6 (5) of the Commercial Act).	No particular provisions in the CCC.
e. Right to request dismissal	
Any shareholder holding 0.05% or more of total shares for six consecutive months or more or holding 3% or more may request a director or a liquidator to be dismissed (Arts. 385 and 542-6 (3) of the Commercial Act).	Any shareholder holding 10% or more of total shares may file for the dismissal of a director with the Supreme Court.
f. Right to make a proposal	
Any shareholder holding 1% or more of total shares for six consecutive months or more or holding 3% or more may propose to a director to place a certain item on the agenda of a shareholders meeting (Arts. 363-2 and 542-6 of the Commercial Act).	No particular provisions.
g. Right to access to accounting books	
Any shareholder holding 0.1% or more of total shares for six consecutive months or more or holding 3% or more may request access to accounting books (Arts. 466 and 542-6 of the Commercial Act).	Any domestic company or any foreign company maintaining accounting books and documents and minutes of shareholders meetings, board meetings and committee meetings in the State or having established the principal place of business in the State is required to provide access during business hours upon the written request of a shareholder or a holder of a voting trust certificate if the purpose of access establishes a reasonable interest to be protected (CCC 1601).

## 6. Transactions with controlling shareholders and other interested parties

The company may not, in principle, extend credit (referring to lending of money or any other property with economic value, guarantees for the performance of obligations, purchase of securities of a financial assistance nature *etc.*) to or for the benefit of any controlling shareholder, his or her specially-related person or director (including any person instructing activities to be executed) (Art. 542-9 (1) of the Commercial Act).

A transaction between the company and one or more directors or between the company and another company in which one or more directors have a material financial interest may be deemed valid (i) if a resolution of the shareholders meeting on such transaction is passed where the material content of such transaction and information on the interest of such directors have sufficiently provided (the shares held by such directors have no voting rights); or (ii) such transaction is deemed fair and reasonable for the company at a board meeting held where the meeting constitute a quorum even with the voting rights of such directors excluded and where the material content of such transaction and information on the interest of such directors have sufficiently provided (CCC 310 (a)).

# [Appendix 10] Comparison of Relevant Provisions of Corporate Laws between Korea and Singapore

## 1. Shareholders meeting

### a. Types of shareholders meetings and when to convene meetings

#### (1) Types of shareholders meetings

Classified into ordinary shareholders meetings and extraordinary shareholders meetings. Any shareholder holding 3% or more of total shares may request a shareholders meeting to be convened (Arts. 365 and 366 of the Commercial Act).

Under the Companies Act, shareholders meetings are classified into: annual general meetings and extraordinary general meetings (Arts. 175 through the Companies Act).

#### (2) When to convene a shareholders meeting

- ordinary shareholders meetings: once a year. The Articles of Incorporation provides for specifically when to convene a meeting.

A general meeting is held once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting, but so long as the company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year (Art. 175 of the Companies Act).

