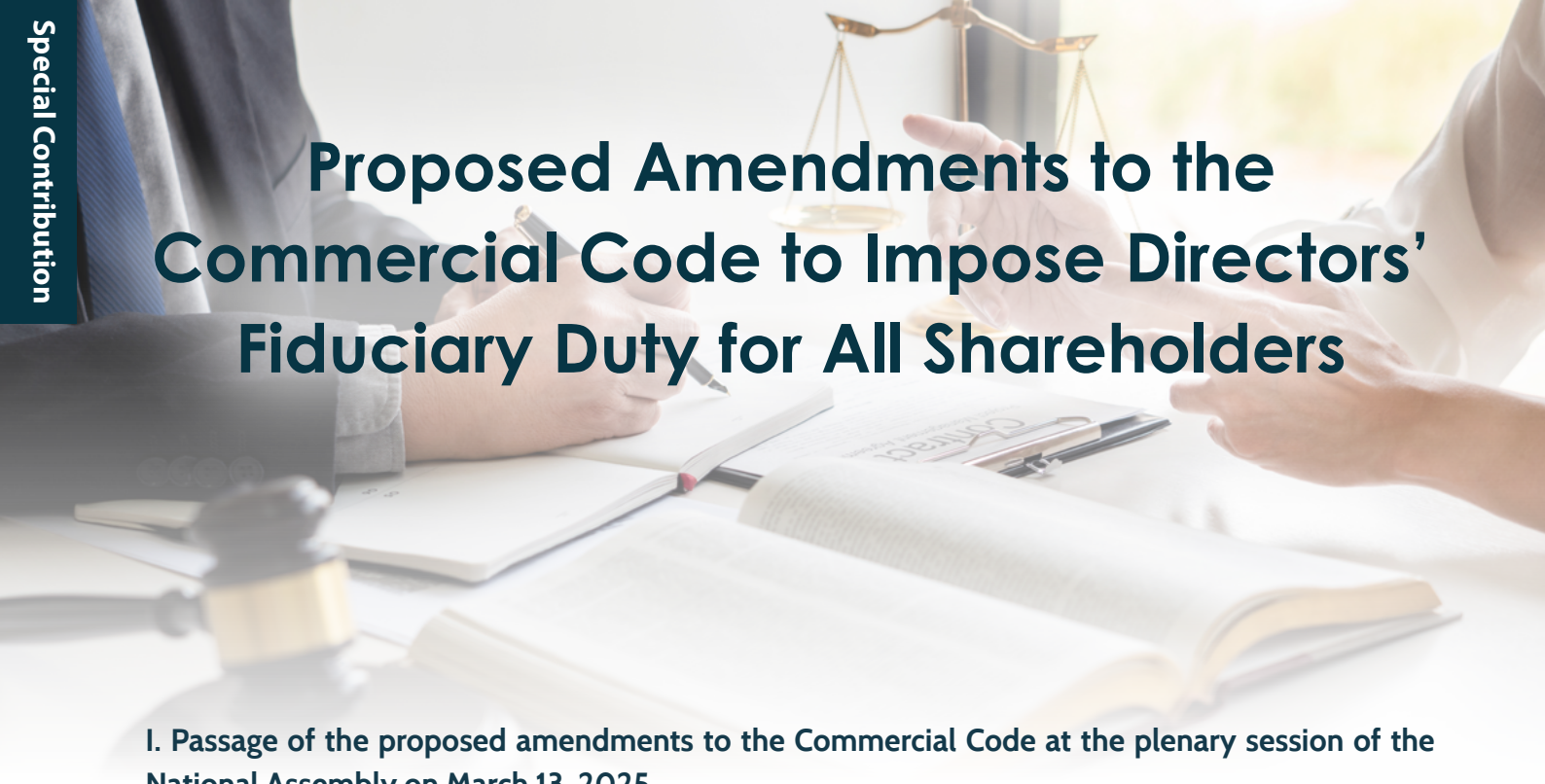


Proposed Amendments to the Commercial Code to Impose Directors' Fiduciary Duty for All Shareholders

I. Passage of the proposed amendments to the Commercial Code at the plenary session of the National Assembly on March 13, 2025

The proposed partial amendments to the Commercial Code (the "Amendment"), which mainly address the expansion of the scope of directors' "fiduciary duty" to shareholders beyond companies, were passed at the plenary session of the National Assembly on March 13, 2025.

That said, on April 1, 2025, South Korea's Acting President Han Duck-Soo exercised his right to request reconsideration (veto) on the Amendment at the cabinet meeting. Accordingly, the Amendment will become final and conclusive by law if the National Assembly resolves on the relevant bill again with the attendance of a majority of the incumbent members and the affirmative vote of at least two-thirds (2/3) of the members present (Article 53(4) of the Constitution). The Amendment will be discarded if the National Assembly does not reconsider the bill or if the above stricter approval requirement is not met, even if the bill is reconsidered.

In short, although it is yet to be determined whether the Amendment will be enforced, legislation with similar initiatives may be pursued again even if the Amendment is discarded this time. In this regard, we discuss the details and impact of the Amendment, on the premise that it will be enforced.

II. Purpose of the proposed amendments to the Commercial Code to impose directors' duty to protect all shareholders' interests

The current Commercial Code only provides, "Directors shall perform their duties in good faith for the interest of the company in accordance with statutes and the articles of incorporation." (Article 382-3 of the Commercial Code) The Amendment adds the following provision: "Directors shall protect the interests of all shareholders in performing their duties, and shall treat the interests of all shareholders fairly."

