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노혁준



한국법제연구원  
KOREA LEGISLATION RESEARCH INSTITUTE

가

(Ⅲ)

- -  
The Comparative Legal Analysis on the Corporate  
Regulatory Reform( )

-U.K.-

연구자 : 노혁준(서울대학교 법과대학 교수)  
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2008. 6. 30.



한국법제연구원  
KOREA LEGISLATION RESEARCH INSTITUTE

가 가 , EU 가 가

7 1

(BERR) (BRE) 가

가 , 2006 (Company Law Review)

3 6 3

(Memorandum of Association), (Articles of Association)

4 (Corporate Governance) , 5

(Corporate Finance) ,

6

2004. 4. 21.

EU 13

7

가

※ : 2006 , (BERR),  
(BRE), , 가 ,  
(Think Small First), ,  
가 , ,

## Abstract

The U.K., one of the most ambitious and active EU countries in terms of deregulation, has made several steps to boost business activities and to provide better regulatory surroundings. The responsible authorities such as the BERR (the Department for Business, Enterprise and Regulatory Reform), HM Treasury and BRE (Better Regulation Executive) have been pursuing more efficient regulatory frame and publishing consultative documents.

Among various areas dealt by the U.K. government, comes the new companies act as having extensive and enormous effect over the U.K. economy general. The Companies Act 2006 (c. 46. the "Act") which has 1,300 Sections and 16 Schedules, the biggest ever legislation in the U.K. history, fundamentally replaced the old legislation.

As is mentioned in the "Final Report"(URN 01/942 and 01/943) by Company Law Review Steering Group and "Company Law Reform" white paper (cm 6456) by the Department of Trade and Industry, the Act aims at several goals: to enhance shareholder engagement and a long-term investment culture; to ensure better regulation and a "Think Small First" approach; to make it easier to set up and run a company; to provide flexibility for the future.

Reviewing major changes under the Act, this paper divides the whole Act into four parts: formation of companies; corporate governance; corporate finance, audit and reporting; takeover and fundamental changes.

Now that the Korea also seeks to reform its legislations over business activities, especially the Korean Commercial Code("KCC") including

companies law, the new Act and its legislative history would provide Korea some helpful insights.

As to the formation of a company, the KCC should introduce new-style statutory entity in order to meet small enterprises' demands. In the U.K., the Act and the Limited Liability Partnership Act 2000 stipulate various forms of limited liability entity including limited liability partnership("L.L.P."), private limited company with share capital ("private company"), public limited company with share capital ("public company"). Even though the KCC reform bill already adopted U.S.-style limited liability company, the new vehicle provision should be accompanied by a tax consideration. In addition, the KCC should define a close or private company as opposed to a normal public company, so that more flexible regulations can be applied to those companies with a few shareholders.

Second, the KCC may deregulate the annual shareholder meeting for small company, an attitude that was adopted in the Act. Further, if the KCC introduces detailed clauses on the conflict of interests between directors and the company, they would help prevent the agency problems associated with management. However, the duty of directors under sec. 172 of the Act to act in a way most likely to promote the success of the company for the benefit of its members as a whole is not clear, when the directors also have to consider the interests of employees, supporters, customers etc.

Third, while the Act continues to seize traditional legal capital concept, the KCC needs to give companies more leeway to form their own capital structure. As to the auditor's liability, the Korean legislation should stipulate under what terms a liability limitation agreement is valid.

Fourth, the board neutrality clause and mandatory bid clause under the Act seem to be inappropriate to import with regard to current M&A market in Korea. However, (i) squeeze-out device using compulsory acquisition, (ii) sell-out mechanism and (iii) scheme of arrangement under the Act would play positive role once introduced in Korean corporate practices.

Finally, the process of legislation for the Act gives Korea another insight. The U.K. government had to pass through regulatory impact assessment, under which the economic, social, environmental costs/benefits of the proposed legislation were scrutinized. In addition, the BERR and the Company Law Review published many consultative documents, asked for comments in order to adopt various viewpoints and left open sources for interpretation and further development. The Korean government should give more attention to the legislative process.

※ Key words : The Companies Act 2006, BERR (the Department for Business, Enterprise and Regulatory Reform), BRE (Better Regulation Executive), Simplification Plan, Impact Assessment, Think Small First, Company Law Review, Enlightened Shareholder Value, Directors' Report, the Panel on Takeover and Mergers

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I.

1 :

I.

1. :

Philip Hampton 2005. 3. (HM Treasury) “ : (Reducing Administrative Burdens: Effective Inspection and Enforcement)”<sup>1)</sup>

David Archlus (Better Regulation Task Force) “ : (Regulation - Less is More: Reducing Burdens, Improving Outcomes)”<sup>2)</sup>

가

---

1) Philip Hampton, Reducing Administrative Burdens: Effective Inspection and Enforcement, published by HM Treasury (2005), (<http://www.hm-treasury.gov.uk/media/7/F/bud05hamptonv1.pdf>) 가 . 2008. 6. 28. 가 ). (Regulatory Impact Assessment)

2) David Arculus et al., Regulation - Less is More: Reducing Burdens, Improving Outcomes, A BRTF Report to the Prime Minister (2005) (<http://www.berr.gov.uk/files/file22967.pdf>) 가 ).

1 :

2008. 3. 12. (BERR)  
 “ : (Enterprise: Unlocking the U.K.'s  
 Talent)” .<sup>3)</sup> 가 10  
 .  
 가 (World  
 Bank) 2008 가  
 가 , , ,  
 ( 1 ).

[ 1: (2008)]<sup>4)</sup>

Economy	Ease of Doing Business Rank (out of 178)
Singapore	1
New Zealand	2
United States	3
Hong Kong	4
Denmark	5
United Kingdom	6
Canada	7
Ireland	8
Australia	9
Iceland	10
Japan	12
Germany	20
France	31
Italy	53

3) HM Treasury & BERR, Enterprise: Unlocking the U.K.'s Talent (2008) (<http://www.berr.gov.uk/files/file44992.pdf> 가 )

4) ( 3), 66 .

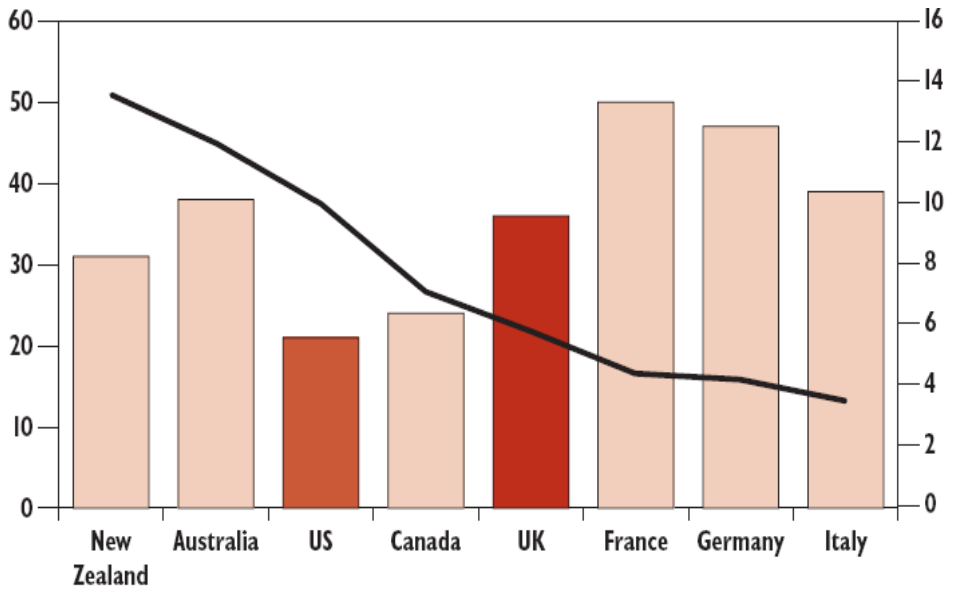
I.

가

(enabler)  
가 (A Culture of Enterprise) 가  
(entrepreneurial talent)

가 ( 2) 가

[ 2: ]<sup>5)</sup>



가

TEA(Total Early Stage Entrepreneurial Activity), 42

5) ( 3), 25

1 :

가

2009

가  
가

(Knowledge and Skills)

가  
3,000

가  
(enterprise education) 가

가

(Peter Jones)

“

(NEA, National Enterprise Academy)”

가

(Assess to Finance) 가

I.