<p>- extraordinary shareholders meetings:</p> <p>(i) Convened, in principle, by the Board of Directors (Art. 362 of the Commercial Act).</p> <p>(ii) Minority shareholder's right to request a meeting to be convened: Any shareholder holding 1.15% or more of total shares for a period of six months or more may request a shareholders meeting to be convened (Arts. 542-6 (1) of the Commercial Act).</p> <p>(iii) Convened by any statutory auditor or the audit committee.</p> <p>(iv) Convened by a court order.</p>	<p>- Extraordinary general meeting:</p> <p>(i) The provisions of the Articles of Association are, in principle, applicable (Art. 176 of the Act).</p> <p>(ii) Minority shareholder's right to request a meeting to be convened: An extraordinary general meeting is convened within two months of the request of any shareholder holding 10% or more of total shares (Art. 176 of the Companies Act).</p>
<b>b. Procedure for convening a shareholders meeting and the place of meeting</b>	
<p>shareholders meeting Shareholders are notified, either in writing or electronically, stating the date, time, place and agenda of the meeting, no later than two weeks prior to convening each shareholders meeting, (Art. 363 of the Commercial Act).</p>	<p>As for a non-listed company, the notice of a general meeting must be given to all shareholders at least fourteen days prior to the meeting (excluding the date of notice and the date of meeting), stating the place, date and time of the meeting. As for a listed company, the notice must be given at least twenty one days prior to the meeting (excluding the date of notice and the date of meeting) (Art. 184 of the Companies Act).</p>
<p>Convened at the head office (Art. 364 of the Commercial Act).</p>	<p>The general meeting is ordinarily held at the time and place determined by the Board of Directors.</p>
<b>c. Matters requiring a resolution of the shareholders meetings and how a resolution is passed.</b>	
<b>(1) Matters requiring a resolution of the shareholders meeting</b>	
<p>- Ordinary resolution : Matters not requiring a special resolution or unanimous resolution.</p> <p>- Special resolution Stock split, transfer of operation, retroactive incorporation, dismissal of directors, issuance of shares at discount, modification of the Articles of Incorporation, capital reduction, winding up, continuation of company, merger or demerger, and equity swapping and transfer.</p> <p>- Unanimous resolution (i) Indemnification of promoters and directors. (ii) Conversion of a corporation into a <i>yuhanhoesa</i>.</p>	<p>- Ordinary resolution : Matters not requiring a special resolution.</p> <p>- Special resolution Modification of the Memorandum or Articles of Association, renaming of the company, conversion of a privately held company into a listed company, and voluntary liquidation of the company.</p>
<b>(2) How a resolution of the shareholders meeting is passed</b>	
<p>An ordinary resolution requires the affirmative vote of a majority of shares present at a meeting and representing one fourth or more of total shares, while a special resolution requires the affirmative vote of two thirds or more of shares present at a meeting and representing one third or more of total shares (Arts. 434 and 368 of the Commercial Act).</p>	<p>An ordinary resolution requires the affirmative vote of a majority of shareholders or voting rights, which requirement may be enhanced in the Articles of Association. Pursuant to Article 184 of the Singapore Companies Act, a special resolution requires the affirmative vote of three fourths or more of voting rights or by proxy where allowed.</p>

<b>2. Directors and the Board</b>	
<b>a. Number of directors</b>	
Must consist of three directors or more while outside directors must represent one fourth or more (Arts. 383 and 542-8 of the Commercial Act).	All companies must have at least one director residing in Singapore (Art. 145 of the Company Act). A listed company must have at least two non-full-time outside directors having no material business or financial relationship with the company, while a foreign listed company must have at least two outside directors residing in Singapore. The guidelines for the Singapore Corporate Governance Act (2005) require that at least one third of directors be outside directors.
<b>b. Appointment and dismissal of directors</b>	
Directors are appointed by ordinary resolution at the shareholders meeting (Art. 382 (1) of the Commercial Act) and dismissed by special resolution (Art. 385 (1) of the Commercial Act).	Directors are appointed by ordinary resolution at the general meeting. Directors may also be appointed at a board meeting. According to the Listing Regulations, if the Articles of Incorporation of a listed company has provisions for appointment of a director to fill temporary vacancy, the appointed director may hold a director position until the next annual general meeting only and becomes eligible for reappointment at such meeting. Notwithstanding anything contained in the Articles of Association or an agreement between the company and the director in question, a public company may dismiss such director by ordinary resolution before the expiration of term of office.
<b>c. Board of Directors</b>	
The Board of Directors is a requisite body (Art. 361 of the Commercial Act).	
<b>(1) Procedure for convening board meetings</b>	
- Each director may convene a board meeting (Art. 390 of the Commercial Act).	The Articles of Association provide that a director may convene a board meeting at any time. The general affairs section of the company may convene a board meeting upon the request of a director.
<b>(2) Requirements for a resolution of the Board of Directors</b>	
Requires the presence of a majority of directors and the affirmative vote of a majority of the directors present (the main clause of Art. 391 of the Commercial Act).	Requires the presence of a majority of directors and the affirmative vote of a majority of the Directors present unless otherwise provided in the Articles of Association.
<b>(3) Minutes of the board meeting</b>	
The board is obligated to prepare and maintain minutes of board meetings (Art. 391-3 (1) of the Commercial Act), while shareholders may have access to the minutes (Art. 391-3 (3) of the Commercial Act).	Under Article 188 of the Companies Act, all companies must prepare and maintain minutes of any board meeting or general meeting within one month of such meeting. The chairman must sign such minutes, which minutes are used as prima facie evidence in relevant litigation.

