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# ESG Around The World: South Korea

By **Chang Wook Min and Hyun Chan Jung** (November 14, 2023, 4:52 PM EST)

*ESG investing has recently become one of the most controversial policymaking issues in the U.S., dividing the country into pro- and anti-ESG states. But what does ESG legislation look like elsewhere? In this **Expert Analysis series**, attorneys across the globe tell us everything we need to know about the state of ESG in each of their countries or regions.*


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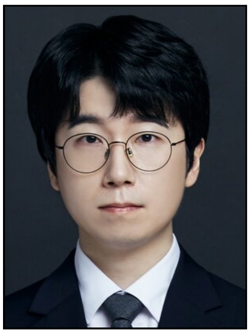
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In South Korea, discussions related to environmental, social and governance issues began to gain traction around the year 2020.

In November of that year, the National Pension Service, one of the world's top three pension funds, formally announced its plan to expand the size of asset classes carved out for responsible investment to 50% of total assets by 2022.[1]

Concomitantly, numerous large Korean companies have increased an array of ESG management endeavors. These endeavors encompassed the establishment of an ESG-dedicated committee within their boards of directors and the publication of sustainability reports.

Against this backdrop, the Korean government proactively issued the K-ESG Guideline in December 2021, followed by the subsequent release of the K-ESG Guideline in Response to Supply Chains in December 2022.

What follows provides a brief overview of ESG trends that have materialized within South Korea, particularly since the pivotal juncture of 2020 in respect of each thematic issue.

**ESG Disclosure and Shareholder Engagement**

Regarding the disclosure of nonfinancial information on ESG, in the realm of governance disclosure, South Korea has imposed the obligation to disclose corporate governance reports on listed companies with total assets exceeding 2 trillion South Korean won, or about $757 million, since 2019.

Moreover, this obligation will be extended to all companies listed on the Korea Composite Stock Price Index by 2026.

In the case of environmental disclosure, the Environmental Technology and Industry Support Act, which came into effect in March 2022, mandated that companies listed on the Korean stock exchange with total assets exceeding $2 trillion shall disclose environmental information, including the amount of greenhouse gas emissions, pollutant emissions and environmental investments.

In the broader context of ESG information disclosure, the Financial Services Commission of South Korea announced in January 2021 that it would stipulate a phased introduction of mandatory ESG disclosure requirements commencing in 2025.

However, in light of industry stakeholders' concerns that many companies still have limited human rights resources and infrastructure to fulfill the International Financial Reporting Standards sustainability disclosure standard, the commission recently resolved to defer the mandatory ESG disclosure requirements by one year, thereby rescheduling its commencement to 2026.[2]

The Financial Services Commission has articulated its plans to formulate domestic ESG disclosure standards by drawing upon the benchmarks established by major countries and international organizations.

Consequently, companies may be advised to respond in a preparatory manner to the growing ESG-related requirements by referring to globally recognized standards, including what the International Sustainability Standards Board promulgated.

Regarding shareholder engagement, the Korea Stewardship Code has been in effect since it was established by the Korea Institute of Corporate Governance and Sustainability in December 2016.

217 institutional investors in South Korea, including the National Pension Service, have joined and adhered to the code.

Since the introduction of the stewardship code, empirical studies have evidenced a marked escalation in the number of shareholder resolutions at listed companies in South Korea, from 75 in 2016 to 315 in 2021.[3]

In parallel, some analyses have demonstrated a gradual surge in the proportion of institutional investors expressing dissenting votes against shareholder resolutions at annual general meetings from 2018 to 2022.[4]

However, there have not yet been many cases of ESG-related shareholder resolutions or dissenting votes from institutional investors succeeding in gaining approval or traction within the Korean corporate landscape.

**Carbon Neutrality, K-Taxonomy and Greenwashing**

In the environmental sector, in March 2022, the Framework Act on Carbon Neutrality and Green Growth for Coping with Climate Crisis came into force. This pivotal legislation sets an interim goal of reducing national greenhouse gas emissions by at least 35% from the levels observed in 2018, to be achieved by 2030.