The courts have consistently held that a company is an independent and separate entity, distinct from its shareholders; therefore, even if there is no damage to a shareholder, breach of fiduciary duty is established if the company suffers damage. Additionally, the courts have viewed that a director is not in a position to handle the affairs of a shareholder; thus, breach of fiduciary duty against a shareholder is not established. As a result, there has been a widespread perception that it is sufficient

for directors to consider the interests of the company, without the need to consider the interests of shareholders separately. The courts have also issued decisions to this effect, and companies and investors have understood and acted accordingly.

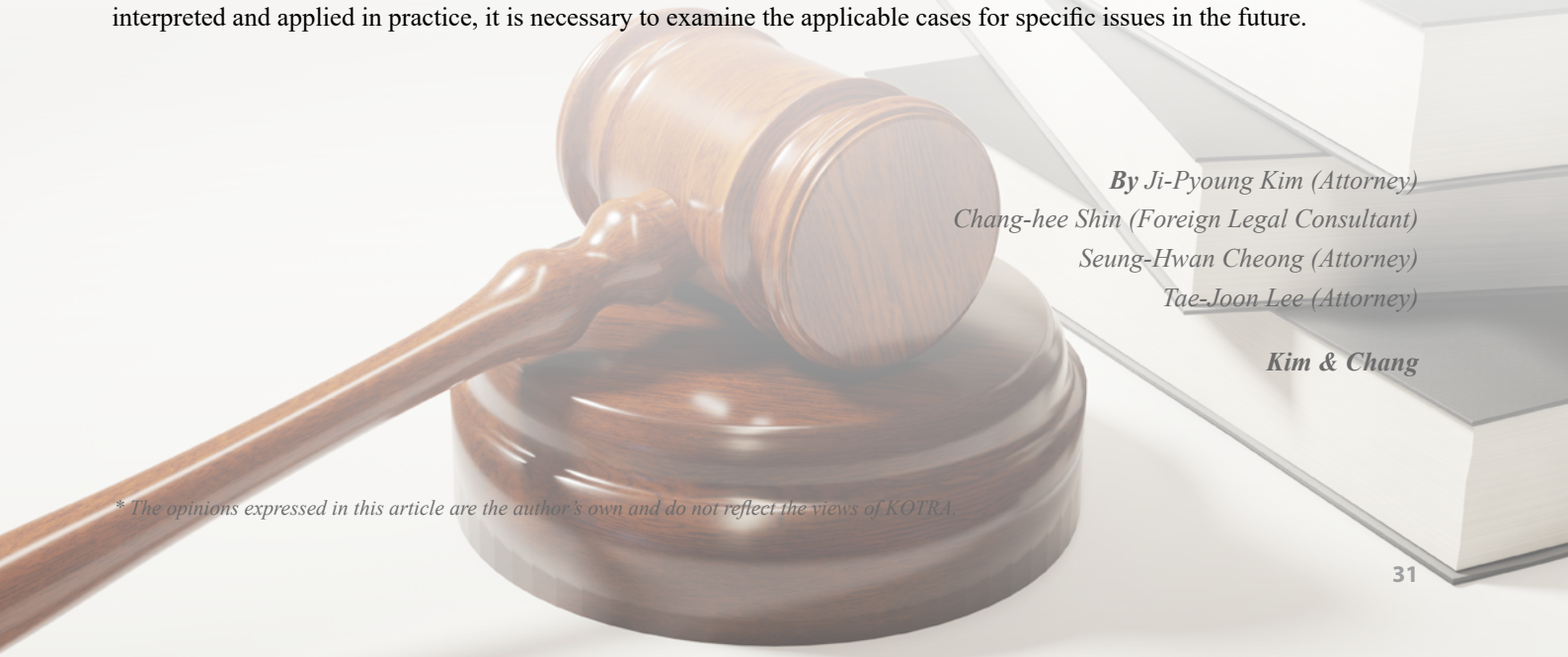
However, it has been noted that no appropriate principle exists to regulate the actions of directors in cases where the company's interests remain unaffected, but the interests of shareholders are directly impacted. These cases include reorganization transactions, such as mergers or stock swaps and the expression of opinions on tender offers. Additionally, there has been a growing social demand to amend the Commercial Code's fiduciary duty provisions to specify that directors should perform their duties for the benefit of shareholders. To address these concerns, the Amendment revised the scope of directors' fiduciary duty by adding "all shareholders." Also, it stipulated that directors should protect the interests of all shareholders in performing their duties, and that the interests of all shareholders should be treated fairly.

III. Impact of the Amendment

Once the Amendment comes into effect, it is expected that the affected shareholders will be able to hold directors civilly and/or criminally liable for breaching their fiduciary duty to shareholders directly in the following cases: (i) where a controlling shareholder acquires company shares at a low price (such as tender offers for shares held by minority shareholders, and transactions involving the squeeze-out right of controlling shareholders); (ii) where a controlling shareholder sells its shares at a high price (such as exclusively selling shares with management control premiums and capital procurement through the split-off listing of core business divisions); (iii) where there are benefits to controlling shareholders or other affiliated companies at the expense of minority shareholders in transactions involving stock-for-stock exchanges, such as mergers, spin-offs, spin-off mergers, and comprehensive stock swaps.

Against this backdrop, it is expected that related lawsuits will be filed frequently. Given this, from a corporate standpoint, there will be a greater need to review and improve the internal control and compliance systems and to ensure the integrity of operational procedures for the board and general shareholders' meetings.

There are also concerns that ambiguity in legal terms, such as "interests of all shareholders" of the Amendment, may cause confusion in the economy by inducing disputes and lawsuits until precedents are established. As for how the abstract concepts of the Amendment, such as "interests of all shareholders" or "treat the interests of all shareholders fairly," will be interpreted and applied in practice, it is necessary to examine the applicable cases for specific issues in the future.



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