<b>d. Directors' compensation</b>	
<p>Determined at the shareholders meeting (Art. 388 of the Commercial Act).</p>	<p>The Listing Regulations stipulate that compensation of non-full-time directors be in finalized amounts and may not be in a form of a profit or sales commission or at a certain percentage. The compensation of full-time directors might not include a form of a sales commission or a certain percentage. The compensation of directors may not be raised unless the proposal for such raise is notified in a notice of the general meeting and supported by a resolution at the general meeting.</p>
<b>e. Indemnity of directors</b>	
<p>May be indemnified with the consent of all shareholders (Art. 400 of the Commercial Act).</p>	<p>A director may be indemnified from and against his or her liability with the consent of all shareholders, which indemnification must be specific and clear.</p>
<b>f. Outside directors</b>	
<p>An outside director is a director who is not engaged in the regular business of a company and does not fall within any of the following scopes:</p> <ul style="list-style-type: none"> <li>- any director or employee engaged in the regular business of the company or any director, statutory auditor or employee who has engaged in the regular business of the company within the last two years;</li> <li>- the largest shareholder or such shareholder's spouse, lineal ascendant or descendant if such shareholder is a natural person;</li> <li>- any director, statutory auditor or employee of the largest shareholder if such shareholder is a body corporate;</li> <li>- any spouse or lineal ascendant or descendant of any director or statutory auditor;</li> <li>- any director, statutory auditor or employee of the parent or subsidiary of the company;</li> <li>- any director, statutory auditor or employee of a corporate body maintaining a transactional relationship or sharing material interests with the company; or</li> <li>- any director, statutory auditor or employee of any other company of which any director is a director or employee of the company.</li> </ul>	<p>According to COCG 2.1,</p> <ul style="list-style-type: none"> <li>- The Board of Directors must have independence and at least one third of its members must be independent directors.</li> <li>- Independent director refers to any person who has no relationship with the listed company, its affiliate, officers and employees that may affect his or her business judgment.</li> <li>- Examples of non-independent directors are as follows: <ul style="list-style-type: none"> <li>(a) any person who is or was an employee of the company or its affiliate within the last three years;</li> <li>(b) any person whose immediate family member was holding an executive position (a position of which compensation is determined in a committee) of the company or its affiliate within the last three years;</li> <li>(c) any person who or whose immediate family member currently receives or received in the preceding fiscal year compensation from the company or its affiliate regardless of the director position; or</li> <li>(d) any person who or whose immediate family member is a controlling shareholder holding 5% or more of the total shares.</li> </ul> </li> </ul> <p>According to COCG Guideline 4.1,</p> <ul style="list-style-type: none"> <li>- A listed company must establish a nominating committee to nominate board members.</li> <li>- The nominating committee must consist of at least three directors, where its chairman and majority must be independent directors.</li> <li>- The nominating committee must determine each year whether each director is independent.</li> </ul>