(small firms

loan guarantee) . 5 가

, 1,250

(British Business Angel Association)

5,000 3 (Enterprise Capital Fund)

, 2 1

가

(Regulatory Framework) .

(Simplification Plan) , 2010

25%

가

(Business Innovation) .

가

(innovation voucher) .

2. :

(Simplification Plan)

(Simplification Plan)

(BERR)

(DTI) 2006. 12.



1 :

, 2010 8  
 14% .<sup>6)</sup>  
 1 2007. 12. 2  
 .<sup>7)</sup> 2010 11  
 25%  
 2  
 가 가  
 [ 3: 1, 2 ]<sup>8)</sup>

( : )

	2006	1	2007	2
	962	167	962	304
&	1,097	170	979	294
	1,914	427	1,914	507

6) PwC (Price Waterhouse Coopers) 452  
 “Administrative Burden Measurement Exercise Report by PwC”  
 , 79 technical  
 summary가

7) BERR, Simplification Plan 2007: Promoting Business and Enterprise  
 through Better Regulation (URN 07/1660) (2007) (<http://www.berr.gov.uk/files/file42767.pdf>  
 가 ) John Huton

8) 2007 ( 7), 10 .

I.

	2006	1	2007	2
	220	12	220	23
	78	0	78	25
	35	29	35	29
	4,306		4,188	
		805		1,182
2005		(115)		(132)
		690		1,050
		16%		25%

, 2006  
 가 .  
 6,600  
 가 .  
 가 4,500  
 가 2010  
 가  
 , (Companies House) , (Joint  
 Filing) , , EU  
 .  
 ,  
 가  
 . , 2006. 12. 7.

1 :

(DTI) (Alistair Darling)

(Michael Gibbons)

2007. 3.

1 8,500 가

가 3 6,500

(Consumer Law) . 2008 EU

(the Unfair Commercial Practices Directive)

2006

가 700 3,500

{ (Control of Misleading Advertisements Regulations)}

2 1,600

(i) 2007. 7.

“ (Next Steps for Regulatory Reform)” , (ii)

(Consumer Credit) 9)

1400 , (iii)

---

9) the Consumer Credit Act 1974 the Conduct of Business (Credit Reference Agencies) Regulation 77.

I.

(Consumer Voice)

가 900  
 가 .10)  
 , 가  
 . 가  
 , 가  
 가 2,250  
 가 가  
 75,000  
 .  
 . 2007 가  
 “ (Meeting the Energy Challenge)”  
 가 ,  
 가  
 .  
 . (Energy Bill) , 가  
 , (Planning Bill)  
 . (Climate Change Bill)

---

10) Retail Enforcement Pilot, Local Better Regulation Office

1 :

## II.

. 가  
가 , 가  
, , 가  
.

1. :

(BERR, the Department for Business, Enterprise and Regulatory Reform) 2007. 6. 28. (DTI, the Department of Trade and Industry)

11) (BER, Better Regulation Executive) (Department for Communities and Local Government)가

가

가

---

11)

Department for Innovation, Universities and Skills

II.

.12)

(BRE)

(i)

가

, (ii)

(administrative cost)

, (iii)

가

가

- 
- 
- 

가

가

12)

(i) 가

(ii) (trade association)

(iii)

(iv) (consultation document)

(v) ( VIPER forum ) 가

(vi) (Business Link)

(vii) (Small Firms Consultation Database) 가

(viii) EU

(ix) EBTP(European Business Test Panel) 가 EU

(x) EU “Your Voice’ Consultations Page”

1 :

- 3

-

- EU

-

,

,

가

: ①

(transparent), ②

(accountable) ③

(proportionate), ④

(consistent), ⑤

(targeted only at cases

where action is needed) .

2. 가

가(Impact Assessment)

가

, , 3

가 가 13)가

가

가

, ( )

가

13) BRE, Impact Assessment Guidance (<http://www.berr.gov.uk/files/file44544.pdf>  
가 )

II.

가

(continuous process)

, 가

가

(i)

(Development Stage):

, (ii) (Option Stage):

, (iii)

(Consultation Stage):

, (iv)

(Final Proposal Stage):

, (v)

(Implementation

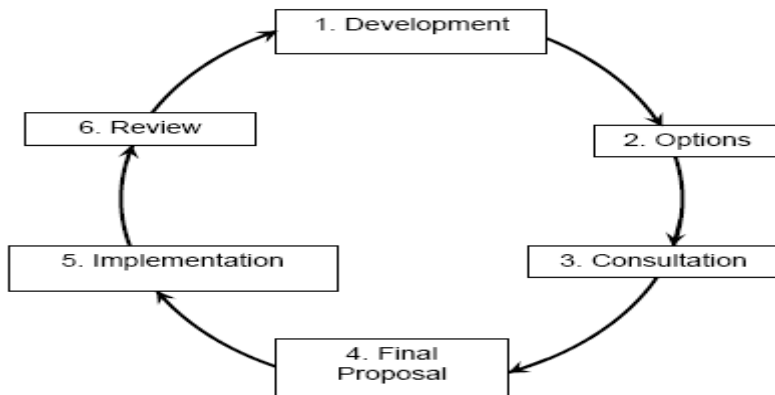
Stage):

, (vi)

(Review

Stage):

[ 4: 가 ]<sup>14)</sup>



14) 가 가 ( 13) .



1 :

가

(Intervention & Option Summary)

(Analysis & Evidence Summary)

(Evidence Base)

가 .<sup>15)</sup>

가

2006

가

가(Regulatory Impact Assessment)

2007. 1.

가 <sup>16)</sup>

“ (Benefit)”

1 6,000

3 4,000

(

1

)

15) 가 . Tim Ambler, Francis Chittenden & Deming Xiao, The Burden of Regulation: Who is Watching out for Us? Published by British Chambers of Commerce (2007) (<http://www.britishchambers.org.uk/6798219243804080059/publications.html>)

가 )  
16) BERR, Regulatory Impact Assessment: Companies Act 2006 (2007) (<http://www.berr.gov.uk/files/file29937.pdf>) 가 )

Ⅲ.

17) “ (Cost)”  
 (Direct Cost) 300 800 가  
 .  
 1,000 2,000  
 18).

Ⅲ.

, , , 가 , , , 가 , , , 2006 , , 가 , , ,

19)

---

17) 가 . 가 ( 15), 5 .  
 18) 가 ( 15), 5-6 1 .  
 19) , , CG Review 31 (2007), 9 2 (2007),

1 :

가

2

2006

3

4

5

5

6

( , )

“limited

company with share capital”,

가

2006

2006

54 (2006)

I.

## 2 2006

### I.

#### 1. (Company Law Review)

1998. 3.

(Company Law Review)

(Steering Group)

.<sup>20)</sup> 1962

(Jenkins Committee)

40

가

가

가

.<sup>21)</sup>

1999. 2. “

(Modern Company Law for a Competitive Economy:

The Strategic Framework)”<sup>22)</sup>

---

20) 2006  
(Steering Group)  
2001. 7. 27.

가

21) DTI, Modern Company Law for a Competitive Economy, A Consultation Document (1998. 3.) (<http://www.berr.gov.uk/files/file23283.pdf>) pp.3-5.

22) The Company Law Review Steering Group, Modern Company Law for a

,<sup>23)</sup> 3 2001. 7. 27. 2

24)

1 가 가

, (i) (Think Small First), (ii)

(An Inclusive, Open and Flexible

Scheme of Company Governance), (iii)

(A Flexible, Responsive Institutional Structure)<sup>25)</sup>가

,<sup>26)</sup> . 2

가

(Small and Private Companies,

4 ). “Think Small First”

가

(company secretary)

((Directors, 6 ).

Competitive Economy: The Strategic Framework, A Consultation Document from the Company Law Review Steering Group (1999. 2.) (URN 99/654) (<http://www.berr.gov.uk/files/file23279.pdf> 가 )

23) 가 (consultation document) <http://www.berr.gov.uk/bbf/co-act-2006/clr-review/page22794.html> .

24) The Company Law Review Steering Group, Modern Company Law for a Competitive Economy: Final Report vol. 1 (2001. 7.) (URN 01/942)/ vol. 2 (URN 01/943). “ (Final Report)” 1 가 .

25) 1 (primary legislation), 2 (secondary legislation), 1 (devolved rule-making by bodies recognized through primary legislation),

(combided code)

26) (Final Report, 24), 18-21 .

