



# ICGN

International Corporate Governance Network

The Honourable Lee Kwi-nam  
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Ministry of Justice  
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15 December 2009

Cc: The Honourable Yoon Jeung-hyun, Minister of Strategy and Finance  
The Honourable Chin Dong-soo, Chairman, Financial Services Commission  
The Honourable Chung Ho Yul, Chairman, Korea Fair Trade Commission  
Dr. Sakong Il, Chairman, G20 Preparation Committee and Chairman, Korea International Trade Association (KITA)

**RE: Draft Bill on Anti-Takeover Defences**

Dear Minister Lee,

We are writing on behalf of the International Corporate Governance Network (ICGN) and its Shareholder Rights Committee. The ICGN is a global membership organisation of institutional and private investors, corporations and advisors from 47 countries. Our investor members are responsible for global assets of U.S. \$9.5 trillion. The mission of the ICGN is to contribute to the continuous improvement of corporate governance best practices through the exchange of ideas and information across borders. Information about the ICGN, its members, and its activities is available on our website: [www.icgn.org](http://www.icgn.org).

As investors, the members of the ICGN have a keen interest in the quality and efficiency of capital markets and, in particular, how sound corporate governance practices can underpin corporate performance. Through this letter we wish to express serious reservations regarding proposed amendments to the Commercial Code that would allow Korean companies to deploy anti-takeover devices, also known as 'poison pills'. As a matter of principle, the ICGN members typically oppose poison pills because they are often used to shield management and protect the interest of related parties at the expense of public minority shareholders and wider economic efficiency and competitiveness.

We actively support the concerns and comments made by F&C, APG and other institutional investors in their letter regarding the introduction of the anti-takeover defences. We believe that the market for corporate control in Korea does not warrant the introduction of rigid anti-takeover defences. We see little evidence of significant hostile takeover activity in Korea, emanating from either foreign or domestic investors.

In terms of the strategic positioning of the Korean securities market, we strongly believe that the risks of introducing poison pills would vastly outweigh any benefits that a small number of companies and their Boards might gain. Since the Asian Financial Crisis, Korea and Korean industries have made

tremendous efforts in reshaping their corporate governance systems and practices. These reforms have played a critical role in rebuilding investor confidence in the country and reducing, over time, the so-called “Korea Discount”. Indeed, there is evidence that these improvements have led to a “governance premium” for well-governed Korean companies.

We are concerned that the introduction of anti-takeover defences now will undo much of the hard work that many Korean companies have undertaken in recent years. More broadly, we believe that it will damage the reputation of the Korean market and raise investment risk. This in turn would likely result in a re-introduction of the country discount and a corresponding outflow of foreign investment to other Asian markets with stronger systems of shareholder protection. Evidence from other markets in Asia that have enacted poison pills, notably Japan, is that they do little for either market reputation or corporate value.

We appreciate the opportunity to express our views on this issue and would welcome the opportunity to engage in further discussion with the Ministry. Please do not hesitate to contact Carl Rosén, our Executive Director, by phone +44 207 612 7098 or email [carl.rosen@icgn.org](mailto:carl.rosen@icgn.org).

Yours sincerely,



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