Additionally, this legislation stipulates that corporations shall conduct climate change impact assessments for major national plans and development projects. It also requires the government to establish and operate a climate response fund.[5]

In April, the government finalized the First National Basic Plan for Carbon Neutrality and Green Growth for 2023-2042 in accordance with the act, setting annual and sector-specific reduction targets to reduce greenhouse gas emissions by 40% by 2030.

Notably, the obligations imposed upon the industrial sector have been moderately lessened in terms of emission reduction, with the deficit expected to be offset by the expansion of nuclear power generation.

The Environmental Tech and Industry Support Act, enacted in March 2022, stipulates that financial institutions shall strive for environmentally responsible investments.

In addition, the act also empowers the minister of environment to establish a green classification system.

This means that South Korea also requires the government to devise specific criteria akin to the European Union's taxonomy for categorizing environmentally sustainable economic activities.

In December 2022, the Ministry of Environment of Korea published and subsequently finalized a revised version of the Korean Green Taxonomy, or K-Taxonomy, Guidelines, which classifies nuclear power generation as a green economic activity by including nuclear research, development, and demonstration and new nuclear power plant construction and continued operation as green sectors and transition sectors, respectively.

In December 2022, the Ministry of Environment revised the Korean Green Bond Guidelines and implemented support projects for companies issuing green bonds, with a specific focus on aligning their projects with the K-Taxonomy classification system.

Meanwhile, the government has taken stringent measures to combat greenwashing. According to statistical data by the Ministry of Environment, a total of 4,940 cases of greenwashing were identified during the three-year span from 2020 to 2022.[6]

In August, the Korea Fair Trade Commission revised its Guidelines for Review of Environment-Related Labeling and Advertising.

This revision incorporated three additional regulations: (1) labels and advertisements concerning future plans, (2) environmental labels and advertisements that do not specify specific details, and (3) labels and advertisements for products or corporations not directly involved in transactions with ordinary consumers.

Earlier this year, the Ministry of Environment also announced its plans to levy fines for environmental labeling and advertising, and in October, it published the Guidelines for Labeling and Advertising of Eco-friendly Management Activities.

The guidelines outline eight key principles, including authenticity, clarity and specificity, for environmental labeling and advertising, with concrete examples for compliance in areas like greenhouse gas emissions reduction, carbon neutrality claims and waste reduction.[7]

**Workplace Harassment, Health and Safety, and Human Rights**

In the social sector, three noteworthy developments are worth mentioning.

First, South Korea amended its Labor Standards Act in 2019 to introduce a system to prohibit workplace harassment. According to the amended Labor Standards Act, any individual is granted the right to report instances of workplace harassment to their employer.

Subsequently, the employer is obligated to promptly initiate an investigation and undertake appropriate measures, which may include reassignment of both the victim and the perpetrator to different workspaces when workplace harassment is substantiated.

Noncompliance with these obligations by the employer carries the risk of incurring fines.

The Ministry of Employment and Labor has reported that, in the three years following the implementation of the workplace harassment reporting system, a cumulative total of 18,906 reports have been submitted.

Notably, the ministry has taken corrective measures, providing guidance for improvement in response to 2,500 reported cases.[8]

However, the Korea Labour & Social Institute reported in January that 45.2% of all reported workplace harassment incidents occurred in workplaces with fewer than 50 employees,[9] gig workers and freelancers, so there is a need to better protect workers in small workplaces from harassing behavior such as verbal abuse, assault and discrimination.

Secondly, the Serious Accident Punishment Act came into effect in January 2022, significantly bolstering the management's responsibility concerning serious health and safety incidents in the workplace.

This legislative measure is delineated by a two-pronged approach: (1) imposing a set of obligations, including establishing a comprehensive safety and health system throughout the company aimed at preventing major accidents, and (2) punishing business owners and responsible managing officers if a serious industrial accident occurs due to a violation of their duties.[10]

Since the enforcement of SAPA, approximately 26 cases have been prosecuted as of October. Notably, in all but one of these cases, the CEO has been charged with violations of the law.