I.

가

(Shareholders, 7 ).

1997 (Law Commission)<sup>27)</sup>

28)

(Company Reporting

and Audit, 8 ).

(annual report)

(ORF,

Operating and Financial Review)

.<sup>29)</sup>

27) 1965 (the Law Commissions Act 1965)

www.lawcom.gov.uk

28) Law Commission, Shareholder Remedies (1997. 10. 24.) (L.C. 246) (<http://www.lawcom.gov.uk/docs/lc246.pdf>)

29) 1985 {the Companies Act 1985 (Operating and Financial Review and Directors' Report etc) Regulations 2005 (SI 2005/1011)}

2005. 11. 28.

{Companies Act 1985 (Operating and Financial Review) (Repeal) Regulations 2005 (SI 2005/3442).

2006. 1. 12. }. OFR

2006 ( 417 5 II. 5.

).

, (Institutional Arrangement, 5  
). 1

(FRC, Financial Reporting Council), (ASB,  
Accounting Standard Board), (FRRP, Financial Reporting  
Review Panel) (CLRC, the Company Law and  
Reporting Commission), (Standards Board), (RRP,  
the Reporting Review Panel)

, (Simplifying and Streamlining  
the Law: Further Proposals, 9 14 ) .

, ,  
.  
, (Effective Sanctions, 15 ).

, (phoenix  
syndrome)

2.

2002. 7. 16. “ : (White Paper: Modernizing  
Company Law)”<sup>30)</sup> . 2  
2 200  
2005 3 “

---

30) Cm 5553-I and Cm 5553-II

I.

(Company Law Reform)" 31) , 7 , 9 , 10

가 가 .

2005. 11. (House of Lords)

(Company Law Reform Bill) .

885 15 (Schedule) .

3 2 3 1

2006. 1. 30. (Grand Committee)

, 가 .  
31 (Part 31) 가 .

,  
1985 , 1989 , 2004  
( , ) {Companies (Audit,  
Investigations and Community Enterprise) Act 2004}

(i)

32) , (ii)

가 , (iii)

---

31) DTI, Company Law Reform (2005. 3.) (Cm 6456) (<http://www.berr.gov.uk/files/file13958.pdf>  
가 )

32)



2006. 4. 25. , 5.  
 9. 16. .  
 5. 25. 1 (First Reading) 6. 6. 2  
 (Second Reading)가 .  
 .  
 (Company Law Reform Bill)  
 (Companies Bill) ,  
 2006. 11. 8. (Royal Assent) .  
 (

## II. 2006

### 1.

2006 1300 (section) 16  
 (schedule) , 가 .  
 8 , 1  
 3,000  
 . 2005 33) 2006  
 가 .  
 ,  
 (to enhance shareholder engagement and a long-term investment culture).  
 가 (enlightened shareholder value)

---

33) 31 .

EU

(to ensure better regulation and a “Think Small First” approach).

(company secretary)

EU (EU Transparency Directive)

(to make it easier to set up and run a company).

가 , 1

가

(to provide flexibility for the future).

가

31

.34)

---

34) Alan Steinfeld et al., Blackstone's Guide to The Companies Act 2006, Oxford Univ. Press (2007) p.4.

2.

47 (Part)

[ 5: ]<sup>35)</sup>

(Part)	
1-7	,
8-12	( )
13-14	
15-16	
17-28	, ,
29-40	(regulatory framework),
41-42	
43	
44-47	

가 , (a)  
 (“  
 ”), (b) , , , (“  
 ”), (c) , (“ ”),

35) Companies Act 2006: Explanatory Notes (2007), p.2  
[http://www.opsi.gov.uk/acts/acts2006/en/ukpgaen\\_20060046\\_en.pdf](http://www.opsi.gov.uk/acts/acts2006/en/ukpgaen_20060046_en.pdf) 가 .

(d) , , (“ ”)

가 .<sup>36)</sup>

가. 1 7 ( , )

1 ( 1 ) ( 2 )

가 ,

2 가 .

(public company) 2 ( )가

, 1 . 7 1

1 가 . 8

3 (constitution) . 17

(Articles of Association) ( 33 ),

( 21 ) . 22 24

(entrench provisions) .

29 , 30 ,

. 31

4 . 39 35 1

2, 3 , 가 (ultra vires)

---

36) Geoffrey Morse et al., *Palmer's Company Law: Annotated Guide to The Companies Act 2006*, Sweet & Maxwell (2007) (“Palmer's Company Law Annotated (2007)”) pp. 52-55 .

5 가 , 6

, 7

2 .

. 8 12 ( )

8 113 5

,

. 120 가

,

가 .

9 (intermediary)

.

10 . 155 1

. 157

16 .

( 172 ).

. 10

가 . 10 8

,

(secure register) .

11 (statutory derivative action)

. (Law Commission) 37) .

12 (company secretary) ,

.

---

37) 28 .

. 13, 14 ( )

**13**

(quoted company) 가

(elective

regime) ( 가 )

(default) 가

가

( 13 2 ).

**14**

10A ).

( 366 ).

. 15, 16 ( )

7 (Audit)

16 , 15 .

**15**

7 (schedule)

(regulation) . 422

가

430

16

가

17 28 ( , , )

17 629 (classes of shares)

642 644 ( 가 (solvency

statement)

18 2

19 (debenture)

20 가 가

50,000

21 2

22 43 EU

6 198 211

23 8

24 가

(annual return) 11 3

25 가 (company charges)

, 12 1 , , , 2

26 (arrangement) (reconstruction)

27 가

28 . 2004. 4. 21. EU  
 38) 2006. 5. 20.  
 28 EU

29 40 ( ,  
 )

29 (fraudulent trading) , 30  
 , 31

32 (investigation)  
 가

(inspector) , ,  
 ( 1035, 1036 ).

33

34 (overseas company)  
 가 11 39) , U.K.

35 (registrar of companies)

(regulation)

38) European Directive on Takeover Bids (2004/25/EC)

39) Eleventh Company Law Directive (89/66/EEC)



( 1069 ).

**36**

가

가

가

(officer in default)

**37**

**38**

(parent),

(subsidiary)

가

**39**

**40**

)

41, 42

(

)

**41**

1985

(Business Brand Act)

**42**

(statutory auditor)

EC

가

EC

43

(

)

**43**

EU

. 44 47 ( )

44

45

가

46

orders)

(regulations,

47

.40)

---

40)

2

I.

3

I.

1.

가 . (a)  
 (limited company)  
 (unlimited company) , (b)  
 (company with share capital)  
 (company without share capital) .  
 가 (c) (private company)  
 (public company) .  
 가 .  
 [ 6. ]

	(Private Company)		(Public Company)
	(Unlimited Company)	(Limited Company)	(Limited Company)
Share Capital	Private Unlimited Company with Share Capital <sup>41)</sup>	Private Limited Company with Share Capital	Public Limited Company with Share Capital (PLC)
Share Capital	Private Unlimited Company without Share Capital	Private Limited Company without Share Capital <sup>42)</sup>	X

41)

가 ( 4 1 ).

( 58 1 )<sup>43)</sup> 5 ( 763 ).

( 755 ).

1980

가 ,

(Financial Services and Market Act 2000)

.<sup>44)</sup>

2004 1,831,100

11,700 가 ,

(Private Limited Company with Share Capital)

.<sup>45)</sup> 2004 1,290 가

---

. Stephen W. Mayson et al., *Company Law* (2007-2008 Ed.), Oxford Univ. Press (2007), p.54.

42) (company limited by guarantee guarantee company) (Stephen W. Mayson et al., *ibid.*, at 47).

가 ( 11 3 ).

, 가 3 {Geoffrey Morse, Charlesworth's *Company Law* (17th Ed.), Sweet & Maxwell (2005) p.39}.

43) "public limited company" "plc"

( ) limited ltd .

44) 가 'quoted' 'listed' .

NYSE NASDAQ 가 ( 361 , 385 2 ). EEA ,

(FSA)가

'quoted' . Geoffrey Morse, *supra* note 42, at 185-186.

45) Geoffrey Morse, *supra* note 42, at 42; Stephen W. Mayson et al., *supra* note 41 at 47.

I.

.46)

“

”

가 ,47)

75%

(registrar)

( 90

). (i) , (ii)

, (iii)

, (iv)

가

가 가가

가

. 가

가

가 ( 97 ).

