

## M&amp;A

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## Korea's Another Step to Adopt Poison Pill - Approved at Cabinet Meeting

The revision bill proposed by the Ministry of Justice to incorporate the poison pill scheme into the Korean Commercial Code (the "KCC") was approved at a Cabinet meeting on March 2, 2010. The revision bill is expected to be submitted to the National Assembly for approval in September of 2010. If the revision bill is passed by the National Assembly according to the expected schedule, it will become effective one year after the promulgation, i.e., in the latter half of 2011. As noted in [our previous M&A newsletter "Korea Anticipating to Adopt Poison Pill" dated November 13, 2009](#), the poison pill scheme is proposed by the Ministry of Justice to allow existing shareholders of a company to fend off hostile takeover attempts by purchasing new shares of the company at a discount price, causing a dilution in the shareholding ratio of another shareholder or a group of shareholders with a takeover intent.

The proposed poison pill clause allows a company to issue warrants to its shareholders under the following conditions: (i) the type and number of authorized issuance of warrants is specified in the articles of incorporation of a company (the "AOI"); (ii) the board approves the type and number of shares underlying the warrants, the exercise price, exercise period and other exercise conditions and (iii) the warrants are issued only to existing shareholders without consideration. In order to specify the issuance of the warrants in the AOI, the shareholders need to approve the amendment of the AOI by a special resolution which requires an affirmative vote of the shareholders holding at least two-thirds of the voting shares present at the meeting, in person or by proxy, and at least one-third of the voting shares issued and outstanding. As such, the board and the shareholders would both be involved in the adoption process of the poison pill scheme, lowering the risk of the scheme being solely adopted by the board in contrary to the shareholders' interest.

One noteworthy change that was made to the revision bill since its introduction in November 2009 relates to the voting requirement of the board. In the previous bill proposed by the Ministry of Justice, the board was to approve the details of the warrants by a simple majority vote. According to the new revision bill, the board is required to approve the details of the warrants by a supermajority vote (i.e., an affirmative vote of two-thirds of the entire board). Additionally, the redemption of all or some part of the issued warrants requires an affirmative vote of two-thirds of the entire board. Requiring a supermajority vote of both the shareholders and the board will work as a mechanism to prevent the possible abuse of the poison pill by management.

Please refer to the M&A newsletter mentioned above for the details of the revision bill concerning the poison pill scheme.

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