

Table of Contents

The Authors	3
List of Abbreviations	17
General Introduction	19
§1. THE GENERAL BACKGROUND OF KOREA	19
I. Geography	19
II. Cultural Composition	19
III. Political System	20
A. The Constitution	20
B. The President and the Executive Branch	20
C. Local Autonomy	20
D. The National Assembly and Political Parties	21
E. The Courts and the Bar	21
IV. Population and Employment Statistics	22
V. Corporation and Partnership Statistics	22
§2. BASIC INFORMATION ON THE LEGAL SYSTEM	22
I. Statutes	22
II. Judicial Precedents	23
§3. DEFINITIONS, NOTIONS, STRUCTURE OF CORPORATIONS AND PARTNERSHIPS	23
I. Different Types of Corporations and Partnerships	23
II. Civil Partnership	24
III. Sleeping Partnership	24
IV. Limited Partnership	24
V. Five Types of Companies	25
A. General Partnership Company	25
B. Limited Partnership Company	25
C. Stock Corporation	25
D. Limited Company	26
E. Limited Liability Company	26
§4. HISTORICAL BACKGROUND OF CORPORATIONS AND PARTNERSHIPS	26
I. Prior to the Enactment of the KCC	26
II. Enactment of the KCC	27
III. Revisions to the KCC Before 1998	27

Table of Contents

IV. Revisions to the KCC Between 1998 and 2009	27
V. Revisions to the KCC in 2010s	28
§5. SOURCES AND HIERARCHY OF THE LAW ON COMPANIES AND PARTNERSHIPS	28
I. Civil Code and KCC	28
II. Capital Markets Act	28
III. Act on External Audit	29
IV. Other Statutes	29
§6. CONFLICT OF LAW	29
I. Proper Law for Foreign Companies and Partnerships	29
II. Law Applicable to Contracts	30
III. Laws Applicable to Chattels, Land, and Registrable Property	30
§7. THE LABOUR LAW CONNECTION	30
Part I. Corporations	33
Chapter 1. Stock Corporations	33
§1. INCORPORATION	33
I. General Introduction	33
II. Actors at the Incorporation Stage	33
A. Promoters	33
B. Promoters' Partnership	34
C. Corporation in the Making	34
III. Drafting of the Articles of Incorporation	34
A. Introduction	34
B. Items Included in the Articles of Incorporation	35
1. Absolute Items	35
2. Relative Items	35
3. Voluntary Items	35
C. Legal Nature and Effect of the Articles of Incorporation	36
IV. Forming the Substance of the Firm	36
A. Two Ways of Incorporation	36
B. Matters Concerning Issuance of Shares	37
C. Method (1): Incorporation by Promoters	37
1. Formation of Capital	37
2. Appointment of Directors and Statutory Auditors	37
3. Examination by Directors and Statutory Auditors	37
4. Examination by a Court-Appointed Inspector	38
D. Method (2): Incorporation with Outside Subscribers	38
1. Subscription by Outside Investors as well as Promoters	38
2. Process of Share Subscription	38
3. Payment for Shares	39
4. Inauguration Meeting	39

Table of Contents

V. Registration of Incorporation	39
VI. Liability of Promoters	40
A. Regarding Completed Incorporation	40
1. Liability for Unsubscribed or Unpaid Shares	40
2. Liability for Damages to the Corporation	40
3. Liability to Third Parties	40
B. Regarding Incomplete Incorporation	41
VII. Liability of Directors and Statutory Auditors	41
§2. CORPORATE PERSONALITY	41
I. Corporate Personality and the <i>Ultra Vires</i> Doctrine	41
II. Lifting the Corporate Veil	41
§3. ORGANIZATIONAL STRUCTURE OF CORPORATIONS	42
I. Introduction	42
II. General Meeting of Shareholders	43
A. Introduction	43
B. Powers of the GMS	43
1. Matters Set Out in the KCC	43
2. Powers Set Out in the Articles of Incorporation	44
3. Delegation by the General Meeting	44
C. Convening of the General Meeting	44
1. Power to Convene	44
2. Ordinary and Extraordinary General Meeting	45
3. Notice of the General Meeting	45
D. Operation of the General Meeting	46
1. Chair of the General Meeting	46
2. Shareholder's Proposals	46
3. Right to Vote	46
4. Voting Requirements	48
5. Minutes of the Meeting	49
E. Class Meeting	49
F. Lawsuits on Defective Resolutions	50
1. Revocation Lawsuit	50
2. Voidness Lawsuit	51
3. Non-existence Lawsuit	51
4. Unfairness Lawsuit	52
III. The Board of Directors	52
A. Powers and Status of the Board	52
B. Relationship with the General Meeting	52
C. Relationship with Representative Directors	53
D. Process of the Board Meeting	53
1. Convening	53
2. Resolution	53
3. Minutes of the Board Meeting	54
4. Challenging Defective Resolutions	54
IV. Representative Directors	55

