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Research Article

ADDRESSING INFORMATION INEQUALITY AND ENHANCING MINORITY SHAREHOLDER RIGHTS: CORPORATE GOVERNANCE CHALLENGES AND SUSTAINABLE DEVELOPMENT IN KOREA'S CAPITAL MARKET

Eun Jung Ko (i) & (ii)

Institute for Social Development and Policy Research, Seoul National University, Korea

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ABSTRACT

In Korea, as of December 2022, the Korean stock market has 826 KOSPI ($1.397 trillion USD), 1,611 KOSDAQ ($249 billion USD) with a market capitalization of $1,646 trillion dollar. Although it is the 13th largest stock market in the world, Korea's corporate governance system has a deformed structure of severe information imbalance. Korea is an attractive market for foreign investors, but large Korean companies have unusual corporate governance due to strange capital management and hereditary management. This is a very negative factor for foreign investors. In addition, Korea's corporate structure has created a cruel governance system for minority shareholders. Minority shareholders have been unaware of the extinction and neglect of their rights. In addition, minority shareholders are either ignorant of the basis and method of exercising their rights, or they are afraid of the movement of vast forces in the stock market, so they are stuck in a lethargy of resistance to the antirational and malicious behavior of the market structure. This study conducts the following subjects. Firstly, the specific research method is to point out the problems in corporate governance history and system in Korea and also introduce them with a focus on actual cases. Second, the research will look at Korea's Commercial Act and Financial investment Services and Capital Markets Act (FSCMA) on the rights and protection regime of minority Shareholders. Third, the research will propose ways to achieve sustainable development in the international economic market. The scope of this thesis is as follows. First, this thesis surveys the literature to examine the characteristics of corporate governance in Korea's economic growth process. Second, it examines the proportion and duration of minority shareholder rights as stipulated by the Commercial. Third, it investigates the relevant provisions of the Commercial Act and the FSCMA to examine the monitoring and supervisory powers of independent directors and auditors and points out the problems related to them. As a result, this thesis will propose strengthening the rights of minority shareholders, who are the weakest under capitalism, to address the serious information inequality and rights imbalance in the market economy, thereby achieving the sustainable development of international capital markets.

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1. Introduction

Shareholder capitalism in the 20th century created a lot of wealth, but it also led to problems such as wealth inequality (the gap between rich and poor) and environmental degradation. Today's capitalism must solve the problem of "extreme capitalist inequality" that pervades social, economic, and cultural structures.[1] The 2030 Agenda for Sustainable Development, it was adopted by all United Nations(UN) Member States in 2015. UN provides a shared blueprint for peace and prosperity for people and the planet, now and into the future. At its heart are the 17 Sustainable Development Goals (SDGs), which are an urgent call for action by all countries in a global partnership.[2] They recognize that ending poverty and other deprivations must go hand-in-hand with strategies that improve health and education, reduce inequality, and sustain economic growth, all while tackling climate change and working to preserve our oceans and forests.[3] Through the United Nations' SDGs, a policy framework has been laid to address environmental, social and economic inequalities around the world.

Korea is also a member of the United Nations and should promote sustainable development. in addition, in (December) 2022, the Korean stock market has 826 KOSPI ($1.397 trillion USD), 1,611 KOSDAQ ($249 billion USD) with a market capitalization of $1.646 trillion dollar (Figure 1).[4] Although it is the 13th largest stock market in the world, Korea's corporate governance system has a deformed structure of severe information imbalance. Korea is an attractive market for foreign investors.

Figure 1: Number of listed companies and market capitalization 2022 in Korea

(Won/Number/*1 dollar is equal to 1,264.50 Korea's won)

		2017	2018	2019	2020	2021	2022
Number of listed companies	**sum**	2,040	2,111	2,204	2,268	2,356	2,437
	Securities Market	774	788	799	800	824	826
	KOSDAQ Market	1,266	1,323	1,405	1,468	1,532	1,611
Market Cap	**sum**	1,493	1,243	1,357	1,870	2,094	1,646
	Securities Market	1,270	1,062	1,167	1,565	1,742	1,397
	KOSDAQ Market	223	180	190	304	352	249

Source: e- a national indicator in Korea Government

But many of Korean companies have abnormal corporate governance due to unusual capital management and hereditary management. This is a very negative factor for foreign investors. In

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[1] D. Beck and M. Ferasso, How can Stakeholder Capitalism contribute to achieving the Sustainable Development Goals? A Cross-network Literature Analysis, Ecological Economics, Vol. 204, 2023, p.2

[2] United Nation, Department of Economic and Social Affairs Sustainable Development(https://sdgs.un.org).

