

## GOVT APPROVES REVISION BILL TO STRENGTHEN RIGHTS OF GENERAL SHAREHOLDERS IN SPLIT-OFF OF LISTED COMPANY

The government approved an amendment to the Enforcement Decree of the Financial Investment Services and Capital Markets Act (FSCMA) at the state council held on December 20. This amendment is a follow-up to the “measures to improve protection for general shareholders in IPO of split-off subsidiary” announced on September 5.<sup>1</sup>

### **KEY DETAILS AND ANTICIPATED EFFECT**

Until the end of this year, all three layers of general shareholder protection system regarding IPO of split-off subsidiary become established and begin operation. With this system, it is expected that companies will pay sufficient attention to the rights and interests of general shareholders when they pursue a split-off and losses incurred to general shareholders in a split-off of a subsidiary, which has been pointed out repeatedly, will be effectively prevented.

- a) **(ENHANCED DISCLOSURE)** From October 18 this year, companies seeking to split off a subsidiary disclose their business restructuring plan including the purpose of split-off, anticipated effect, shareholder protection measures and listing plan on their material fact reports.
- As a result, general shareholders and investors can get adequate information related to the split-off and make informed decisions at general meetings of shareholders, when exercising the right to request companies to purchase their shares and when making investments.
- b) **(RIGHT TO REQUEST COMPANY TO PURCHASE SHARES)** The amendment approved today grants shareholders, who dissent from the company’s split-off decision, a right<sup>2</sup> to request that company purchase his or her stocks when the company’s board of directors reaches a resolution to make a split-off.
- If a majority of general shareholders is opposed to the split-off or that a potential drop in company value is triggered, pursuing a split-off in itself can be difficult. Therefore, in essence, listed companies can pursue a split-off only when they prepare shareholder protection measures in place and have convinced general shareholders to go along with their split-off plan.

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<sup>1</sup> Please click [here](#) to see the press release dated September 5, 2022.

<sup>2</sup> When shareholders’ right to request stock purchase is exercised, purchasing price is determined based on consultation between shareholders and the company. If no agreement is reached, then a market price (an arithmetic mean of the weighted average of stock prices two months, one month and one week from the day prior to the company board’s split-off decision) will be applied. If still no agreement is reached on the purchasing price, a motion to determine a purchasing price can be filed at the court.

- c) **(STRENGTHENED LISTING REVIEW)** From September 28, parent companies' efforts to ensure the protection of general investors are being investigated when a split-off subsidiary plans to go public.
- In addition, the listing rules have been amended to ensure that there are no restrictions for shareholders of a parent company to dispose of subsidiary's stakes, when the parent company chooses to distribute dividends in kind of its subsidiary's stocks to its general shareholders as a measure to protect general shareholders.
  - By comprehensively reviewing the implementation status of shareholder protection measures disclosed in the listing process and companies' efforts in responding to shareholder protection issues, etc., it is expected that the protection of the rights and interests of general shareholders will be effectively guaranteed.

Since the announcement of the "measures to improve protection for general shareholders in IPO of split-off subsidiary" on September 5, there are already positive changes taking place in the market as some companies voluntarily withdrew their split-off plans and others are making improvements to their shareholder protection mechanisms.

## **FURTHER PLAN**

The amendment will be promulgated within this year and enter into force immediately after promulgation. Throughout this year, the FSC has made several efforts to resolve the problem of insufficient protections for general shareholders, which has been identified as a source of "Korea discount" in our capital markets, by devising and seeking an array of measures to improve regulations as shown below.

### <Regulatory Improvements Announced in 2022 on General Shareholder Protection>

- Application of the 6-month lockup period for executives of newly listed companies even when they acquired shares through stock options prior to IPO and decided to exercise stock options after IPO (*Feb. 23*)
- Improvement of the corporate governance disclosure form requiring companies to indicate their shareholder protection policy when changes in corporate ownership structure occur, explain more thoroughly details of internal transactions with affiliated firms, and state their CEO succession policy (*Mar. 7*)
- Enhanced disclosure in split-off, introduction of shareholders' right to request purchase of stocks from company, and strengthened listing review on split-off subsidiaries (*Sep. 5*)
- Introduction of ex-ante disclosure rule for insider transactions at least 30 days prior to the expected date of trade (*Sep. 13*)
- Trade restriction in capital markets and restriction for board appointment at listed companies for those committing unfair trading practices (*Sep. 26*)
- Measures to protect general investors in mergers and acquisitions taking place via stock acquisition (*in this year*)

In 2023, the FSC will work to ensure seamless implementation of the newly introduced measures, while seeking and pursuing new policy initiatives that will continue to help improve the rights and interests of general shareholders. In addition, authorities will make active efforts to revamp the areas of domestic regulations that are deemed to be inconsistent with global regulatory standards.

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