

Impact of the Recent Amendments to the Korean Commercial Code on Corporate Governance

1. Introduction

On July 22, 2025, the Korean government promulgated a partial amendment to the Korean Commercial Code (the “KCC”) following its passage at the National Assembly plenary session on July 3, 2025. This amendment package, long advocated by the Democratic Party and included among President Lee Jae-myung’s key campaign commitments, introduces a series of structural changes to Korean corporate governance.

For the first time, the amended KCC expands directors’ duty of loyalty, which has traditionally been owed to the company only, to shareholders. It also mandates (i) hybrid shareholders meeting that allow real-time electronic participation alongside in-person attendance for large listed companies, (ii) enhances board independence by redesignating “outside directors” as “independent directors,” and expands the scope of the Aggregate 3% Rule (as defined below) with respect to audit committee member elections.

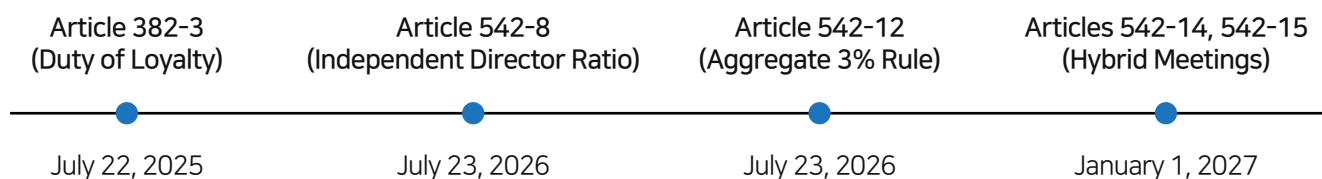
Collectively, the reforms reflect a broader policy shift toward strengthening shareholder protections, particularly for minority and institutional investors. In parallel, they impose heightened governance expectations on Korean companies, requiring boards to evaluate potential shareholder conflicts more holistically and with greater procedural rigor. This update outlines the key statutory changes and highlights practical considerations for boards and management.

2. Key Amendments and Practical Implications

The principal reforms under the KCC amendment are summarized below and, in general, will become effective one year following promulgation; except that the expansion of the duty of loyalty under Article 382-3 became effective on July 22, 2025, and the provisions on hybrid meetings will take effect on January 1, 2027.

Provision	Summary
Article 382-3	Directors’ duty of loyalty broadened to include shareholders
Article 542-8	At least one-third of the Board must consist of independent directors
Article 542-12	Aggregate 3% Rule applies to all audit committee appointments
Articles 542-14, 542-15	Mandatory hybrid shareholders meetings for large listed companies

Timeline of Effective Dates for KCC Amendments



Proposals relating to mandatory cumulative voting and expanded separate election of audit committee members were not adopted in this round of amendments and remain under further legislative review.

(1) Expansion of Directors' Duty of Loyalty (Article 382-3)

Among the most consequential changes is the expansion of the directors' duty of loyalty to include shareholders. Prior to the amendment, Article 382-3 required directors to perform their duties faithfully in accordance with applicable law and the company's articles of incorporation. The amended Article 382-3 now expressly provides that directors must also act in the interest of shareholders and treat all shareholders equitably.

This broadened fiduciary duty is expected to heighten scrutiny of transactions involving controlling shareholders or related parties. In particular, boards must ensure that such transactions are not only in the company's interest but also fair to all shareholders, including minority shareholders. Directors may face increased legal risk in derivative suits if they approve actions that are detrimental to shareholders as a whole. In addition, capital return strategies such as share buybacks without a cancellation plan may be criticized as misaligned with shareholder interests under the new standard.

(2) Redesignation and Appointment Ratio of Independent Directors (Article 542-8)

The term "outside director" has been formally replaced with "independent director," defined as a director capable of exercising judgment independent from management and internal directors. Listed companies, subject to exemptions set forth by Presidential Decree, must ensure that independent directors comprise at least one-third of the board, up from the previous minimum of one-fourth.

This structural reform aims to strengthen board independence and ensure more rigorous oversight in transactions involving conflicts of interest, such as intra-group restructurings and affiliate listings. Companies that fall below the new threshold must appoint additional independent directors within one year of the effective date of the amended KCC.

(3) Application of the Aggregate 3% Rule to Audit Committee Appointments (Article 542-12)

The amended Article 542-12 extends the application of the aggregate 3% rule, which limits the

combined voting rights of a controlling shareholder and its specially related parties to 3% (the **"Aggregate 3% Rule"**), to all audit committee elections, regardless of director classification. Under the prior regime, this cap applied only when the nominee was not an outside director. The revised Article 542-12 now applies uniformly, including to candidates for independent director positions.

