South Korea's regulators are on a roll – don't stop now

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Keynote address by Jonathan Pines, Head of Asia ex-Japan Equity, to South Korea's Korea Corporate Governance Forum in Incheon on 16 May 2026.

Thank you for inviting me to speak to you today. It is indeed an honour for me to be invited by Mr Namuh Rhee, a brave man whom I have long admired. My email box is always full, and mostly unread. But I always immediately open any email from Namuh. I always learn something from his company specific analyses. Stock specific governance analysis is the best way to understand developments in Korea. The insights one can gain from the company level analysis that Namuh does are far deeper than from a broad analysis of the kind that might be done by a lawyer. It also helps to identify patterns and intent. When one company finds a way of frustrating the intentions of regulators, do others follow their lead? Of course, not only are Namuh's analyses informative. I also find them entertaining. I feel the passion in the PDF. He too is clearly a long frustrated fellow traveller.

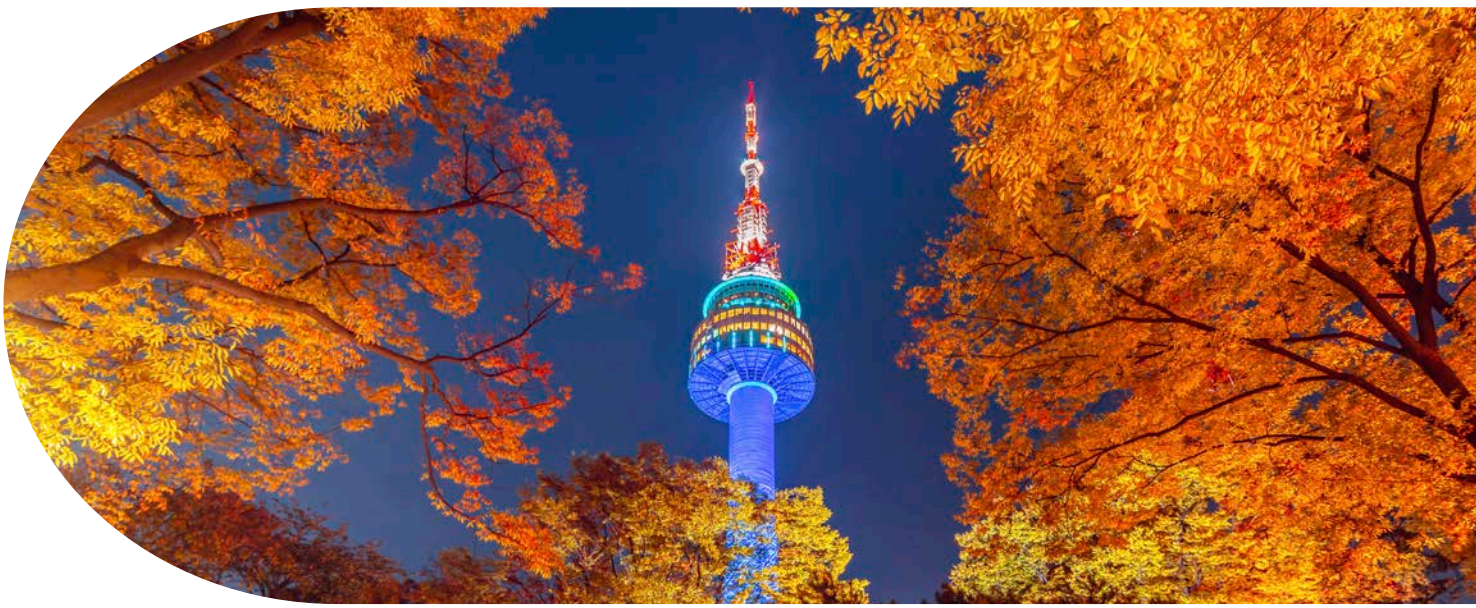
Korean companies have achieved remarkable success and have contributed immensely to the development of this country, and Korea's standing in the world. Korea Inc is deservedly credited for being world leaders in key industrial sectors, such as semiconductors, heavy engineering, auto manufacturing and defence. For this, they have earned my deep admiration and respect.

However, the late Charlie Munger expressed the view that one should only invest in companies when management is 'on side'. For decades, Korean directors of public companies – over 90% of which are controlled by families – have shown consistently that they are not. They have used every trick in the context of permissive regulations to benefit themselves at the expense of minority shareholders. They have gotten away with things that similarly minded controlling shareholders in other countries could only dream of. They have self-dealt, excluded minorities from participating in takeover offers, forced minority shareholders to sell their stock to them at their cheapest point (often after first engineering prices down), used general shareholder funds to secure control for themselves alone, used general shareholder funds to finance pet projects, sought to frustrate the rare shareholder proposal, forced through their own prejudicial propositions, and often refused to even engage.