3. Statutory auditors	
Any listed company with assets totaling 100 billion won or more as of the close of the most recent fiscal year is required to appoint one or more full-time statutory auditors (Art. 542-10 (1) of the Commercial Act and Art. 15-1 of the Enforcement Decree of the same Act).	Under Article 205 of the Companies Act, directors are required to designate statutory auditors of the company within three months of incorporation. Each designated statutory auditor must hold his or her position until the first annual general meeting is finished. The company may designate statutory auditors at each annual general meeting.
4. Changes in capital	
a. Increase or decrease in equity capital	
A rights offering (issuance of new shares) requires a resolution of the Board of Directors, while capital reduction requires a special resolution of the shareholders meeting (Arts. 416 and 438 of the Commercial Act).	The Board of Directors may not exercise rights to issue shares (including securities convertible to shares) without an ordinary resolution at a general meeting (Art. 611 of the Companies Act). The board may be granted limited authority with respect to issuance of a particular share or general authority for a certain period with the approval of the general meeting and may not be granted unconditional authority or authority under particular conditions.
b. Issuance of redeemable shares	
May be issued (Art. 345 of the Commercial Act).	Under Article 70 of the Companies Act, any company with share capital may, if authorized under its Articles of Association, issue preferred shares to be redeemed either at the option of the company or on such terms and in such manner as provide in the Articles of Association.
c. Share repurchase	
Shares may be repurchased (Art. 341 of the Commercial Act and Art. 165-2 of the FSCMA).	Share repurchase must be approved in advance in the form of general mandate granted for the purpose of share repurchase expires (i) at the end of the annual shareholders. The general mandate granted for the purpose of repurchase of treasury stock expires (i) at the end of the annual general meeting of the next year, (ii) upon the expiry of the period in which the annual general meeting of the next year is to be held, or (iii) when the above mandate is revoked or modified by ordinary resolution of shareholder at an annual general meeting. Shares to be repurchased may be traded (i) in transactions on exchange on the Central Limit Order Book Trading System by one or more authorized stock brokers appropriately appointed for the purpose of the transactions by the company or (ii) in over-the-counter transactions as determined or contemplated appropriate by directors.
d. Issuance of shares at discount	
Allowed (Art. 330 of the Commercial Act and Art. 165-8 of the FSCMA).	The concept of par value shares is not recognized under the laws of Singapore.



5. Exercise of shareholder's rights	
a. Transfer of shares	
No restrictions are placed on share transfer in the case of a listed company.	Article 126 of the Singapore Companies Act, the company registers only the transfer of shares for which an appropriate instrument of transfer is delivered to the company. In the case of a listed company, no restrictions are placed on transfer of fully paid securities except by law or the Listing Regulations.
b. Preemptive rights	
Are held by shareholders, in principle, but may be transferred to non-shareholders as provided in the Articles of Incorporation (Art. 418 of the Commercial Act and Art. 165-6 of the FSCMA). If new shares are issued in a follow-on offering, the discount rate applicable to the base share price may not exceed 30%. In the case of a private offering of new shares, the discount rate may not exceed 10%.	The price of new shares issued by a listed company must be no less than the weighted average price, as discounted at 10%, of transactions effected on the Singapore Stock Exchange throughout the trading day on which the allocation or subscription agreement is entered into. If shares in a listed company are traded during only part of the trading day, the weighted average price must be calculated based on the transactions effected from the preceding trading day until the signing of the allocation or subscription agreement.
c. Shareholder derivative suit	
Any shareholder holding 0.01% or more of total shares for six consecutive months or more or holding 1% or more may institute a shareholder derivative suit against any director, promoter or liquidator or a shareholder derivative suit claiming the return of benefits or holding a director liable if any person has provided benefits in relation to exercise of shareholder's rights (Arts. 403 and 542-6 (6) of the Commercial Act).	Under Article 216 A of the Companies Act, a shareholder may file a derivative suit against directors for and on behalf of the company.
d. Right to injunction	
Any shareholder holding 0.05% or more of total shares for six consecutive months or more or holding 1% or more may exercise the right to injunction (Arts. 402 and 542-6 (5) of the Commercial Act).	A shareholder must file the suit with the court, and the court may issue an injunctive order after reviewing the cause of action.
e. Right to request dismissal	
Any shareholder holding 0.05% or more of total shares for six consecutive months or more or holding 3% or more may request a director or a liquidator to be dismissed (Arts. 385 and 542-6 (3) of the Commercial Act).	Provided in the Articles of Association of the listed company.
f. Right to make a proposal	
Any shareholder holding 1% or more of total shares for six consecutive months or more or holding 3% or more may propose to a director to place a certain item on the agenda of a shareholders meeting (Arts. 363-2 and 542-6 of the Commercial Act).	Provided in the Articles of Association of the listed company.