1

1

.48)

2. : (Limited Liability Partnership Act 2000)

(company) (i)

Partnership Act 1890 (general partnership), (ii) Limited Partnerships

Act 1907 (limited partnership) .

46) Stephen W. Mayson et al., supra note 41 at 185.

47) 283 .

48) 7 1 ( 1 1 , 3A ).

38 .

(general partner) 1

(limited partner) 1

가 .

가

2000

가

.49) Limited Liability Partnership Act 2000  
(registrar)

.50)

, ,

.51)

/

2006. 3.

17,499

, 가 .52)

## II.

### 1.

(Memorandum

of Association) (Articles of Association)

.

,

---

49)

가

50) Limited Liability Partnership Act 2000 1 2 , 3 1 .

51) Limited Liability Partnership Act 2000 6 1 .

52) Geoffrey Morse, supra note 42, at 36.

II.

.53)

(1985

2 ),

.54)

(subscriber)

가

.55)

가

.56)

가

.57)

( ‘historical

snapshot’)

.58)

, 2008. 10. 1.

.59)

53) Geoffrey Morse, supra note 42, at 50.

54) Ibid.

55) 8 .

9 .

56) Alan Steinfeld et al., supra note 34, at 10.

57) (Final Report, 24), 213 .

58) Gary Scanlan et al., Companies Act 2006: A Guide to the New Law, The Law Society (2007), pp.12-14.

59) 28 .

.60)

2.

(constitution)

3 3

.61)

Table

A<sup>62)</sup>

.63)

( 8 2 ).

가가

.64)

19 가

(private companies limited by shares),

(private companies limited by guarantee),

(public companies)

.65)

22 (entrenchment provisions)

60) Gary Scanlan et al., supra note 58, at 13.

61) 17 , 29 .

62) The Companies (Table A to F) Regulations 1985.

63)

64) Gary Scanlan et al., supra note 58, at 14.

65) Implementation of Companies Act 2006: A Consultative Document (DTI, 2007)



II.

가

가

(objects)

.66)

I.

4

I.

1.

가.

‘ (elective regime)’

.67)

(i)

5

, (ii)

(annual accounts)

, (iii)

, (iv)

, (v)

가

(default provision)

‘opt-in’

‘opt-out’

가?

67) 1985

379 A

가

, (i) (general law) , (ii)

(iii) ,<sup>68)</sup> (iv) Stock Transfer

Act 1963 , (v)

,<sup>69)</sup> (v) (statutory

rights) .<sup>70)</sup>

(shareholder agreement)

, (a) 가 ,<sup>71)</sup> (b)

가 72)

가

(to enhance

---

68) 33

69) 가 3

40 (1)

70) Stephen W. Mayson et al., supra note 41 at 74, 76.

71)

Stephen W. Mayson et al., supra note 41 at 73.

72) 21 1

I.

shareholder engagement and a long-term investment culture)

.73)

40% 가

가 가

,74) 9

.75)

가

가

가

가 .76)

.77)

.78)

가 .79)

---

73) 2 II. 1 .

74) Gary Scanlan et al., *supra* note 58, at 50.

75) 145 .

76) 145 4 (a).

77) 146 .

78) Alan Steinfeld et al., *supra* note 34, at 34; 146 3 .

4

.80)

152

가

가

2.

가.

(AGM, annual general meeting)

.81)

가

가

( 13 3 )

( 301 335 ),

( 336 340 ),

( 341 354 )

---

79)	150	5	.
80)	150	2	.
81)			336

가  
.82)

1989

가

( 381A 381C ).  
가 , 가 가

가 가 .83)

가 .84)

가 .85)

,

.86)

가 .87) 가

,

( 가

) .88)

82) Stephen W. Mayson et al., supra note 41 at 357.

83) 288 300 381A 381C

84) 281 1 .

85) 288 2 .

86) 300 .

87) 288 3 .

가 , 5% ( )  
 가 , (a) 가  
 (b) (c)  
 .89)  
 가 (circulation date)  
 가  
 가 가 .90) 가  
 가 .91) 가  
 .92)(  
 296 3 ).  
 (i) , (ii)  
 28 .93)  
 37 1143 1148 (Schedule) 4, 5  
 (electronic communications)

---

88) 291 3 .  
 89) 288 5 , 6 , 2 .  
 90) 289 .  
 91) 282 2 , 3 .  
 92) 296 3 .  
 93) 297 .

I.

가 . (i) ‘ ,  
(Schedule) 4 3 , (ii) ‘  
, (Schedule) 5 3  
, (electronic means)

1168 .

(debenture)

( 1145 ). ‘ ,  
1146 . (i) 가  
, (ii)

1146 .

## II.

1.

1 , 2 가  
.94) 1  
(natural person) .95) 가  
16 ,96) 16  
. 16

---

94) 154 .  
95) 155 1  
96) 157 .



,  
,97) 160 , 168

,  
,98)  
가 (service address)<sup>99)</sup>

100) 가  
,101)

,  
가  
가  
(company secretary)

,  
,102)  
,  
,103)

---

97) 161 .  
 98) 162 , 163 .  
 99) 1141 1 ,  
 .  
 100) 240 , 241 .  
 101) Alan Steinfeld et al., supra note 34, at 65 .  
 102) Geoffrey Morse, supra note 42, at 335.  
 103) 270 .

II.

2.

가.

(fiduciary duty)

· , 가

가 .<sup>104)</sup> 가 가

가 가 .<sup>105)</sup>

· , 가

.<sup>106)</sup> 가

· , 170 4 .

· 가 , .

· , 170 4 171 177

---

104) Gary Scanlan et al., supra note 58, at 56.

105) 가 (Final Report, 24)

106) Gary Scanlan et al., supra note 58, at 57-58.

가 .107)

.108)

(Duty to Act withing Power.

171 )

171 (a) (constitution)

가 , (b)

가 .

가 ,

. (a)

(b)

가 ,

가

.109)

. 가 가 ,

(moving cause)

.110)

107) Stephen W. Mayson et al., supra note 41 at 446.

108) Alan Steinfeld et al., supra note 34, at 82.

109) Palmer's Company Law Annotated (2007), supra note 36, at 165.

110) Hindle v. John Cotton Ltd. (1919) 56 S.L.R. 625 at 631 .

II.

(Duty to Promote the Success of the Company. 172 )

(1)

172 가 (in goo faith)  
“ 가 가  
(most likely to promote the success of the company for the benefit of its members as a whole)”

가 . 1942 Re Smith and Fawcett Ltd.<sup>111)</sup>  
“ 가 - -  
(in the interests of the company)  
”

‘ 가 (enlightened shareholder value)’  
.<sup>112)</sup>

가  
, ,  
가 가  
‘ 가 ’

111) (1942) Ch 304 at 306.

112) Palmer's Company Law Annotated (2007), supra note 36, at 166.

,  
113)

. 172 1 “  
가 가 ”

114)

가?

가 . Mutual Life Assurance Co. of New York v. Rank  
Organization Ltd.<sup>115)</sup> Rank Organization  
가 .

가

116)

가

(2)

(i)

, (ii)

, (iii)

, (iv)

---

113) Alan Steinfeld et al., supra note 34, at 84.

114) Stephen W. Mayson et al., supra note 41 at 456.

115) (1985) B.C.L.C. 11 at 21.

116) Multinational Gas and Petrochemical Co v. Multinaional Gas and Petrochemical Services Ltd {(1983) Ch. 258 CA}

II.

, (v) 가

, (vi)

.117)

가

.118)

, 1986

214

.119)

(ii)

309

가

309

가

가

.120) 가

가 ,

.121)

(Duty to Exercise Independent Judgment.

173 )

가

117) 172 1 .

118) 172 3 .

119) Stephen W. Mayson et al., supra note 41 at 460.

120) Geoffrey Morse, supra note 42, at 297.

121) Stephen W. Mayson et al., supra note 41 at 460.

가

.122)

.123)

(Duty to Exercise Reasonable Care, Skill and Diligence, 174 )

(fiduciary duty)

가

가

( , )

).

(1)

(Duty to Avoid Conflicts of Interest, 175 ),

122) 173 2 .

123) Stephen W. Mayson et al., supra note 41 at 465.

II.

3 (Duty Not to Accept Benefits from Third Parties, 176 ),<sup>124)</sup>

(Duty to Declare Interest in Proposed Transaction or Arrangement, 177 )

, (Declaration of Interest in Existing Transaction or Arrangement, 182 ),

(Transactions with Directors Requiring Approval of Members, 188 ) .