As for paper losses that such conduct has caused in the form of lower stock prices, they have shown themselves to be 'concertedly indifferent'. (It took a while for us to coin that oxymoron, and we are proud of it!) Of course, who would not be proud of coining *any* oxymoron? Still, it might not be the perfect descriptor. "Indifferent" might be too weak a word. Even "*concertedly* indifferent" might be too weak. Because, as we know, controlling shareholders often *prefer* lower stock prices and have often worked very hard to engineer that outcome. Of course, lower stock prices portend lower inheritance taxes.

For decades, controlling shareholders both had their cake and ate it.

For controlling shareholders, minority shareholders have long been seen as a nuisance – to be tolerated and managed as a price of being listed, rather than co-owners in the business. This attitude was made clear to me in a recent call with the management of a small-cap company trading below the value of the net cash on its balance sheet. A director (who was the son of the founder) had reached out to us asking us to vote 'no' to a shareholder proposal for a higher dividend. He complained: "These shareholders just want our cash!". "*Our* cash"! Of course, we supported the shareholder resolution.



Over the last two years we have seen tremendous positive change in Korea's regulatory framework. Initially sceptical that the government would do what it takes to lift the equity market, we have been surprised at the moves that regulators have made. Reforms keep coming. And they are significant.

In a follow-up letter to our 2024 landmark paper, Enough is Enough, we made six key recommendations. Remarkably (for us at least), four have been implemented or are being considered for implementation in one form or another. Laws have been passed, or bills being considered that, introduce a fiduciary duty, mandate the cancellation of treasury stock, and reform how directors are voted for. Value up statements will be enhanced for companies trading below book value. There are consequential changes happening too. Companies in the insurance industry are now being scrutinised by *other* regulators for investment concentration risk. We think this other, apparently non-related intervention, is too a consequence of positive governance changes. These other regulators are being emboldened by the new governance initiatives and clear public support for them.

In fact, regulators have gone further in key respects than even our recommendations. We, as a foreign investment firm, would not recommend a change in inheritance tax laws. It is not our place to opine on the social contract. Yet tax reform, including inheritance taxes, are now on the table. As for the hated and routine separate listing of subsidiaries of public companies, our proposal only went so far as to call for a minority shareholder vote on restructurings. We did not think it was even within the realm of possibilities that regulators would simply put a stop to them. Yet that is exactly what they are now considering doing.

It seems that the mood in Korea now is if regulators can *think* of something that will improve the market, they will seek to implement it.

The types of poor behaviour that directors can get away with have been reduced and subject to legal challenge. In addition, regulatory measures targeting control itself (such as the requirement to cancel treasury stock) will progressively reduce the number of controlled companies, especially as high inheritance tax bills come due. Shareholder activism is rising. Chastened directors are picking up the phone when minority shareholders call.

The *key* structural weakness of concentrated control in Korea remains, and therefore so does both the ability and incentive for company directors of most companies to act in their own interests. Old habits die hard.

But to answer Munger's question, can we now say that management is on our side? Unfortunately, the answer to that, in our opinion, is 'no'. Regulations don't change human impulses. The *key* structural weakness of concentrated control in Korea remains, and therefore so does both the ability and incentive for company directors of most companies to act in their own interests. Old habits die hard. If you have run your company for the benefit of controlling shareholders for decades, it is likely that you will continue to do so. Of course, to the extent you *can*.

The irony is that, on paper at least, the controlling shareholders would increase their wealth tremendously, in our opinion, if they were firmly on minority shareholders' side because then they would act in ways that make their stock prices rise. Indeed, the near tripling in the Kospi over the last 18 months, mainly attributable to operational achievements in semiconductors (and an upcycle supercharged by AI) but *partly* attributable to improving governance, has demonstrated that the people who are resisting change are the biggest beneficiaries of that which they resist. But it isn't a true irony, is it? It is not as if controlling shareholders don't know how to get the stock prices of companies they control up. They know exactly how to do it. They *know* their companies are worth more than the Bloomberg screen says. Most have simply come to the same conclusion: absent the need for capital and if confident that they will retain control, the psychologic satisfaction of seeing their paper worth rise is not worth the higher inheritance tax liability this will cause.