<b>g. Right to access to accounting books</b>	
Any shareholder holding 0.1% or more of total shares for six consecutive months or more or holding 3% or more may request access to accounting books (Arts. 466 and 542-6 of the Commercial Act).	Provided in the Articles of Association of the listed company.
<b>6. Transactions with controlling shareholders and other interested parties</b>	
The company may not, in principle, extend credit (referring to lending of money or any other property with economic value, guarantees for the performance of obligations, purchase of securities of a financial assistance nature <i>etc.</i> ) to or for the benefit of any controlling shareholder, his or her specially-related person or director (including any person instructing activities to be executed) (Art. 542-9 (1) of the Commercial Act).	

## [Appendix 11] Comparison of Relevant Provisions of Corporate Laws between Korea and Hong Kong

<b>1. Shareholders meeting</b>	
<b>a. Types of shareholders meetings and when to convene meetings</b>	
<b>(1) Types of shareholders meetings</b>	
Classified into ordinary shareholders meetings (annually) and extraordinary shareholders meetings.	Classified into ordinary shareholders meetings (annually) and extraordinary shareholders meetings.
<b>(2) When to convene an ordinary shareholders meeting</b>	
- once in every calendar year within 3 months of the closing of the previous fiscal year.	An ordinary shareholders meeting is held once in every calendar year and within 15 months after the holding of the last preceding ordinary shareholders meeting.
<b>(2) Right to convene an shareholders meeting</b>	
- Convened, in principle, by the Board of Directors. - Any shareholder holding 1.15% or more of total shares for a period of six months or more may request a shareholders meeting to be convened (Arts. 542-6 (1) and 366 of the Commercial Act).	- Convened, in principle, by the Board of Directors. - pursuant to Art. 115 A of the Company Ordinance (Co. Ord.), members representing not less than 2.5% of the total voting rights or 50 members holding shares in the company on which there has been paid up an average sum, per member, of not less than HKD 2,000 may request a shareholders meeting. - pursuant to Art. 113 of the Co. Ord. members holding at the date of requisition 5% of the paid-up capital with voting rights of the company may request an extraordinary shareholders meeting.

