

Key ESG Laws and Regulations of S. Korea

1. Environment

a) Towards Carbon-Neutral World

At the UNFCCC COP 26 held in Glasgow, then-S. Korean President Moon Jae-in submitted the Intended Nationally Determined Contribution (INDC) to achieve a 40 percent domestic reduction in greenhouse gas emissions by 2030, a significant increase from the 2018 levels of 26.4 percent. In 2021, the Framework Act on Low Carbon Green Growth, a key legal basis for Korea's domestic implementation of the INDC, is to be abolished. Instead, the Framework Act on Carbon Neutrality and Green Growth (Carbon Neutrality Act) has entered into force on March 25, 2022. It requires the government to cut its greenhouse gas emissions in 2030 by 35 percent or more from the 2018 levels to achieve carbon neutrality by 2050, with the "2050 Carbon-Neutral Green Growth Committee" established. Indeed, the legislation of Carbon Neutrality Act is in line with Korea's statement at the COP26. The Act also includes the provision of a fund (the "Climate Response Fund") to support the classes, regions, and industries vulnerable to the climate crisis, based on the concept of "climate justice."

Since 2015, K-ETS (Emission Trading Scheme) has been operated under Act on the Allocation and Trading of Greenhouse-gas Emission Permits. If greenhouse gas emissions of a company or public entity exceeded the allocated emissions, then the company or public entity either had to pay administrative fines, purchase emissions rights from the emissions trading market, or offset excessive

emissions with offset credits. Also, with the revision of the sub-regulation on K-ETS in 2021, by purchasing REC (Renewable Energy Certificates), an organization receives credit for carbon emissions in the amount equivalent to the purchase amount (indirect emissions from electricity use). This is to encourage companies to participate in the RE 100 (production of products using only renewable energy), representing the partial integration of the RPS (Renewable Portfolio Standard) market and the K-ETS market.

b) Air, Water, Waste, and Soil

As for air quality, the Clean Air Conservation Act (CACA) regulates air emission by way of imposing discharging facilities either to obtain a permit or file a report. Also, the Special Act on the Improvement on Air Control in Air Control Zones designates certain areas "air control zones" and sets emission limits for each zone whereby certain facilities are mandated to request permission.

The main legislation governing water quality has been Water Environment Conservation Act (WECA), under which wastewater discharge facilities are required to report or gain permission.

Gathering, transportation, storing, recycling, and disposing solid and hazardous waste are controlled by the Wastes Control Act (WCA). The Act categorizes waste into two main categories and provides a differentiated management system for each category: industrial waste and household waste. Any business operator that discharges (i.e.,

generates) industrial waste must report the waste type and amount to the relevant local authority. The operator must treat the waste directly or have it treated by someone with a license to manage a waste treatment business or operate a waste treatment facility.

The Soil Environment Conservation Act (SECA) regulates matters relating to soil pollution in Korea and prohibits the disposal of pollutants. Regarding soil contamination, this act imposes two types of liabilities: payment of damages or contamination remediation obligations. While the former is a type of strict liability borne by the persons responsible for the soil contamination, the latter is a liability borne by persons designated by the law (e.g., the owner of the facility that caused contamination).

c) Chemicals

Hazardous products and substances are mainly regulated by the Act on Registration, Evaluation, Etc. of Chemicals (K-REACH), Chemicals Control Act (CCA), and Act for the Safety Control of Consumer Chemical Products and Biocides (K-BPR). K-REACH is similar to EU-REACH in the way that it regulates the market entry of a chemical substance. Also, K-BPR may be seen as a counterpart of EU-BPR, in imposing safety and labeling standards for certain consumer chemical products and requiring manufacturers and importers of biocidal products to obtain prior approval for the biocides. CCA regulates the usage of such chemical substances once introduced to the domestic market. The manufacture, keeping, storage, transport, and use of chemical substances (collectively, handling) require a business permit and handling facility in accordance with the specifications set forth in CCA.

d) Aggravated Penalties and Liabilities

There has been an amendment to the Act on Control and Aggravated Punishment of Environmental Offenses,

increasing penalties imposed on the business entities that have illegally discharged “specific pollutants,” which are likely to harm human health, property, or the growth of animals and plants. Regardless of the proceeds (usually the cost of discharge treatment) from the illegal discharge, penalties are now calculated as the sum of the amount not exceeding 5 percent of the sales and the remediation costs.