Table of Contents

A. General	55
B. Appointment and Removal of Representative Directors	55
1. Appointment	55
2. Removal	56
3. Vacancies of Representative Director	56
C. Power of Representation	56
D. Joint Representative Directors	56
1. Reasons for Joint Representation	56
2. Registration of Joint Representation	57
3. Power of Joint Representative Directors	57
E. Apparent Representative Director	57
1. Background	57
2. Use of Title Implying Apparent Authority	58
3. Authorization of Such Title	58
4. Innocence of the Counterparty	58
5. Apparent Authority of Joint Representative Director	58
6. Apparent Authority of Non-director	59
F. Tortious Acts of Representative Directors	59
V. Statutory Officers	59
A. General	59
B. Adoption of Statutory Officer Scheme	59
C. Appointment and Dismissal of Statutory Officers	60
D. Allocation of Powers Between the Board and Statutory Officers	60
E. Statutory Officer's Duty and Liability	60
§4. DIRECTORS AND STATUTORY AUDITORS	61
I. Directors	61
A. General	61
1. Definition	61
2. Number of Directors	61
3. Term of Office	61
4. Qualification of Directors	61
5. Corporate Director	62
6. Outside Director	62
B. Appointment and Removal of Directors	62
1. Appointment	62
2. End of Office	63
3. Vacancy of Director's Office	64
C. Compensation of Directors	64
II. Duties of Directors	64
A. Directors' Fiduciary Duty	64
B. Business Judgment Rule	65
C. Duty to Monitor	66
D. Prohibition of Competition with the Corporation	66
E. Prohibition of Self-dealing Transactions	67
1. Scope of the Prohibited Transactions	67

Table of Contents

55	2. Approval of the Board of Directors	67
55	3. Fairness Requirement	67
55	4. Effect of the Transaction Entered into Without the Board Approval	68
56	F. Prohibition of Misappropriation of Corporate Opportunities	68
56	1. Scope of the Prohibited Acts	68
56	2. Approval of the Board of Directors	69
56	3. Remedy	69
57	III. Liabilities of Directors	69
57	A. Liability to the Company	69
57	1. Article 399	69
57	2. De Facto Directors' Liability	70
58	3. Exemption or Reduction of Liability	71
58	B. Liability to Third Parties	71
58	1. Article 401	71
58	2. Scope of Third Party's Damage	72
59	IV. Statutory Auditors and Audit Committee	73
59	A. General	73
59	B. Statutory Auditor	73
59	1. Election	73
59	2. Removal	74
59	3. Powers	74
59	4. Duties and Liabilities	75
59	5. Securing the Independence of Statutory Auditors	76
59	C. Audit Committee	76
59	1. General	76
59	2. Composition of the Committee	76
59	3. Powers, Duties, and Liabilities	77
59	V. External Auditors	78
59	A. General	78
59	B. Appointment	78
59	C. Powers and Duties	78
59	§5. SHAREHOLDERS AND MANAGEMENT CONTROL	79
59	I. General	79
59	II. Right of Access to Corporate Information	80
59	A. Inspection of Accounting Books and Records	80
59	B. Inspection of Other Corporate Documents	80
59	III. Applying for Appointment of Inspectors	80
59	IV. Minority Shareholders' Remedies to Restrain Management	81
59	A. Injunctive Relief	81
59	B. Derivative Action	81
59	1. General	81
59	2. Statutory Requirements	81
59	3. Other Procedural Aspects	83
59	§6. SHARES	83