[3] Ibid.

[4] e- a national indicator, Number of listed companies, market capitalization (https://www.index.go.kr/unity/potal/main/EachDtlPageDetail.do?idx_cd=1079).

addition, Korea's corporate structure has created a cruel governance structure for minority shareholders. Minority shareholders are still unaware of the extinction and neglect of their rights. In addition, minority shareholders are either ignorant of the basis and method of exercising their rights, or they are afraid of the movement of vast forces and influence in the stock market, so they are stuck in a lethargy of resistance to the alterational and malicious behavior of the market structure. In order to create a sustainable environmental, social, governance (ESG), Korea is at a time to resolve agency issues and information inequality, and to strengthen corporate checks, monitoring, and supervision functions through minority shareholders. This research conducts the following: Firstly, he specific research method is to point out the problems in corporate governance system in Korea and introduce them with a focus on actual cases.

Second, the research will look at Korea's Commercial Act and Financial investment Services and FSCMA on the Protection of Minority Shareholders.[5]

Third, the research will propose ways to achieve sustainable development in the international economic market.

Throughout the specific research, this research achievement's goal are as follows.

First, this research will introduce the rights of minority shareholders stipulated in the Korean Commercial Act and Secondly, introduce the system of independent directors and point out specific inspection problems. Third, the research will examine protection method for minority shareholder's right in the Korean stock market.

In addition, the empirical research that is lacking in this study will be developed in the future through questionnaires and interviews to establish specific validity and develop into a specific research direction.

Ultimately the thesis will seek to strengthen the rights of minority shareholders, who are the absolute weakest under Excessive capitalism. Through the above research, this thesis will share ways to achieve sustainable development in the international economic capital market.

History and Characteristics of Corporate Governance in Korea

The reason why Korea's economic growth is so remarkable is that Korea experienced the war in 1960. In 1962, the Park Jung Hee(former president) government implemented the five-year plan for economic development plans and in the 1970s, Korea intensively promoted the heavy chemical industry with the growth strategy of "export-led economic development" and provided various privileges and government support to several companies.[6] In the 1980s, the country opened up to the outside world, and in the 1990s, it fostered information technology and venture companies, and in 1996, it joined the OECD. In 1996, it joined the Development Assistance Committee (DAC) under the OECD, becoming the first country in the world to become an aid

[5] "It is important to note that the USA do not have one single corporate law regime. Instead, every state has its own corporate code and jurisprudence which produces a wealth of case law"(Adolf Peter, CSR and Codes of Business Ethics in the USA, Austria(EU), Springer, 2021, p.11.

[6] KDI, "The Korean Economy Creates a Miracle", Click Economy Education(https://eiec.kdi.re.kr/material/clickView.do?click_yymm=201508&cidx=2437).

donor.[7] Behind this economic growth in Korea is the 'chaebol', a unique group of economic privileges that the government has intensively fostered. The development of capitalism in Korea can be seen as the "Miracle on the Han River", which was achieved by the state and led by certain companies. The group of companies that have grown up with such privileges is called the "Chaebol of Korea." Today's 'Chaebol' is also called controlling shareholders in companies. South Korea's corporate governance system, which is concentrated on chaebol. Chaebol has various problems under extreme capitalism. Of course, bad corporate governance practices in private and public companies are not unique to chaebol. However, it is true that due to the amount of capital and the large influence of chaebol. Throughout Chaebol groups, Korea's corporate governance structure is not transparent. In particular, corporate governance by the controlling shareholder is characterized by concentrated ownership to the controlling shareholder, extensive family ownership and control, the structure of the business group, and the weakness of legal protections for minority shareholders.[8] In this process, 'management priority', 'performance-ism', and 'concentration of economic power'. The extreme capitalist ills of 'wealth inequality' are rampant in South Korea.
This study had found that Korea's planned economy growth has created a manager-centered and chaebol-centered corporate management culture. In the process, minority shareholders' rights have not been recognized for long time. The inherent problems of Korean in the rate of exercising minority shareholder rights is very high rate base on Korean Commercial Act. secondly, the monitoring functions of directors, independent directors are almost non-functional. Focusing on these two problems, point out problems and suggest solutions.