<b>b. Procedure for convening a shareholders meeting and the place of meeting</b>	
Shareholders are notified, either in writing or electronically, stating the date, time, place and agenda of the meeting, no later than two weeks prior to convening each shareholders meeting, (Art. 363 of the Commercial Act).	As for ordinary shareholders meeting or extraordinary shareholders meeting a written notice must be given to all shareholders at least 21 days prior to the meeting that require special resolutions; and for all other extraordinary shareholders' written notice must be given to all shareholders at least 14 days prior to the meeting
Convened at the head office (Art. 364 of the Commercial Act)	The meeting is held at the time and place determined by the Board of Directors.
<b>c. Matters requiring a resolution of the shareholders meetings</b>	
<b>(1) Type of resolution</b>	
Ordinary resolution and special resolution	Ordinary resolution and special resolution
<b>(2) How a resolution of the shareholders meeting is passed</b>	
- ordinary resolution: requires the affirmative vote of a majority of shares present at a meeting and representing one fourth or more of total shares (Arts. 434 and 368 of the Commercial Act)	Ordinary resolution requires the affirmative vote of a majority of shares present at the meeting.
- special resolution: requires the affirmative vote of two thirds or more of shares present at a meeting and representing one third or more of total shares.	Special resolution requires the affirmative vote three fourths or more of shares present at the meeting.
<b>(3) Ordinary resolution matters</b>	
All matters not reserved for special resolution	The following are reserved as special resolution matters - Review and approval of financial documents - Approval of directors' reports and auditor's reports - Declaration of dividends and approval thereof - Appointment of new directors or replacement directors after resignation - Dismissal of director - Appointment of auditor - Particular transactions allowed(through ordinary resolution) under the Articles of Incorporation
<b>2. Directors and the Board</b>	
<b>a. Number of directors</b>	
Must consist of three directors or more while outside directors must represent one fourth or more (Arts. 383 and 542-8 of the Commercial Act).	All companies must have at least one director An unlisted company is not subject to any outside director requirements
<b>b. Appointment and dismissal of directors</b>	
(1) Appointment of Directors: by ordinary resolution at the shareholders meeting	Appointment of Directors: by ordinary resolution at the shareholders meeting
(2) Dismissal of Directors: by special resolution at the shareholders meeting	Dismissal of Directors: by ordinary resolution at the shareholders meeting (cannot impose higher requirement)
<b>c. Board of Directors</b>	
<b>(1) Procedure for convening board meetings</b>	
Each director may convene a board meeting	Each director or the secretary may convene a board meeting

<b>(2) Requirements for a resolution of the Board of Directors</b>	
Requires the presence of a majority of directors and the affirmative vote of a majority of the directors present.	As set forth in the Articles of Incorporation (in principle, affirmative vote of majority of directors present).
<b>(3) Minutes of the board meeting</b>	
The directors and auditor present must sign off on the minutes and any dissents must be recorded thereon.	The Chairman of the Board must sign off on the minutes.
<b>e. Indemnity of directors</b>	
May be indemnified with the consent of all shareholders.	In principle requires the consent of all shareholders.
<b>f. Qualification of Outside directors</b>	
An outside director must not have engaged in the regular business of the company within the last two years; must not have special relations with the largest shareholder; must not be employed by a corporate body maintaining a transactional relationship with the company, etc.	Not required for unlisted companies.
<b>3. Statutory auditors</b>	
<b>a. Requirement of statutory auditor</b>	
Any listed company with assets totaling 100 billion won or more is required to appoint one or more full-time statutory auditors and to put in place an audit committee if the assets exceed 2 trillion won.	Statutory auditors are required- however, the concept of statutory auditors is different in Korea as this requirement is usually satisfied with the company entering into a contract with an accounting firm.
<b>b. Duties of statutory auditor</b>	
Work and financial audits.	Financial audits.
<b>4. Changes in capital</b>	
<b>a. Increase or decrease in equity capital</b>	
A rights offering (issuance of new shares) requires a resolution of the Board of Directors, while capital reduction requires a special resolution of the shareholders meeting.	A rights offering requires the resolution of the board of directors (in the event generally authorized by the resolution of the shareholders), while capital reduction requires a special resolution of the shareholders meeting.
<b>b. Issuance of redeemable shares</b>	
May be issued if provided for in the Articles of Incorporation (Art. 345 of the Commercial Act).	May be issued if provided for in the Articles of Incorporation.
<b>c. Share repurchase</b>	
Shares may be repurchased (Art. 165-2 of the FSCMA). (Certain conditions such as market purchase must be complied with).	A company may repurchase its own shares if allowed under the Articles of Incorporation. The Co. Ord. only allows such repurchase to be carried out through the paid-in capital for the stocks to be repurchased, dividends or profit allowed to be redistributed ("dividends and redistributions") or the capital paid in for newly issued stocks.
<b>d. Issuance of shares at discount</b>	
Allowed under Art. 165-8 of the FSCMA.	Issuance at a discount is prohibited in principle (requires court approval and the like).