(2)

<sup>125)</sup>(Transaction or Arrangement)

. ‘ (Substantial Property Transaction)’ 가

. 177 가 (proposed transaction or arrangement) 가

, 182 가 (existing transaction or arrangement) ,

가 가 .<sup>126)</sup> 177 182

124)

. , 239 . Palmer's Company Law Annotated (2007), supra note 36, at 173.

125) . Re

Duckwari plc (1999) Ch 253.

126) 317 .



.127)

가

.128)

,

.129)

가

180

177

,

가

(3)

,

175

가

(i)

, (ii)

.

가

.

,

가

.130)

.

(principal)

131)

127) 182 1

128) Gary Scanlan et al., supra note 58, at 61.

129) Palmer's Company Law Annotated (2007), supra note 36, at 171.

130) 175 5

131) Clark Boyce v. Mouat (1994) 1 A.C. 428

II.

가<sup>132)</sup> ,  
 가 ,133)  
 (4)  
 180 4 가  
 가 ,134)  
 가  
 ( 227 )  
 ( 234 ) ,135)  
 (i) 2 (Directors' long-term  
 service contracts. 188 ),<sup>136)</sup> (ii) (Substantial Property  
 Transactions. 190 ), (iii) , (Loan, Quasi-loans  
 and Credit Transaction. 197 ), (iv) (Payment for Loss of  
 Office. 215 )  
 ,  
 ,137)

132) London and Mashonaland Exploration Co. Ltd vs. New Mashonaland Exploration Co Ltd (1891) W.N. 165.

133) Palmer's Company Law Annotated (2007), supra note 36, at 172.

134) Ibid.

135) 228 , 229 , 237 , 238

136) 319 , 5

137) 2  
 281 3

가

.138)

.139)

가

, 가 , (i) 가

10% 5,000 , (ii) 100,000

가 .140) 320 322

.141)

232 309 A

.142)

.143)

144)

---

138) 188 2 , 190 2 , 197 2 , 198 2 ,  
 200 2 , 201 2 , 203 2 , 217 2 , 218 2 .

139) 188 6 , 190 4 , 197 5 , 198 6 ,  
 200 6 , 201 6 , 202 5 , 217 4 , 218 4 , 219  
 6 .

140) 191 2 (a), (b)

141) 2,000 5,000 .

142)

. Palmer's Company Law

Annotated (2007), supra note 36, at 172.

143) 234 3 , 235 3 .

144) 234 235 Qualifying third party indemnity provision,  
 Qualifying pension scheme indemnity provision .

, ,  
145)

( 239 ).

146)

239

가 가

가

가

가

가

147)

3. (Derivative Claims)

가.

2006

---

145) 1157 .

146) 239 2 .

147) Alan Steinfeld et al., supra note 34, at 101.

(1) Foss v. Harbottle<sup>148)</sup>

v. Harbottle . . . . . Foss  
 가  
 (Proper Plaintiff Principle) . . . . .  
 가  
 (Internal Management Principle) . . . . .  
 (Irregularity Principle). 가 가  
 ,  
 가  
 가  
 가  
 ,  
 ,  
 .149)

(2) Edwards v. Halliwell<sup>150)</sup>

Foss v. Harbottle  
 가 . . . . .

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148) (1843) 2 Hare 461  
 149) Stephen W. Mayson et al., supra note 41 at 518.  
 150) (1950) 2 All ER 1064

II.

( i ) 가

( ii ) 가 가

( iii ) 가

( iv ) 가 (fraud) 가

(i) (iii) 가

Foss v. Harbottle ,

.151)

(iv) 가 .

(iv) (iii) 가 .

가

가 가가 가

가?

(No reflective loss principle) . ,

가 가 가

, 가

.152)

(iv) 가

, 가 가 .

가 가 ,153)

151) Alan Steinfeld et al., supra note 34, at 104.

152) Prudential Assurance Co. Ltd. v. Newman Industries Ltd (No.2) (1982) Ch. 204 at pp.222-223; Johnson v. Gore Wood and Co. (2002) 2 AC 1; Gardner v. Parker (2004) EWCA Civ 781 (2004) 2 BCLC 554); Stephen W. Mayson et al., supra note 41 at 528.

153) Pavlides v. Jensen (1956) Ch. 565.

가

.154)

.155)

(3)

, 가

가 .

가

.156)

Prudential Assurance Company Limited v. Newman Industrial Limited (No. 2)<sup>157)</sup>

가

(prima facie case) Foss vs. Harbottle

. 1994 RSC Ord 15, r 12A가

21

가

CPR Part 19.9 .158)

. 2006

(1)

Foss v. Harbottle

154) Palmer's Company Law Annotated (2007), supra note 36, at 233; Alan Steinfeld et al., supra note 34, at 104.

155) Alan Steinfeld et al., ibid.

156) MacDougal v. Gardiner (1875) 1 Ch D 13.

157) (1982) Ch. 204.

158) Alan Steinfeld et al., supra note 34, at 105.

II.

,  
(Law Commission) ,159)  
가  
.160)

.161)

(2)

11 1 ( 260 264 )  
994 (unfair prejudice)  
11 1 .  
260 5 (c)

. 가  
가 .162)  
, , (shadow  
director), (de facto director)가 .163)  
3 가 .164)  
가 , , ,  
.165).

---

159) Stephen W. Mayson et al.,

supra note 41 at 517-518.

160) Alan Steinfeld et al., supra note 34, at 104.

161) Ibid. at 103.

162) 260 4 .

163) 260 5 (a), (b), 1261 1 .

164) 260 3 .

165) 260 3 .



.

,

.166)

(3)

(가) 가

(Law Commission)

,

261

가

,

.

,

(prima facie case)

.

가

,

.167)

,

,

가, 가

,

가

가

.168)

166) Alan Steinfeld et al., supra note 34, at 106.

167) 261 2 .

168) 261 3 , 4 .

II.

( ) 가

가

,169)

(a) 가

가

(b)

가

(c)

/ 가

, /

(d)

/ 가

, /

(e) 가

(f)

/ 가

가

,170)

가

,171)

(a)

172)

(b)

/ 가

, /

가

---

169)	263	3	.
170)	263	4	.
171)	263	2	.
172)			

, Barrett v.

Duckett (1995) 1 BCLC 243

4

(c) / 가 , / 가

( )

가

.

가 , (i)

(abuse) , (ii) 가

, (iii) 가 가

.173)

가

,

.174)

가

가

.

가

가

2

가

.

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173)

262 .

174)

264 .

5

I.

1.

가.

(memorandum of association)

(authorized share capital) ,<sup>175)</sup>

.  
.  
,  
,<sup>176)</sup>

2 177) 8 . ,

,  
가  
가 .

.  
.  
가 ,  
5 ,<sup>178)</sup>  
,

---

175) 2 5 가

176) 542

177) the Second EC Company Law Directive (Directive 77/91/EEC),

178) 761 2 , 763 1 .

가 ( ) 1/4

.179) 가

.180) 가

,

.181)

가 ,

가 .182) , 40

가

, 48

.

.

,

.183)

가 .184)

가

( 88 ).

---

179) 586 .  
 180) 91 1 (a), (b).  
 181) 578 .  
 182) Alan Steinfeld et al., supra note 34, at 41.  
 183) 585 1 .  
 184) 593 1 . 가

594 , 595 .



(Realized Profit Test) .189) (

) (

) .

.190) 가

.191)

.192) (capital profit capital surplus)

(revenue profit or earned surplus)

가 .193)

17 7 .

.194)

(fully-paid bonus

shares) .195)

.

(Net Assets

Test) 가 가 .196)

가

.

가

189) 830 .

190) 'nimble dividend' . Stephen M. Bainbridge, Corporation Law and Economics, Foundation Press (2002), p.775.

191) Paul L. Davies, Gower's Principles of Modern Company Law (16th Ed.), Sweet & Maxwell (1997), p.283.

192) 852 가

193) Paul L. Davies, supra note 191 at 283; Geoffrey Morse, supra note 42, at 485.

194) 610 1 .

195) 610 2 , 3 .

196) 831 .

(share premium),

(capital redemption reserve),

,  
197)

162

,  
198)

,199)

가

가

,  
200)

가

,  
201)

가

(off-market purchase)

가

,202)

(market purchase)

197)		831	(4).
198)		Table A, reg. 35	.
199)		690	.
200)	18	5	.
201)		714	.