But while we cannot conclude that management is 'on side', we can say that the government is. And as long-suffering investors in Korea, we are grateful to this government, as well as the small retail investors in Korea and to your forum for helping to make it happen.

Directors will no longer be able to use general company resources to buy back shares to help secure control for themselves alone. When – or if – a mandatory offer rule is introduced, controlling shareholders won't be able to extract a control premium for themselves alone. If the government bans listing of subsidiaries of listed companies, the scope for controlling shareholders to manipulate relative valuations, and dividend policy to benefit themselves will be reduced. If a minimum inheritance tax of 80% of book value is introduced, directors will lose a powerful incentive to keep share prices below that level. And of course, directors of cheaply priced companies will (or should) at least be embarrassed every year as they seek to explain themselves by enhanced 'value up' requirements for low price-to-book companies.

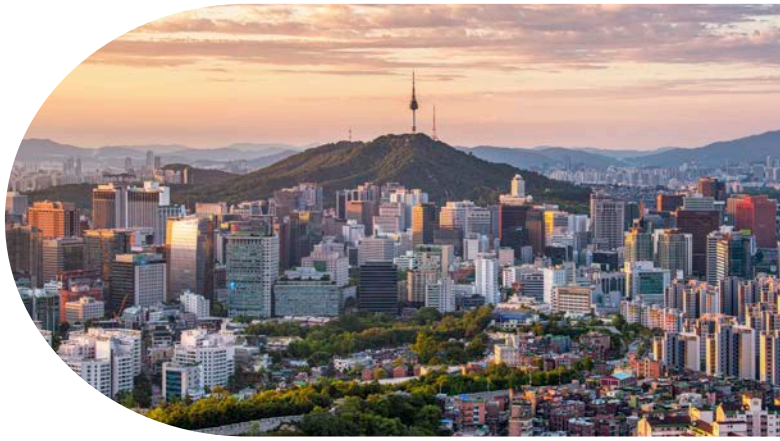
One law that might be powerful in preventing poor conduct is the Fiduciary Duty law. The other laws are specific. The Fiduciary Duty law is vaguer, and this may be a strength because it can address conduct that directors or investors might not even have thought of yet. But a lot depends on judicial interpretation. It can be a very powerful law or a very weak one. We don't yet know. Of course, the most egregious conduct of directors can be ended by this law, such as stealing from the company, selling the crown jewels to a related party cheaply or paying the chairman's idle son a salary KRW15bn. But what of situations that are more subjective? When legally well-advised directors can present better arguments for their conduct?

For example: the cash rich company that pays a tiny dividend or issues new capital and argues that it is simply being conservative in the face of economic uncertainty or future M&A needs. Or one that buys a non-core asset or deepens a cross holding, arguing the benefits of diversification. Or the company that fails to prioritise buying back its non-voting preferred shares even though such shares might be trading at a 50% discount to the common stock, arguing that non-voting stock is used in other countries and the value of a vote is subjective. Or one that seeks to make it harder for independent directors to get elected because it will cause management instability. Or the holding company that has consistently traded at a 60% discount to the sum of its part that refuses to dissolve or even target the discount for reduction, arguing that the synergies of being within a strong group offer long term benefits. Or indeed directors who go so far as to lobby for no further minority shareholder protections because it is all too distracting.

When such harder cases come before judges using 'fiduciary duty' arguments, the precedents established by how they are adjudged will be critical in assessing the evolving governance landscape. If we were to hazard a guess it is that when management can make even a weak business case for their conduct – even one barely plausible – that conservative-minded judges will have little choice but to side with management against minority shareholders.

Indeed, it is our sceptical opinion that despite a positively evolving regulatory landscape most controlling shareholders will continue to focus on two key objectives. Retaining Control and minimising inheritance taxes, to the extent they can.

How do we know? Well, there are clues as to how they are responding to the new regulatory environment. Most of the 90% of companies that are controlled, in our view, are not embracing change. Some are trying to prevent it. Organised lobbying efforts (possibly financed by general shareholder resources) have tried to water down or delay regulations. Some companies have sought to tie up uncancelled treasury shares in complicated transactions – to avoid having to cancel them before the deadline. Other cash rich companies, fearing they might be under pressure to return some to shareholders, are buying real estate. Listings of subsidiaries have been rushed through before potentially being outlawed. Articles of association are being amended to make it harder for minority



shareholders to propose or appoint new directors. Notices of AGMs are kept short – leaving no time for shareholder proposals. And when shareholder proposals are submitted in time, directors are seeking to find technical ways not to put such proposals to a vote, including challenging later injunctions. Some 'value up' statements, just as we feared they would be, have vague, unmeasurable, statements such as "*our objective is sustained revenue growth and high profitability through strengthened cost competitiveness and product strategy*".