2. Social

a) No More Death in Workplaces

Conglomerates have been put on alert over the implementation of the Serious Accidents Punishment Act (SAPA), which has gone into effect on January 2022. SAPA imposes criminal penalties on the business owner and/or managerial responsibility holder (MRH) of a business whose failure to secure safety and health in violation of the requirements of the SAPA causes serious accidents, as the case may be. Without codification of SAPA, the “business owner” is obligated to undertake safety and health measures to maintain and promote workers’ safety and health and is criminally liable for the violation of such duties, as per the Occupational Safety and Health Act (OSHA). High-ranking executives have easily avoided criminal liability even in the event of “professional negligence resulting in injury/death” since courts have denied a finding of professional negligence from a mere violation of a general and abstract duty of care. In that regard, to protect high-ranking executives from potential liability, businesses’ command system has been organized in a way that minimizes their involvement in safety management. Thus, the legislative goals of SAPA are to block this loophole in the existing OSHA regime and further encourage the top management of companies to exercise companywide leadership, making workers’ safety and health a core organizational value. In line with the introduction of SAPA, obligation under OSHA have become reinforced as well.

b) Labor Conditions

Aside from workplace safety, overall labor conditions such as minimum wage, health coverage, unemployment benefits, whistleblower protections, paid leave, and gender-based discrimination are protected and guaranteed by the Labor Standards Act, Equal Employment Opportunity and Work-family Balance Assistance Act, Protection of Public Interests Reporters Act, and so forth.

Such relief measures that induce an increase in the employment rate for women represent typical gender-based affirmative actions. Taking it a step further, the proportion of female executives will go up since listed companies with KRW 2 trillion or more in total assets are required to have at least one female director on their board by August 5, 2022, as per the Financial Investment Services and Capital Markets Act (FSMA).

c) Further to the Above

The Fair Transactions in Subcontracting Act, Product Liability Act, and Personal Information Protection Act appertaining to ‘Social’ are also major contributors to ESG management.

3. Governance

a) Minority Shareholders’ Rights

The Commercial Act adopted multi-level derivative action that now enables a shareholder who holds more than 1 percent of shares in the parent company to request that its subsidiary company file a lawsuit against the directors to compel them to perform their obligations. On the other hand, the competence of a member of the audit committee gained more independence by way of separated elections of directors who also serve on the audit committee. Both revisions strengthened minority shareholders' rights.

b) Stricter Regulation on the Shareholding Ratio of the Holding Company

The Monopoly Regulation and Fair Trade Act (MRFTA) raised the shareholding ratio requirement for the subsidiaries or second-tier subsidiaries, with respect to newly established holding companies or entities newly converted into a holding company—the shareholding ratio from the current 20 percent to 30 percent for listed companies and from the current 40 percent to 50 percent for unlisted companies, from December 30, 2021.

c) The Korea Stewardship Code

Over 175 institutional investors participate in the Korea Stewardship Code. The Korea Corporation Governance Service (KCGS) developed and constantly revised the code, to facilitate institutional investors’ accessibility to Stewardship Code-related information and give due weight to the code. Currently, there are 50 more preliminary participants submitted the applications.

d) For More Inspection

Along with those mentioned above, the Act on External Audit of Stock Companies, Act on Corporate Governance of Financial Companies, and Financial Group Supervision Act also cover governance regulations for Korean companies or institutions.

By *Dr. Yun Sung Kim* (yunsung.kim@leeko.com)

Ms. Seulbin Park (seulbin.park@leeko.com)

Associate Attorneys at Law

(members of Korean Bar Association)

Lee & Ko

** The opinions expressed in this article are the author's own and do not reflect the views of KOTRA.*