The Problem of the Ratio of Minority Shareholders' Rights Exercise

This chapter provides an overview of the problems in the Korean Commercial Act regarding the exercise of minority shareholder rights. In the event of a problem in the management of the company, To pressure a company regarding an issue, shareholders can use multiple mechanisms, selling their shares, or engaging in litigation.[9]However, if a minority shareholder wants to hold the company accountable through a lawsuit(if the percentage of shares held is too high) the shareholders will simply sell their shares and walk out. As a result, these "exit strategies" make it even more difficult to solve the problems of corporate executives. As a result, the difficulty in exercising minority shareholder rights is linked to the abandonment of minority shareholder rights.

Regulations on Minority Shareholder Rights in the Korean Commercial Act (Figure 2) introduces the rights of minority shareholders, focusing on Korean Commercial Act. The structure of a company in which ownership and management are separated creates agency problems, and to minimize agent costs is a major issue in corporate governance.[10] In order to solve the problem of agency, corporate institutions are formed, and roles and powers are distributed among

[7] Ibid.

[8] Young, Michael N., et al. Corporate governance in emerging economies: A review of the principal–principal perspective. Journal of management studies, 45(1) , Wiley, 2008, p.196.

[9] Melissa Carlisle, Melanie I. Millar, Jacqueline Jarosz Wukich, Shareholder primacy or stakeholder pluralism? Environmental shareholder proposals and board responses, Accounting, Auditing & Accountability Journal, Volume 37(3), Emerald Publishing Limited, 2023, p.924.

[10] Ko Eun Jung, The Review on the Expansion of Right of Minority Shareholders in Corporate Governance, Hongik Law Review, Vol. 21, No. 1, The Law Research Institute, 2020, p.26.

shareholders, Korea's Commercial Act stipulates the rights of minority shareholders, both in the case of public and private companies. he board of directors, and executives to be checked. Because of this, the public governance of the company is maintained. Shareholders can claim rights against the company based on their shareholder rights. The individual specific rights recognized by the Commercial Act are called "shareholders' rights" to distinguish them from shareholder rights, which comprehensively refer to the employee-right status of shareholders.

Specifically, the content of shareholder rights can be divided into public interest rights and self-interest rights. The right to public interest is the right to participate in and supervise the management of the company, and the representative right of public interest is the right to vote. The right to self-interest is the right of a shareholder to receive a direct economic benefit from the company. The right to self-interest is the sole shareholder. A representative right is the right to claim dividends of profits, which is the right to receive profits. The ratio of exercising minority shareholder rights of public and private companies stipulated in the Commercial Act is as follows.

Figure 2: Regulations on Minority Shareholder Rights in the Korean Commercial Act

Minority Shareholder Rights	Private Company	Public Company
Right to derivative suit	1% (Article 403)	0.01% (Article 542-6(6))
Multiple derivative suit	1% (Article 406-2)	0.5% (Article 542-6(7))
Appraisal Right	(Article 360-25)	
Director/Audit Removal Right	3% (Article 385(2), Article 415)	0.5% (Article 542-6(3))
Rights to Injunction	1% (Article 402)	0.05% (Article 542-6(5))
Inspection of Affairs and Status of Company's Assets	3% (Article 467)	1.5% (Article 542-6(1))
Shareholders' Rights to Make Proposals	3% (Article 363-2)	1% (Article 542-6(2))
Requests for Convocation by Minority Shareholders	3% (Article 366)	1.5% (Article 542-6(1))
Cumulative Voting	3% (Article 382-2)	1% (Article 542-7(1))
Removal of Liquidators Right	3% (Article 539 (2))	0.5% (Article 542-6(1))
Appointment of Inspectors Right	1% (Article 367(2))	
Shareholder's Right to Inspect Books of Account	3% (Article 466)	0.1% (Article 542-6(4))
Dissolution of corporation	10% (Article 520)	

Source: Korea Commercial Act, No. 17362[11]

[11] Korean Law Information Center(https://www.law.go.kr/lsInfoP.do?lsiSeq=224883&efYd=20201229#0000).