171

177



가 .203)  
가 , .204) 가

, .205)

.206)

3.

가.

1980

가

가 , 1980

.207)

80 가 ( )

가

---

202) 694 700 .  
203) 701 .  
204) 678 .

205) Geoffrey Morse, *supra* note 42, at 172.

206) 가 가 “whitewash procedure” 가 (1985 154 158 ),  
가

207) Geoffrey Morse, *supra* note 42, at 133-134.

가 . 5 ,  
,  
80A  
( 379 A . 'elective regime'). ,

.  
,

가 (pre-emption rights)  
. 가 가 ,  
가 ( 89 ).  
가 가 .  
( 91 ).

80

가 가 .

, .

,

( 95 ).

.

가 , ,  
(allotment)

.208)

80

5

가 , ( 가 )  
 )  
 가 .209)  
 가 가 .  
 . 가  
 가 ,  
 .210)  
 . 가  
 .  
 가 , 가 . ( )  
 ,  
 .211)  
 , 212)  
 가 가  
 . 213)  
 가 ,  
 ,  
 .214)

---

208) 549 , 551 .  
 209) 551 .  
 210) 550 .  
 211) Gary Scanlan et al., supra note 58, at 136.  
 212) employee's share scheme . 80 2  
 213) 549 2 .  
 214) 549 5 , 6 .

89 96 560

577

,215) 가

, ,

, ,

가

( , treasury shares) ,217)

,218)

가 ,219)

---

215) 561 . 가 가 ,

216) 569 . 가 ( 562 ).

217) ,

가

218) 573 .

219) 90 가 21

562 6 14

II.

1.

7

15 , 16  
 가  
 (annual account), (directors' report), (auditor's  
 report), (directors' remuneration report)가 .  
 ,  
 ,  
 , ,

2. ,

가 .  
 (small companies) (a) 560  
 , (b) 280 , (c) 50 220)  
 가 가 ,221) 222)  
 가 가  
 220)  
 382 6 .  
 221) 382 2 .  
 222) 가 가  
 382 1 .

II.

	가	,	
	.223)		(small group)
		가	,
			.224)
(a)	가 560	(	
672	), (b)	가 280	(
	336	), (c)	50
	가	가	.225)
	'net'	,	
			.226)
		(medium-sized company)	(a)
2,280	,	(b)	1,140
			, (c)
250		가	.227)
가	(medium-sized group)	,	
(a)	가 2,280	(	
2,736	), (b)	가 1,140	(
	1,368	), (c)	250
	가	.228)	
<hr/>			
223)	382	2	(a)
	,	(b)	
			, (c)
224)	383	1	.
225)	383	4	.
226)	383	6	.
227)	465	3	.
228)	466	.	

가 가

, ,  
 .229) 가

.230)

3.

가 (annual account),

231)

.232)

가 (individual accounts)

(group accounts)가 .

(parent company)

가

가 .

,

.233)

400

402

가

(undertaking)가<sup>234)</sup> (i)

, (ii)

, (iii)

, (iv)

229)	384	1	, 467	1	.
230)	498	5	.		
231)	396	1	.		
232)	394	,	441		
233)	398	.		249	.
234)	1161			(corporation)	,

II.

.235)

, 474 236)

(IAS, International Accounting Standards)

.237)

가

.238)

가

(true and fair view)

.239)

가

.240)

(i)

, (ii)

.241)

235) 1162 .

236) 'International Accounting Standards' means the international accounting standards, within the meaning of the IAS Regulation, adopted from time to time by the European Commission in accordance with that Regulation.

237) 395 1 , 403 1, 2 ; Gary Scanlan et al., supra note 58, at 107.

238) 407 1 .

239) 393 .

240) 414 .

241) 414 4 , 5 .



4.

가.

The Companies (Audit, Investigations and Community Enterprise)

Act 2004 .242)

, 2006 6 (Audit Directive)

.243) 4 , 7

, 8 .244)

385 (auditor) 가

245) ,

.

.

,

가 ) 28

.246) 가

가 .247)

,

.248)

242) Geoffrey Morse, supra note 42, at 13.

243) Directive 2006/43/EC.

244) Gary Scanlan et al., supra note 58, at 127.

245) 385A (elective regime) 가 .

246) 485 2 , 424 , 423 .

247) Gary Scanlan et al., supra note 58, at 128.

248) 485 3 .

II.

(i) , (ii)  
, (iii) 5% 가  
, (iv) , (v)

.249)

42 1209

.250)

(statutory auditors)

가

.251)

가

가

.252)

가

(senior

---

249)	487	2	.		
250)		42	Schedule 10-14	2	.
251)			510	,	516
252)		519	2 , 3	.	.

statutory auditor)<sup>253)</sup>가

,<sup>254)</sup>

가

,<sup>255)</sup>

(i)

(small company)

, (ii)

560

, (iii)

280

(public

company)

,<sup>256)</sup>

10%

가

,<sup>257)</sup>

16

5

5%

100

100

,<sup>258)</sup>

가

253)

504

254)

503

255) Charlotte Villiers, Corporate Reporting and Company Law, Cambridge Univ. Press (2006), p.136 가

note 41 at 246

가

, Stephen W. Mayson et al., supra

가

가

256)

478

257)

476

258)

527

II.

, ,

, ,

, (indemnity)

.259) ,

가 .260)

‘ ,

가 .261)

, ,

( , liability limitation agreement)

.262)

, 가

가 .263) 1

,

.264) (i) 16

, (ii) ,

(iii)

.265)

, (Unfair Contract Terms Act

1977) . (i)

---

259) 532 . 310 .

260) 533 .

261) Alan Steinfeld et al., supra note 34, at 122.

262) 534 .

263) Gary Scanlan et al., supra note 58, at 132.

264) 535 1 (a), 536 .

265) 537 .

가 266) (ii)  
가

,267)

5.

(directors' report) ,268)

(business review)

,269)

가

( 172 )

(i)

(the development and performance of the company's business) (ii)

(the position of the company's business)

가

,270)

---

266) 537 2

267) Gary Scanlan et al., supra note 58, at 133.

268) 415

269) (Operating and Financial Review)

270) 417 2 , 4 , 5

II.

.271)

(i)

가

(unaware)

, (ii) 가

.272)

, (a)

(b)

, 가

2

가 .273)

6.

.274)

가

가 .275)

가

21

.276)

---

271)	418 .				
272)	419 1 .				
273)	419 4 (a)	418	6	(a)	.
274)	423 .				
	(	437	)		
275)	423 2 .				
276)	424 3 , 6 .				

가

.277) .

(summary financial statement)

.278)

가

.279)

(registrar)

( )

.280)

‘10 ’ ‘9

‘7 ’ ‘6 ’

.281)

가

.282)

.283)

.284)

.285)

가

277)	424	2	.
278)	427	428	.

279)	430	.
280)	441	.

가 1967

가 1981

가 . Geoffrey Morse, supra note 42, at 425.

281)	442	.
282)	1077	.

283) Charlotte Villiers, supra note 255, at 110.

284) 444 1 . 가

285) 445 1 . 가





6

I.

1.

가.

(1) City Code

EU 가 , 2004. 4. 21.  
13 287)( “ ” )

,288)

(the Panel on Takeover and Mergers, “ ”

) 1968

(Bank of England) ,

City Code (the City

Code on Takeovers and Mergers)가

,289)

287) Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on Takeover Bids.

288) , DTI, Company Law Implementation of the European Directive on Takeover Bids: Government Response and Summary of Responses to the

Consultative Document, 2005 (Ihttp://www.berr.gov.uk/files/file44171.doc)

289) www.thetakeoverpanel.org.uk City Code

, 4 2006. 5. 20.

. , Takeover Directive (Interim Implication) Regulations  
2006, SI 2006/1183 2006. 5. 20.

가 , 2006 28

City Code

City Code

가 .290)

1 , 2 , 20

(Panel Executive)

(Code Committee)

951 ,

(Hearing Committee), (Takeover

Appeal Board)

.291)

6 5

가 .292)

가

.293)

.294)

290) Gary Scanlan et al., supra note 58, at 149 .

291) 947 .

292) 948 .

293) 955 .

294) 960 .

I.