It is also clear from what they are not doing. There are many low hanging fruits that are available for company directors to pick – obviously value accretive moves they can easily make. If they truly started caring for minority shareholders, companies with too much cash would pick the plentiful low hanging fruits. Raise dividend payout ratios, pay special dividends or buy back and cancel stock. Those with expensive preferred shares in issue would buy them back at the big discounts on offer. Non-core holdings would be divested and cross holdings unwound. Experienced, perhaps international, independent directors would be proposed for election. There would be a rush to amend articles of association to make directors more rather than less accountable to shareholders.

And then of course there are the *chaebols*. The holding companies. Relics of the past in most countries, they remain widespread in Korea and the primary mechanism used to assert control in excess of economic value held. Without exception they trade at massive discounts to the sum of their respective parts, often exceeding 50%. What value to directors of these companies add by putting on a suit, commuting to the office, and coming in to work each morning? Granted some of these holding companies have a so called "operational" part of the business, but though generally the sole focus of all presentations they make to investors, the size of the so called "operations" part of the business is generally inconsequential relative to the value of their listed holdings. Shareholders would be better off if these holding companies simply didn't exist, and their non-operating assets distributed. But no-one is rushing to dissolve these value destructive structures. Indeed, we expect any regulations specifically targeting these structures to meet the fiercest resistance of all.

Recommendations

We are not lawyers, and our suggestions should be seen as principles for considerations (or even food for thought) rather than specific legal recommendations. That said, in the next phase of reform, in our view regulators should consider the following.

Full implementation of laws or bills under consideration. The prohibition of the listing of subsidiaries and the application of a minimum percentage of net assets for the purposes of calculating inheritance taxes should be implemented without delay.

Mandatory offer law. A mandatory offer law should be implemented in a way that applies to all shares held using best international practice (not a watered-down interpretation) as is best practice in other countries at a 30% threshold.

Ending of compelled share swaps. A common controlling shareholders of two companies can still force minority shareholders owning attractive stock in company A to swap their stock for unattractive stock in company B at market price, perhaps after both stock prices have been manipulated in a way that suits the controlling shareholders. Minorities in this way continue to be subject to the threat of a controlling shareholder deciding both the price and timing of their exit. If a shareholder can be forced to sell stock at a price and time decided by someone else, there is theoretically *no price too cheap for a Korean stock that might be subject to such a forced swap*. Any such swaps should, of course, require a separate minority shareholder vote and this should be legislated. (It is possible that such transactions may be prevented by a fiduciary duty law, but why risk it? Why let directors have the opportunity to argue that because the swap is at market value it is fair. We know it is not).

Reducing control of families. Ninety percent of companies being controlled is the ultimate source of all the governance problems in the Korean stock exchange. Reducing the number of companies controlled is hard. You cannot force someone to sell their shares, and we would not advocate for that. However, the already-announced requirement to cancel treasury stock, if fully implemented, will result in several companies previously 'artificially' controlled by families no longer being so controlled. The one large *chaebol* that has circular holdings should be forced to unwind them. The use of cross holdings should be restricted. In addition, even within family-controlled companies, the voice of independent directors can be raised. Chairmen should be subject to term limits and be truly independent. People able to wield significant power within companies must be accountable to shareholders. One cannot have powerful non-executive directors or chairmen in all but name, who don't stand for election and are therefore not accountable to shareholders. It should be law that director terms are one year (which of course implies no boards are staggered and voting for each director is annual). Votes should be cumulative. Articles of association should not be permitted to change these. Consideration should be given to limiting the number of votes any one shareholder can vote for in any matters at all relating to directors for example for the director themselves and for a change in the number of directors, or for the term of directors (if the law is not changes to make terms annual). A vote limitation rule would go beyond the laws of other countries and a one-year fixed term for directors is shorter than that which applies in many countries. Korea's controlled companies may complain that annual election cycles will result in short-termism and that vote limitations on matters relating to directors unfairly give too much power to smaller shareholders. However, many Korean directors have shown themselves over decades to be untrustworthy stewards and in that sense deserve to be held to greater account by minority shareholders.

Value up Enhancements. As is already to be the case for companies trading below book value, enhanced value up disclosures should be required for companies that are holding companies; have non-voting (preferred) stock in issue; have cash that exceeds (say) 25% of market cap; and have significant non-core investments (for example real estate investments, or investments in companies – listed or unlisted – not directly related to their core operations).