Loss of monitoring and supervision functions of independent directors

In 2017, a South Korean court issued a ruling that was highly unusual and condoned illegality. It's called the "Corebit case".[12] In the Corebit case, the court did not recognize the defendant's liability under Article 162(1)(2) of the FSCMA. The Corebit case is pointed out as a representative case of the judiciary's failure to understand the specific legal principles regarding the expression of the CEO and the responsibilities of independent directors under the Commercial Act. But even more troubling than the ruling is that the outcome has a very negative perception to me make of minority shareholders' exercise of rights. This leads to distrust of the judiciary.

This problem is especially severe in emerging countries, where internal and external governance mechanisms are underdeveloped, rendering minority shareholders more vulnerable.[13] Moreover, third-party monitoring, which could serve to protect these minority shareholders, may be dampened, as their interests may deviate from those of the shareholders.[14] Regulators with strong incentives to monitor can only indirectly influence corporate governance through measures such as comment letters or ex-post facto punishments. In such a context, minority shareholders, despite their lesser power and incentives to monitor given their limited shareholdings, could be the ones to directly and effectively protect themselves from expropriation.[15]

In sum, independent directors should act as 'watch dogs' in the name of dispersed shareholders, in an approach highlighting the monitoring role of the board.[16] For this reason, the independence and expertise of outside directors are essential. Korea companies have a system of independent directors. It is an import of the U.S. independent director system, but there is an assessment that Korea has failed from the independence model.[17] In addition, there are many cases where there is a lack of expertise, so in reality, the independent director system in Korea is evaluated as a failure. Shareholders want to monitor whether their capital is being properly managed. They must monitor, supervise and check management through independent directors. In companies, the system of independent directors is given the function of monitoring and supervising the board of directors and management. Independent directors are preferred over directors in terms of supervisory capacity. The theory of shareholder primacy starts from the problem of agents. Since agents of directors and executives pursue personal interests rather than the interests of the company or shareholders, organizations such as directors, independent directors, and audit/audit

[12] Korea Supreme Court Decision 2013da76253.

[13] Ziying Zhao , Chao Lu , Xiaoxue Xia , Regulator as a minority shareholder and corporate Fraud: Quasi-natural experiment evidence from the pilot project of China Securities Investor Services Center Review, Vol. 56(5), BAFA, 2024, p.1.

[14] Ibid.

[15] Ibid.

[16] Sandra Cavacoa , Edouard Challeb , Patricia Crifoc , Antoine Rebériouxd and Gwenaël Roudaute, Board independence and operating performance: analysis on (French) company and individual data, APPLIED ECONOMICS, VOL. 48, NO. 52, 2016, Routledge, p.5093.

[17] Many scholars in Korea have raised the issue of the independence and professionalism of outside directors(Dong Won Ko, Jae-Hak Hwang, Regulatory Review of Corporate Governance for Financial Institutions in Korea, Korean Journal of Banking and Financial Law, Vol. 17 no. 1., Korea Banking and Financial law Association, 2024: Ji, Gwang-Woon Comparison of German and Japanese company laws- Focusing on regulations related to board composition, Legal Theory and Practice Review, Vol. 12. No.2, The Korea Society for Legal Theory and Practice Inc, 2024: Lim, Chul Hyun, Review of Requirements for Qualification of Outside Directors under the Commercial Act, Chung-Ang Journal of Legal Studies, Vol 47, No. 1, CAU Institute of Legal Research, 2024.

committees seek to check the phenomenon of pursuing private interests. The core of corporate governance, which is a top priority in corporate law, is linked to the minimization of agency costs.