City Code  
 .295) 961  
 1988 (Human Rights  
 Act 1998) 가

(2) ( )

, 942  
 , 943 , 944  
 ‘ , (rule) ‘  
 , City Code  
 . City Code

.296)  
 , , (scheme of arrangement)

가

( )

가

.297)

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295) R v. Panel on Takeovers and Mergers, ex parte Datafin plc (1987) QB 815; R v. Panel on Takeovers and Mergers, ex parte Guinness plc (1990) 1 QB 146.  
 296) City Code Introduction 3. Companies, Transactions and Persons Subject to the Code  
 297) Palmer's Company Law Annotated (2007), supra note 36, at 697.

Code (i) City  
 가 ( City Code) , (ii)  
 City Code ,

, (iii) ( )  
 City Code

.

.

(scheme of arrangement)

. 1986 110  
 가 .298) , 가 (voluntary  
 liquidation) 가 (liquidator)  
 가

. , 가  
 가

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.299)

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298) Gary Scanlan et al., *supra* note 58, at 147.

299) 110

가 . ,

(scheme of arrangement)

110

. Re Anglo-Continental

2. (General Principles)

3 1 가 (General Principle) , City Code

,300)

,301)

,302)

,303)

가

,304)

가

305)

3. (Mandatory Bid)

가 (equitable price)

Supply Co. Ltd (1922) 2 Ch 723.

300) City Code

Rules 6, 9, 10, 11, 14, 15,

16, 20

301) 가 City Code Rules 23, 25

302) City Code Rule 21

303) City Code Rules 2.2, 8, 28

304) City Code Rules 2.5, 24.7

305) City Code Rule 35.1

( 5 1 ).

가 . ‘

,

‘ ,

.

가 , , , , 30%

가 , 33%, 40%

.306)

5 4 가 가

.

6 12

(

)가 가 가 .

가 가

가 가

.

가

.

, 가

,

, 가 ,

.

가

. 30%가 (City Code Rule

9.1 (a)), 30% 50%

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306) Marco Ventoruzzo, Europe's Thirteenth Directive and U.S. Takeover Regulation: Regulatory Means and Political and Economic Ends, 41 Tex. Int'l L.J. 171 (2006), p.195.

I.

가

가

(City Code Rule 9.1(b)).

30%

.307)

가

가

12

가

가

(City Code Rule 9.5).

4.

가.

(Break-through Rule)

(1)

11

a.

가

,

( 11 2 ).

( 11 3 ).

2002

, 가

308)

307) Alan Steinfeld et al., *supra* note 34, at 130.

308) Klaus-Heiner Lehne, Draft Report on the proposal for a European Parliament and

6

가

b.

가

가

(capital carrying voting rights) 75%

( 11 4 ).

가

가

가

c.

( 11 6 ).

가

.309)

Council directive of on takeover bids, PE 327.239 (2003) (available at <http://www.ecgi.org/takeovers/documents/european/htsdesktakeover.pdf>).

309) Guido Ferrarini, One Share - One Vote: A European Rule? ECGI Working Paper Series in Law (2006) at 18.



I.

가가

( 11 7 ).

EU

.310)

( 11 5 ).

가

.311)

(2)

12

가

( 12 2 ).

가

310) EC 56 “ 3

ibid., at 19-21; Silja Maul & Athanasios Koulouridas, The Takeover Bids Directive, 5 German L.J. 355, 358 (2004)

311) 가 . Blanaid Clarke, Article 9 and 11 of the Takeover Directive and the Market for Corporate Control, J. Bus. L. 355, 370-371 (2006. 6).

가

가

가

(opt-in) , 가  
(opt-out) .  
968, 969

. 968 6

11 5

,  
(i) 가 , (ii)  
, (iii)

가

,<sup>312)</sup>

(Board Neutrality)

(1) 9

가 (i)

(ii)

313)가

가  
가 가

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312) Alan Steinfeld et al., supra note 34, at 133 .

313) 가 .

가 ,

. Marco Ventoruzzo, supra note 306, at 208.

I.

가 가  
( 9 2 ).

,  
( 9 3 ). ,  
,

가 ,314)

(2)

12

. City Code Rule 21, 25

. 가 ,315)

,316)

5.

			City
Code	.	6 1	3
		,	City Code
Rules 2.2, 2.5, 2.6	.		7
		City Code Rule 31	

314) Ibid., at 209.

315)

City Code General Principle 7 Rule 21

316) Gary Scanlan et al., supra note 58, at 177.

8 City Code Rules  
2.6, 19, 24

6. : (Scheme of Arrangement)

가.

26 (Scheme of Arrangement)

,

가 가

“Arrangement”

가

가 ‘ (give and take) ’ ,

, 가

-

.317) 가

.

26

.318)

26

.319)

가

, 가 26

.320)

317)Re National Bank Ltd (1966) 1 WLR 819 at 829; Gary Scanlan et al., supra note 58, at 152.

318) 895 1 .

319) Gary Scanlan et al., supra note 58, at 154.

320) Barclays Bank Plc v. British and Commonwealth Holdings Plc [1996] 1 BCLC 1.

가

.321)

EU

.322)

.323)

가

324)

100%

.325)

가

가

.326)

가

(Transfer Scheme)

321) Gary Scanlan et al., supra note 58, at 153

322)

323) Finance Act 1999 Schedule 13. para 3  
(stamp duty)

324)

90%

325)

가

612

( 681 ).

610

share premium

326) Stephen W. Mayson et al., supra note 41 at 231.

가  
 ( )  
 ,  
 가 가  
 (Cancellation Scheme)  
 ,  
 가  
 . 17 10  
 . 가  
 .

(1)

가 ,  
 896 1  
 ,  
 ‘ ( 13 3, 4 )  
 ,<sup>327)</sup> 가  
 .  
 .<sup>328)</sup>

(2)

가 ,  
 897 2 , 가  
 , 가

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327) Gary Scanlan et al., *supra* note 58, at 156.  
 328) *Ibid.*

I.

(i) 가 , (ii) 가  
75% ,329) ,330)

, 가  
가 ,331)  
(3) 가

가가 ,332) 가  
가가 ,333)  
가 가 (registrar)

,334)  
가 가  
가  
가  
가 ,335)

,  
가  
,336)

---

329) 897 1 .  
 330) 899 1 .  
 331) Re Hellenic and General Trust Ltd (1976) 1 WLR 123.  
 332) 899 .  
 333) Devi v. Peoples Bank of Northern India Ltd (1938) 4 All ER 337.  
 334) 899 4 .  
 335) Re Telewest Communications Plc (2004) EWHC 1466 (Ch).  
 336) Re Abbey National Plc (2004) EWHC 2776 (Ch).

II. ,

1. : (Compulsory Acquisition)

가.

(1) 15

EU 15 (the right of squeeze-out)

가 (i) 가 90%

(capital carrying voting rights) 90%

337), (ii) 가

90%

가 가 ( 15 2 ).

3

( 15 4 ). 가

, 90%

가 ( 15 5 ).

(2)

1929

가 90%

가 .338)

337) 15 2 95%



II. ,

가

,339)

28 3 974 982

가

(1)

가

(i)

340)

, (ii)

341)

,342)

(treasury shares)

(date of

offer)

,343)

,344)

,345)

338) Re Greythorn Ltd (2002) 1 BCLC 437.

339) Bramelid v. Swden (applications 8588 and 8589/79) 5 EHRR 249

European Convention on Human Rights, Protocol

1 1 (protection of property)

340)

가

341)

342)

974 2 , 3 .

343)

974 4 6 .

344)

991 1 .

(2) 90%

a. 90% 가

, 가  
90% “90%  
(capital carrying voting rights) 90% ”

가 90% 가 90%  
90% .346)

, 가 1 1

.347)

b. 90%

가 90%

, 가  
, ( )  
.348) 30% 가 70%  
90%, 63%가  
.349)  
7% 가 가

345) Palmer's Company Law Annotated (2007), supra note 36, at 731.

346) 979 2 .

347) Gary Scanlan et al., supra note 58, at 183.

348) 975 1 , 974 2 .

349) Stephen W. Mayson et al., supra note 41 at 225.

II. ,

, (associate)<sup>350</sup>가  
, ( )  
,<sup>351</sup>

, .  
가 가  
가 가  
,<sup>352</sup>

c. 90%

90%  
가 .  
90% .  
, 가  
, 90%  
가 ,<sup>353</sup>  
가 ,  
,<sup>354</sup>)

350) 988 associate

(a) a nominee of the offeror

(b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary

(c) a body corporate in which the offeror is substantially interested

(d) a person who is, or is a nominee of, a party to a share acquisition agreement with the offeror; or

(e) (where the offeror is an individual) his spouse or civil partner and any minor child or step-child of his

351) 975 4 , 974 2 .