Table of Contents

I. Legal Capital	83
A. Concept of Legal Capital	83
B. Function of Legal Capital	84
II. Classes of Shares	84
A. Introduction	84
B. Preferred/Common/Subordinated Shares	85
C. Shares with Restrictions on Voting	85
D. Redeemable Shares	85
E. Convertible Shares	86
III. Share Certificate and Register of Shareholders	86
A. Share Certificate	86
1. General	86
2. Issuance of Share Certificates	87
3. Shares Held Without Certificate	87
B. Register of Shareholders	87
1. General	87
2. Maintenance and Inspection of the Register	88
3. Evidential Effect of Register	88
4. Closure of Register and Record Date	88
IV. Transfer of Shares	89
A. Transfer and Disclosure	89
1. Delivery of Share Certificate	89
2. Transfer of Shares of Listed Companies under Book-Entry System	89
3. Disclosure of Share Ownership	90
B. Restriction on Transferability Imposed by the Articles of Incorporation	90
1. Request for Approval	90
2. Right to Sell to the Company	91
3. Request for Determination of a New Purchaser	91
C. Restriction on Transferability by Shareholder Agreements	91
V. Statutory Restriction on Share Acquisition	92
A. Share Repurchases	92
1. Repurchases from Distributable Profits	92
2. Repurchases Not from Distributable Profits	92
3. Treasury Shares	92
B. Subsidiary's Acquisition of Parent's Shares	93
VI. Share Split and Reverse Split	93
§7. CORPORATE FINANCE	94
I. Introduction	94
II. Issuance of New Shares	94
A. General	94
B. Shareholder's Pre-emptive Right	94
1. Pre-emptive Right in General	94
2. Remedies for Existing Shareholders	95
3. Issuance of Unsubscribed Shares	95

Table of Contents

§9. AMENDMENT OF ARTICLES OF INCORPORATION	107
I. Process of Amendment	107
II. Effect of Amendment	108
§10. CORPORATE RESTRUCTURING	108
I. Reduction of Legal Capital	108
A. Process of Reduction	108
1. Shareholders' Special Resolution	108
2. Protection of Creditors	109
B. Methods of Reduction	109
1. General	109
2. Decrease of Par Value	109
3. Decrease of Number of Shares	109
C. Effect of Reduction	110
II. Transfer and Purchase of Undertaking	110
A. Procedures for Transfer of Undertaking	110
B. Protection of Dissenting Shareholders	110
III. Mergers and Divisions	111
A. Mergers	111
1. Definition of Merger	111
2. Procedures of Merger	111
3. Short-Form Merger and Small-Scale Merger	113
4. Triangular Merger and Cash-Out Merger	113
5. Effect of Merger	114
B. Division	114
1. Definition and Types of Division	114
2. Division Procedures	114
3. Effect of Division or Division-Merger	116
IV. Takeover	116
A. General	116
B. Procedures for Tender Offer	117
1. Public Notice of Tender Offer and Submission of Tender Offer Statement	117
2. Disclosure of Tender Offer Prospectus	117
3. Tender Offer Period	117
4. Restrictions on Activities of Offer or Target Company	118
5. Price and Consideration	118
6. Target Company's Opinion on Tender Offer	118
7. Revocation of Tender Offer	118
8. Withdrawal by Shareholders	119
9. Purchase of Tendered Shares	119
C. Mandatory Tender Offer	119
V. Squeeze-Out and Sell-Out	119
§11. REORGANIZING COMPANIES IN TROUBLE	120
I. General	120
II. Rehabilitation under the CRPA	121