Out of these cases, seven have already reached a verdict. In one such instance related to the Hankook Steel & Mill Corp., the CEO was sentenced to one year in prison and subsequently taken into custody.[11]

Executives operating within high-risk industries in South Korea need to heighten their focus on preventing health and safety accidents.

Third, the momentum toward the domestic implementation of global business and human rights norms is gaining impetus. In South Korea, business and human rights have gained early traction within the public sector.

Notably, the National Human Rights Commission of Korea issued recommendations regarding the application of human rights performance guidelines to public institutions in 2014.

The Ministry of Economy and Finance incorporated respect for human rights in the management evaluation of public institutions and state-owned enterprises in 2017.[12]

Since then, concerted endeavors have been made to expand business and human rights to the private sector. For example, the government proposed the Framework Act on Human Rights Policy in December 2021, which stipulates corporate responsibility to respect human rights.

Furthermore, the NHRCK initiated a pilot project, thereby conducting pilot human rights impact assessments for major Korean food, manufacturing and entertainment companies in 2022.

Additionally, the nongovernmental organization known as KTNC and the Korean Bar Association have embarked on drafting a proposal for a human rights and environmental due diligence legislation similar to the Corporate Sustainability Due Diligence Directive in Europe.[13]

Currently, the KTNC-led legislative proposal is pending in the National Assembly,[14] but its potential enactment remains uncertain given the lukewarm reception from the ruling party.

**Board Diversity, Labor Director System and Board-Centered Management**

In the domain of corporate governance, the Financial Investment Services and Capital Markets Act was amended in April 2021 to require listed companies with total assets of 2 trillion won or more to appoint at least one female director by August 2022.

Until recently, the proportion of female executives among listed companies in South Korea stood at less than 5%, a stark contrast to countries such as France and Norway, where the proportions are about 44% and 41%, respectively.

In response, the government has taken measures to promote the social value of gender equality through legislation,[15] and in fact, the percentage of female registered directors in all listed companies seems to have risen slightly from about 4.3% in 2019 to 6.8% in 2023 since the law was amended.[16]

However, while the number of female outside directors increased by about 3.5 times over the same period, the number of female inside directors increased by only about 20%. This suggests a need for companies to develop targeted medium- to long-term strategies aimed at cultivating female leadership.

In January 2022, a significant amendment to the Public Institutions Management Act was enacted, introducing the board-level employee representation system. This system entails the inclusion of employees as board members, actively engaging them in the decision-making processes of the company.

Pursuant to the amended act, public enterprises and quasi-governmental institutions are obligated to designate one of their workers as a nonstanding director. Such a worker shall be the person who is recommended by a worker representative or who received the majority consensus of the workers, among the workers who have worked for the institution for three or more years.

Historically, heads in many public institutions have tended to be the chair of the board, thereby making decisions unilaterally with respect to management-related matters.[17] However, with the inclusion of workers as directors, there is a potential for diversifying the composition of the board and integrating some of the workforce's perspectives into the board's deliberations and decision-making processes.

There is a need to run the system in a manner that ensures labor directors in public institutions make decisions for the benefit of the entire institution, rather than exclusively focusing on the interests of the workforce.

Lastly, it's crucial to underscore that the principles of ESG are founded upon board-centered management, with numerous ESG-related organizations in South Korea and overseas offering guidelines on how to ensure that boards operate transparently.

For example, the KCGS, a prominent ESG rating organization in South Korea, emphasizes the independence, transparency and professionalism of boards of directors in its revised code of best practices for ESG.

SK Group, a large Korean conglomerate, has taken steps to bolster the role of independent directors in monitoring and supervising management by proclaiming its commitment to "strengthen board-centered management."

Furthermore, Samsung Group recently introduced a senior independent director system, giving senior independent directors the authority to request reports from management on key issues and convene meetings of independent directors.[18]

It is anticipated that these developments will substantially enhance the role and capabilities of the board within major South Korean corporations.

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***Disclosure: Min and Jung helped pilot the Human Rights Impact Assessment project and draft a proposal for human rights and environmental due diligence legislation.***



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