II. Results and Discussion

Expansion of Minority Shareholders' Rights to Improve Corporate Governance

As the thesis has been seen, the share acquisition rate in the exercise of minority shareholder rights in Korea is high. For example, in order to exercise the right of representative litigation, a person must own shares equal to at least 1%(0.01%) of the total number of issued shares, and the right to request an inspection of the state of business and property and the right to inspect the books of accounts must be owned by 3% share. In order to minority shareholders to exercise this right, they must have 0.1% or 3% of the total number of outstanding shares. However, it is very difficult for individual minority shareholders to exercise their rights in solidarity with other shareholders.

In the U.S. and the U.K., shareholder representative litigation is an shareholder right (a right that can be exercised even with one share),[18] In the case of Japan, it is also an shareholder right (but the holding period is 6 months).[19] Only in Korea must shareholders meet the conditions of holding 1% of shares for unlisted corporations (0.01% for listed companies, with a holding period of 6 months). Additionally, the right to access the books of accounts can be exercised by a sole shareholder in the United States and the United Kingdom.[20] However, in Korea, shareholders must meet the requirement of holding 3% of shares (0.1% for listed companies, with a 6-month holding period). In Japan, shareholders must also own 3% of shares, but there are no conditions regarding the holding period.[21]

Shareholder litigation protects the interests of minority shareholders. Management and director have a fiduciary duty that managers and director must operate in the best interests of shareholders in order to fulfill their legal obligations. If a manager promotes his or her own interests, he or she can be sued for misconduct. A number of previous studies have shown that shareholder-management conflicts are reduced by liability laws and private enforcement. As a result, it can be confirmed that shareholder litigation rights act as an important external governance mechanism.[22] Therefore, lowering the ratio of minority shareholder rights can make it easier for minority shareholders to hold management and directors accountable, thereby promoting corporate governance soundness.

If there are no committees, meetings, or periodic activities among minority shareholders, it is impossible to exercise the right to collect shares. Therefore, apart from relaxing the requirements for exercising individual minority shareholders' rights, it is necessary to form a committee or community of minority shareholders to continuously monitor the reality of corporate management

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[18] RMBCA §7.40, Federal rules of civil procedure, §23.1.
UK Companies Act 2006 §260.
[19] 日本會社法 第八百四十七條.
[20] RMBCA §16.2.
UK Companies Act 2006 §431.
[21] 日本會社法 第四百三十三條.
[22] [22] D. Beck and M. Ferasso, Op.cit., p.28.

and to pave the way for active relief in the event of information asymmetry between management and controlling shareholders and minority shareholders, and to enact regulations in this regard in the Commercial Act.

Strengthening and Overhauling Monitoring and Supervision Systems

Standard economic theory views human beings as exclusively self-interested.[23] In this respect, monitoring and supervising agents is an important task in corporate law. And also, Director independence is highest value.[24] Most corporate governance guidelines strive to promotes an independent relationship between the board and management by defining standard of independence that a majority of board members must achieve.[25] A representative system to secure the independence of directors is the independence director system. Independent directors perform a variety of functions[26] and duties. Beyond the functions of legal monitoring and supervision, this research advice on corporate management and strategy, provide expertise, and contribute to the improvement of external image and corporate value. In addition, it can be expected to perform a variety of comprehensive tasks, including the performance of social roles, and it also has the effect of improving corporate governance.[27]

The duties and responsibilities of an independent director are no different from those of an audit committee member, however, their authority is considerably more limited than that of an audit committee member. If we pay attention to the appointment of more than two-thirds of the audit committee as independent directors and the actual functions of the independent directors and audit committee members, it may be grounds to raise the authority of the independent directors to the level of that of the audit committee members.[28] If the purpose of introducing the independent director system in the United States, China, and Japan, including Korea, is to establish an independent director system because it cannot be expected to have the effect of improving corporate governance through audits alone, it can be concluded that independent directors should be composed of experts in accounting, law, and management. If the company aims to improve the corporate governance of the company by appointing an independent director who strengthens the monitoring and supervision duties separately from the existing audit committee system, there is reason why the role of an independent director is no different from that of an audit committee member, but rather a stricter independence and expertise than that of an audit committee

[23] DavidS. Clark, Encyclopedia of Law and Soiety, SAGE published, 2007, p.119.