5. Exercise of shareholder's rights	
a. Transfer of shares	
No restrictions.	No restrictions except for those transfers by mentally ill persons or minors.
b. Preemptive rights	
Preemptive rights are held by shareholders, in principle, and any issuance to non-shareholders in exclusion of such preemptive rights need to be specifically set forth in the Articles of Incorporation.	Preemptive rights are held by shareholders, in principle, and any issuance to non-shareholders in exclusion of such preemptive rights requires the resolution of the board of directors with authority granted by the resolution at a shareholders meeting.
c. Shareholder derivative suit	
Any shareholder holding 0.01% or more of total shares may institute a shareholder derivative suit against any director, promoter or liquidator or a shareholder derivative suit claiming the return of benefits or holding a director liable if any person has provided benefits in relation to exercise of shareholder's rights (Art. 542-6 (6) of the Commercial Act).	In order to protect minority shareholders from abuse of status by majority shareholders the Co. Ord. allows the following measures: 1. Statutory Relief in the event the business of the company was conducted in such a manner to prejudice the shareholders as a whole or certain shareholders. 2. Lawsuits or allowing participation through derivative suits in the event of abuse of power. 3. Application for appointment of auditor for investigation of the business of the company by the Hong Kong Ministry of Finance (where the Ministry of Finance is allowed to appoint an auditor under certain conditions) whereby such auditor is authorized to audit the company pursuant to the Co. Ord. and submit an audit report (with such audit report being able to be used as evidence). 4. Application for dissolution of company in the event such dissolution is warranted.
d. Right to request dismissal	
Any shareholder holding 0.05% or more of total shares may request a director or a liquidator to be dismissed (Art. 542-6 (3) of the Commercial Act).	May request disqualification to the court as to a director (Co. Ord 168P) if he or she is convicted of an indictable offense in connection with the promotion, formation, management, liquidation, receivership or management of the company (Co. Ord 168E); exhibits continued violations of the Co. Ord (Co. Ord 168F); exhibits fraud in the course of winding up of the company (Co. Ord 168G).
e. Appraisal Right	
Any shareholder filing a written notice of objection to the company against comprehensive exchange of shares, comprehensive transfer of shares (material part or all), sale of business, merger, split and the like may request an appraisal.	N/A

**f. Transactions with controlling shareholders and other interested parties**

The company may not, in principle, extend credit to or for the benefit of any controlling shareholder, his or her specially-related person or director (Art. 542-9 (1) of the Commercial Act).

In the event that a director has a contractually interested relationship, directly or indirectly with the company or is proposed of the same the director must disclose the nature of such contents to the board of directors.

A director shall be deemed to have satisfied obligation to declare a interested relationship in the event he or she provides a general notice that an interested relationship shall arise by the company entering into a contract or transaction with a certain company for which he or she is a shareholder or director of; provided that, in order for such notice to be effective such director must take necessary measures so that such interested relationship is raised and recited in the very next board of directors meeting convened after notice of the same has been given.

The director with such interested relationship is prohibited from voting on such matter at the board of directors meeting.

A company shall not, directly or indirectly make a loan, guarantee or provide any security in connection with a loan to a director, his or her family (specially related person) or a company controlled by them, unless specially allowed under the Co. Ord. or without the approval at the shareholders meeting (Co. Ord. 157 H), and such director is obligated to return any such loan, guarantee or security upon violation of the same (Co. Ord. 157 I), and may be subject to criminal penalty (Co. Ord 157 J).

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I sincerely hope that this guidebook will help the KOSPI Market and the KOSDAQ Market present consistent guidelines for listing review and take decision making processes in listing review to the next level.

**Chairman of the Listing Committee of the KOSPI Market**

I do think that this guidebook will serve as a guiding light for not only an extensive range of companies intending to have their shares listed on the KRX but also the working level personnel of securities companies providing listing-related services and even CEOs and top decision makers.

**Chairman of the Listing Committee of the KOSDAQ Market**