- Holding companies should be required to (1) provide a detailed calculation of the change in the discount to the sum of parts over the last year and their assessment of the reason for the change; (2) explain the strategy to reduce the discount over the next year, and what further steps they will take if they are not successful; (3) explain why it is in the interests of shareholders that the holding company not simply be dissolved. (4) In light of the prominence and power of holding companies in a Korean context, disclose if any directors or the companies contributed to any lobbying effort, directly or indirectly relating to governance regulations and the nature of such lobbying efforts

  Consideration should be given for making the chairman, or non-executive directors, or all directors of holding companies ineligible for remuneration or re-election if the discount to its sum of parts exceeds (say) 25% on average for two years or more.

- Companies with non-voting stock trading at discounts of more than (say) 25% to the common should be required to explain why they have not bought back the expensive non-voting capital to reduce the gap.
- Companies with high cash holdings should be required to explain why they have such high cash, and (if earmarked for future investment) by when they expect to use it. If the company has retained a high cash balance for more than (say) two years, directors should be required to comment specifically on this aspect in their disclosure.
- Companies with non-core investments, particularly those made within the last year should be required to explain why retaining such holdings it is in the interests of shareholders.

Implementing advisory vote on 'Value Up' statements with inheritance tax implications for 'No' votes. Shareholders should be given an advisory vote on the Value Up statement. Ideally only minority shareholders should have a vote, or alternatively votes should be limited to (say) 3% or 5% per voter. Approved (acceptable) or not approved (not acceptable). Though advisory only, for companies in respect of which shareholders have voted down the Value Up plan more than once in the preceding two years, in the calculation of any inheritance tax due in respect of such companies for controlling shareholders (and family members or affiliated structures), fair value should be used if higher than market value. The valuer should be:

- appointed by regulators not the company or inheritance tax payer;
- instructed, specifically for holding companies and other companies holding listed assets, to apply, a sum of parts valuation methodology in respect of such assets, using a *zero percent* discount for listed assets held;
- instructed to use a starting point of the valuation of average multiple of earnings or free cash flow or book for the relevant industry, using *global* comparables, and to adjust for the value of non-core assets and adjust for net cash/debt; and
- required to specifically consider evidence of stock suppression e.g., by a low dividend policy or poor governance or previous advisory shareholder votes on the value up plan.

Holding voting proxy service providers to greater account. While not an issue for regulators, clients of proxy shareholder providers should hold proxy providers to greater account. These service providers – extraordinarily powerful because many institutional shareholders simply blindly follow their advice – hold themselves out as protectors, advancers and enhancers of governance. Indeed, that is perhaps their primary purpose and reason for being in business. But in the most recent Korean voting season, their advice in many cases (in our opinion) hurt governance. This is particularly frustrating given the governance watershed moment we found ourselves at in Korea. At the final hurdle it seems that those that should be most supportive of positive change have not been. In the last voting season, some of the world's largest proxy service providers supported management resolutions in ways that, in our opinion, were clearly and obviously not in the interests of minority shareholders. For example, they often supported changes to articles of association that gave 'outs' to companies cancelling treasury stock and that made it more difficult for minority shareholders to obtain board representation (by for example supporting management proposed changes to the articles of association concerning the number of directors or director terms). The implications of the director-related changes were not always obvious. One strategy of management is to amend articles to reduce the number of directors on the board. This, combined with the promotion by management of a full director slate, results in the management supported appointment being more likely to fill all positions, as shareholders would need to work out which management supported directors not to support for their votes for shareholder appointed ones to be effective. Allowing variable term limits for directors allows management to effectively and precisely stagger voting as they might decide annually, reducing the power of shareholders. It is telling that in many cases recommendations of proxy service providers were at odds not only with less well-resourced local proxy service providers, but even the National Pension Service (the largest Korean investor not known for a confrontational or controversial approach to governance). It is further telling that the advice given in respect of smaller companies was more problematic than for larger companies, which, in my opinion, implies a possible resourcing issue resulting in minds not being adequately applied in respect of such companies in Korea's rapidly evolving regulatory and governance landscape.

I would like to thank Namuh Rhee and this Forum for inviting me here today. You are the unsung heroes of the tremendous positive change we have seen. You have been instrumental in driving the change we have seen so far, and I wish you only success as you continue your vital mission.

The opinions expressed in this speech represent the views of Jonathan Pines, Lead Portfolio Manager, Asia ex-Japan Equity.

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