Table of Contents

	A. Process of Rehabilitation Proceeding	121
	1. Application for Rehabilitation Proceeding	121
	2. Suspension of Enforcement and Operation of the Creditor Commission	121
	3. Commencement of the Rehabilitation Proceeding and Approval of Restructuring Plan	121
	B. Effect of Restructuring Plan and Termination of Rehabilitation Proceeding	122
	III. Rehabilitation under the DRBA	122
	A. Process of Rehabilitation Proceeding	122
	1. Application for Rehabilitation Proceeding	122
	2. Provisional Order and Temporary Stay Order	123
	3. Commencement of Proceeding	123
	4. Appointment of the Administrator	123
	5. Authority of the Administrator	124
	6. Report of Claims	125
	7. Rehabilitation Plan	125
	8. Court Approval	126
	B. Effect of Approved Rehabilitation Plan	126
	C. Termination of Rehabilitation Proceeding	127
	1. Successful Termination	127
	2. Unsuccessful Termination	127
	IV. Bankruptcy Proceedings	127
	A. Process of Bankruptcy Proceeding	128
	1. Application for Bankruptcy Proceeding	128
	2. Provisional Order and Declaration of Bankruptcy	128
	3. Administration of Bankruptcy Estate	128
	4. Report of Claim and Claim Type	129
	5. Liquidation and Distribution of Assets	130
	6. Termination of Bankruptcy Proceeding	130
	B. Effect of Bankruptcy Proceeding	131
	§12. LIQUIDATION BY THE MEMBERS	131
	I. General	131
	II. Dissolution	131
	III. Liquidation	132
	§13. HOLDING COMPANIES AND SUBSIDIARIES	132
	I. Holding Companies under the MRFTA	132
	A. Background	132
	B. Regulations	133
	II. Financial Holding Companies	133
	Chapter 2. Limited Companies (GmbH)	135
	§1. GENERAL	135

Table of Contents

§2. FORMATION	135
§3. MEMBERS	135
I. Eligibility and Number of Members	135
II. Rights of Members	136
III. Obligations of Members	136
IV. Transfer of Holdings	136
§4. MANAGEMENT AND CONTROL	136
I. Members' Meeting	136
A. Supremacy and Flexibility of Members' Meeting	136
B. Convening of Members' Meeting	137
C. Votes and Resolutions	137
1. Votes	137
2. Resolutions	137
II. Directors	138
A. General	138
B. Appointment and Removal	138
C. Management of Company	138
D. Representation of Company	138
E. Duties and Liabilities of Directors	138
III. Statutory Auditors	139
§5. MERGERS	139
Part II. Partnership Companies	141
Chapter 1. General Partnership Companies	142
§1. FORMATION	142
§2. MEMBERSHIP AND MANAGEMENT	142
I. Contribution by Members	142
II. Management	142
III. Members' Meeting	142
IV. Transfer of Membership	143
§3. LIABILITY OF MEMBERS	143
Chapter 2. Limited Partnership Companies	144
§1. GENERAL	144
§2. FORMATION	144
§3. MEMBERSHIP AND MANAGEMENT	144

Table of Contents

35	I. Contributions	144
35	II. Management	144
35	A. Management and Representation of the Company	144
36	B. Disqualification	145
36	C. Investigation by the Members with Limited Liabilities	145
36	III. Duties of Members	145
36	IV. Transfer of Membership	145
36	§4. LIABILITY OF MEMBERS	145
36	Chapter 3. Limited Liability Companies	146
37	§1. GENERAL	146
37	§2. FORMATION	146
37	§3. MEMBERSHIP AND MANAGEMENT	146
8	I. Transfer of Membership	146
8	II. Management	146
8	A. Executive Manager	146
3	B. Duties of Managers	147
3	III. Members' Meeting	147
3	§4. LIABILITY OF MEMBERS	147
9	Part III. Tax Law	149
9	§1. GENERAL	149
9	I. Tax System in Korea	149
9	II. Income Tax	149
9	III. Corporate Tax	149
9	§2. TAXABLE ENTITIES UNDER THE CTA	150
9	§3. TAXATION ON TRANSACTIONS BETWEEN THE COMPANY AND SHAREHOLDERS	150
9	I. Incorporation	150
9	II. Distributions	151
9	A. Separate Tax Treatment	151
9	B. Imputation System for Double Taxation	151
9	C. Constructive Dividend	151
9	III. Liquidation	151
9	§4. MERGERS	152
9	I. Merged Corporation	152
9	II. Surviving Corporation	152
9	III. Shareholders of the Merged Corporation	152

Table of Contents

Selected Bibliography 153

Index 157

<http://www.pbookshop.com>