[24] Frank N, Marrocco, Q.C, Special Lectures 2004: Corporate and commercial Law, Irwin Law, 2004, p.542.

[25] Ibid.

[26] "Independent directors as developed in the U.S. context solve three different problems: First, they enhance the fidelity of managers to shareholder objectives, as opposed to managerial interests or stakeholder interests. Second, they enhance the reliability of the firm's public disclosure, which makes stock market prices a more reliable signal for capital allocation and for the monitoring of managers at other firms as well as their own. Third, and more controversially, they provide a mechanism that binds the responsiveness of firms to stock market signals but in a bounded way"(Jeffrey N. Go, The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices, Stanford Law Review, Vol. 59, No. 6, 2007, 1469.

,[27] Masako Egawa, "The Role of Outside Directors: Reform of the Board of Directors, Analysis of the Current Status of Female Outside Directors," Journal of Securities Economics, No. 100, 2017, p. 37.

[28] Ko Eun Jung, Review of the dual legal status of outside directors and research on measures to strengthen surveillance and supervision, soongsil Law Review, Vol.47, Institute for Legal Studies, 2020, p.552.

member.[29]The effectiveness of the independent director system depends on their independent decision-making and expertise in monitoring and supervising corporate management and ensuring access to management data.[30] Independence, expertise, and access to information are organically linked, and if any of them are lacking, the function of an independent director is lost.[31]

III Conclusion

The United Nations' Sustainable Development Programme, an international order has been created to guard against extreme capitalism. In order to expand the rights of minority shareholders, it is necessary to embrace the spirit of the SDGs. Capitalism has made humanity convenient and has facilitated development in various fields such as science, culture, art. However, under extreme capitalism, minority shareholders are still weakness in their position. Moreover, it was very difficult to assert the rights of minority shareholders, whose shares in the company were divided according to the amount of capital. As in the case of the Korean stock market, corporate governance under an extreme capitalist system is bound to focus on the controlling shareholders and managers, centering on the efficiency and effectiveness of the company. As companies' capitalization channels diversify and the stock market becomes more active, there is a growing interest in shareholder activism. Solutions to correct the problems of extreme capitalism and strengthen the rights of minority shareholders are as follows.

First, shareholder activism will be effective only if it is easy to exercise shareholder rights. In order to strengthen the rights of minority shareholders, the rate of exercising minority shareholder rights as stipulated in Korea's Commercial Act should be reduced.

Second, Thesis needs to correct the behavior of extreme capitalism and pave the way for managers, controlling shareholders, and executives to be checked.[32] According to the agent theory, minority shareholders also enjoy their rightful rights. In addition, given the global corporate governance report, it is a natural progression to strengthen and expand the rights of minority shareholders.

Given the reality of minority shareholders, whose rights are violated by the tyranny of majority and large shareholders in companies due to information asymmetry, the way they improve corporate governance by expanding their rights would be a positive alternative to reducing agency costs.[33]

As such, a new direction for the improvement of corporate governance will be the expansion of minority shareholders' rights. The robust evolution of capitalism will facilitate changes in capital markets and shareholder participation in the stock market. In such an environment, the power of minority shareholders must be strengthened, which will make them wary of extreme capitalism.

[29] Ibid.
[30] Ibid.
[31] Ibid.
[32] Ko Eun Jung, Op. cit., p.26.(The Review on the Expansion of Right of Minority Shareholders in Corporate Governance, Hongik Law Review, Vol. 21, No. 1)
[33] Ibid.

In addition, the expansion of minority shareholders' rights will have a positive effect on improving corporate governance. Strengthening minority shareholders' rights will be a powerful check on management's selfish behavior and resolve the issue of representation in corporate governance.

Finally, directions for future research are based on the gaps in the existing literature that have not been addressed in this study. First, future research should empirically analyze minority shareholders' perceptions of corporate governance principles through structured surveys and in-depth qualitative interviews. Second, policy effectiveness should be assessed through consultations with field experts to bridge existing gaps and gain a more comprehensive understanding of the practical implications of minority shareholder protection mechanisms. Through these efforts, future research aims to establish a solid foundation for future research on policy effectiveness and corporate governance reform, thereby contributing to a broader academic discourse.

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