The uniform application of the Aggregate 3% Rule eliminates a key loophole and is expected to curtail controlling shareholders' influence over audit committee composition. It also increases the importance of securing minority shareholder support, particularly in contested elections.

(4) Mandatory Hybrid Shareholders Meetings (Articles 542-14 and 542-15)

Effective January 1, 2027, large listed companies (as defined by Presidential Decree) will be required to convene hybrid shareholders meetings that allow real-time electronic participation alongside in-person attendance. Shareholders participating electronically must be granted the same rights as those attending physically. Companies must also record and retain meeting proceedings for five years and store copies at their head office for at least three months after the meeting. Operation of the electronic meeting system may be delegated to a third-party administrator, subject to confidentiality safeguards.

The introduction of hybrid shareholders meetings is expected to significantly enhance shareholder engagement, particularly among individual investors previously limited by physical attendance barriers. To ensure a smooth transition, companies should begin preparing by securing appropriate IT infrastructure, establishing robust shareholder verification systems, and revising meeting protocols. This change brings Korean practice into closer alignment with international standards.

3. Practical Recommendations for Companies

(1) Expansion of Duty of Loyalty: Shifting from Formal to Functional Boards

The amendment to Article 382-3 marks a pivotal shift in Korean corporate governance by expressly extending the directors' duty of loyalty to shareholders. Boards are now expected to move beyond a formal compliance approach and operate as active oversight bodies that uphold both corporate and shareholder interests. This is particularly relevant for transactions involving controlling shareholders, where fiduciary duties face heightened scrutiny.

To mitigate legal risks and strengthen governance, companies should reassess board composition, prioritizing not only legal independence but also on substantive expertise in areas such as law, finance, and relevant industry. Enhancing generational and professional diversity can strengthen board deliberation and long-term strategy.

In parallel, boards should adopt transparent, performance-based compensation frameworks that tie director remuneration to long-term shareholder value. Finally, internal governance infrastructure must be reinforced through tools such as board secretariats, agenda pre-distribution, and access to external legal or financial advisors, enabling independent, informed oversight.

(2) Compliance with Enhanced Independent Director Ratio

Under the amended Article 542-8, listed companies are now required to ensure that at least one-third of their board is composed of independent directors, up from the prior one-fourth requirement. This heightened requirement reflects the policy objective of improving board independence, particularly in companies where conflicts of interest are more likely to arise.

(3) Application of the Aggregate 3% Rule for Audit Committee Appointments

The revision to Article 542-12 standardizes the application of the Aggregate 3% Rule, making it applicable to all audit committee nominees, regardless of whether they are classified as independent directors. This eliminates the previous exemption and has the effect of reducing the influence of controlling shareholders in audit committee appointments.

Given this change, companies should simulate voting outcomes in advance of shareholders meetings and identify any vulnerabilities in vote alignment. Early and targeted engagement with institutional and minority shareholders will be critical to secure support. Companies should also stay vigilant against activist fund tactics, including cumulative voting and nominee coordination, which may gain traction under the new voting dynamics.

(4) Preparing for Mandatory Hybrid Shareholders Meetings

Starting from January 1, 2027, large listed companies will be required to hold hybrid shareholders meetings pursuant to amended Articles 542-14 and 542-15, allowing real-time electronic participation alongside physical attendance. This reform reflects a broader push toward shareholder accessibility and transparency, and aligns Korea with leading global practices.

In preparation, companies must ensure that digital infrastructure, including voting platforms and backup systems, is secure, stable, and compliant with statutory requirements. Clear and investor-friendly disclosures should be prepared in advance, covering matters such as director qualifications, dividend policies, and governance frameworks. In addition, procedural protocols must be established for live Q&A, anonymous participation, recordkeeping, and virtual meeting setting. These operational guidelines will be essential to ensure smooth execution and preserve meeting integrity in a hybrid environment.

4. Conclusion

The recent amendments to the KCC mark a significant turning point in Korea's corporate governance landscape. The expansion of directors' duty of loyalty, enhanced board independence, and the introduction of hybrid shareholders meetings system are poised to reshape boardroom practices and shareholder engagement.

Companies should view these reforms not as regulatory hurdles, but as opportunities to strengthen governance and build market trust. Companies that adapt early and decisively will be best positioned to meet evolving legal and market expectations.

Yulchon remains committed to providing timely insight and strategic counsel as clients navigate Korea's evolving corporate governance framework.

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