352) 974 4 , 6 .

353) 986 .

354) 986 10 .

가 , 가 90%  
 ,355) 가 가  
 , 가 ,356) 가  
 90% 가  
 ,357) 90%

a.

,358)  
 ,359) 3 ,360) 15  
 6

355)	979	8	10	.
356)	974	5	(i)	
		(ii)	가	
		(iii)		
357)	979	5	.	
358)	980	1	.	
359)	980	4	, 5	.
360)	980	2	.	

II. ,

4 ‘ 3 ’  
, 가 ‘ 6 ’  
City Code

가 가  
,  
,361)

b.

,362)  
6 (i) 가  
, (ii)  
,363)  
,364) 90%  
, ,365)  
,366) 가  
, 90%  
,367)  
가 ,

361) Gary Scanlan et al., supra note 58, at 183.

362) 981 2 “on the terms of the offer”

363) 986 1 .

364) Re Carlton Holdings (1971) 1 WLR 918.

365) Re Hoare and Co Ltd (1933) 150 LT 374; Re Press Caps Ltd (1949) Ch 434.

366) Re Grierson, Oldham and Adams Ltd (1968) Ch 17.

367) Fiske Nominees Ltd v. Dwyka Diamond Ltd (2002) EWHC 770 (Ch), (2002) 2 BCLC 123.

6

6 가 가 (368)

가 (369)

2. (Sell-out Right)

가. 16

16

가

가

가

(1)

1985

가

(exit right) (370)

가

가

983

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368) 981 6 .  
 369) 981 9 , 982 1 , 3 .  
 370) Gary Scanlan et al., supra note 58, at 179 .

II. ,

(2)

가  
 (associate)가 가 90%  
 90% .371) 90%  
 . 가  
 ( )  
 ,  
 , 가 가  
 .372)  
 가  
 .373)

(3)

.374) 90%  
 , 979 가

.375)	(i)	, (ii)
371)	983 1	4 , 8 .
372)	983 2	3 , Gary Scanlan et al., supra note 58, at 185
373)	983 5	.
374)	983 2	3 .
375)	984 3	.

3 ,376)

가 ,377)

가 ,378)

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376)	984	2 .
377)	985	2 .
378)	986	3



I. : 가

7

, 가 가 , EU  
가 가

I. : 가

가(Impact Assessment)

가 가

, 가 가

가 ,

가 가

,

가

가

## II.

가

(DTI)

(BERR)가

(consultation document)

가

가

가

가

III.

III.

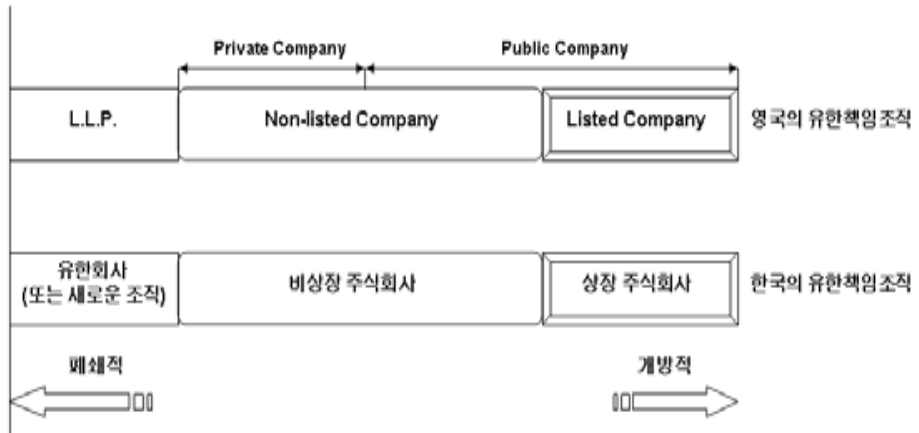
(Schedule)

(limited liability entity)

가

가

[ 7: ]



(L.L.P.)

가 2007. 9. 20.

(

177463,

“ ”

가

) ,

,379)

379)

"Limited Liability Company"

가

가 가

.380)

가

(L.L.P.)

(L.L.C.)

가

가

가

#### IV.

가

381)

가

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380)	278	12,	278	8.					
381)	352	2,	356	2,	363	,	363	2,	366 1 ,

IV.

가

,382)

가

가? (i)

(ii)

383)

가

,384)

“

”

( 172 1 )

368 2 1 , 368 4 .  
382) 386 3.

383)

47 (2003. 3.), , 21  
(2007), 236-243 ( ).

449 2

384)

( 398 ).

가 ( 398 1 ,

3 ),

{ 172 1 (a) (f) 가  
 가 (enlightened shareholder  
 value)'

V.

capital) 가 (legal

가  
 70  
 ,385)

가

VI.

VI.

가

가 95%

,386)

(compulsory acquisition)

가

90%

가

1997. 1.

25%

387)

가 1

가

가

386)

360 24

360 26.

387)

가

가

25%

50%+1

(1998. 2. 24.

21 2 ).

7

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.

,

가

.

(scheme of arrangement)

가



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- , , 11 , (2005)
- , , 4 , (2004)
- , (LP), (LLC) , 25 4 (2007)
- , , 54 (2006)
- , , CG Review 31 (2007. 3.)
- , , (2007. 11)
- , , 9 2 (2007)

Provision	Cost (per annum)	Benefit (per annum)
Access to timely, transparent company information	£0 - £4m	Difficult to quantify corporate governance benefits
Facilitating e-communications	Small administrative costs	Approximately £47m for FTSE companies, further cost-savings for rest of market
Exercising rights through proxy	£1m - £2m	Difficult to quantify corporate governance benefits
Information rights for indirect investors	£3m - £8m	Enhanced shareholder engagement (difficult to monetize)
Codification of directors' duties	No obvious costs	£30m - £105m
Register of members	No obvious costs	£2m
Shareholder right to question auditors	£0 - £3m	Difficult to monetize
Implementation of the Takeover Directive	£0 - £1m	Difficult to monetize
Improving accessibility	Small costs	Approximately £30m
Resolutions and meeting	No obvious costs	£25m - £112m
Companies Secretaries	Negligible	£3m - £6m

Provision	Cost (per annum)	Benefit (per annum)
Capital maintenance and share provisions	No obvious costs	Approximately £20m in respect of the prohibition on private companies providing financial assistance. Difficult to monetize the benefits of other deregulatory measures that the Act introduces in the area of capital maintenance and share provisions.
Simplification of company formation process	Not possible to monetize costs	£2m - £4m
Trading disclosures	No obvious costs	£4m - £12m
<b>Total</b>	<b>£10m - £20m</b>	<b>£160m - £340m</b>

2. 2006

389)

1	General introductory provisions (1-6) Section 2: 6 April 2007	1 October 2009
2	Company formation (7-16)	1 October 2009
3	A company's constitution (17-38) Sections 29 & 30: 1 October 2007	1 October 2009

388) BERR, Regulatory Impact Assessment: Companies Act 2006 (2007), p.6.  
(<http://www.berr.gov.uk/files/file29937.pdf> 가 )

389) 가 2007. 12. 13. . BERR, Companies Act  
2006 Table of Commencement Dates (2007) (<http://www.berr.gov.uk/files/file46674.doc>  
가 )

4	A company's capacity and related matters (39-52) Section 44: 6 April 2008	1 October 2009
5	A company's name (53-85) Sections 69 to 74: 1 October 2008 Sections 82 to 85: 1 October 2008	1 October 2009
6	A company's registered office (86-88)	1 October 2009
7	Re-registration as a means of altering a company's status (89-111)	1 October 2009
8	A company's members (112-144) Sections 116 to 119: 1 October 2007 Sections 121 & 128: 6 April 2008	1 October 2009
9	Exercise of members' rights (145-153)	1 October 2007
10	A company's directors (154-259) Sections 155 to 159: 1 October 2008 Sections 162 to 167: 1 October 2009 Sections 175 to 177: 1 October 2008 Sections 180(1), (2)(in part), & (4)(b), and 181(2) & (3): 1 October 2008 Sections 182 to 187: 1 October 2008 Sections 240 to 247: 1 October 2009	1 October 2007
11	Derivative claims and proceedings by members (260-269)	1 October 2007
12	Company secretaries (270-280) Section 270(3)(b)(ii): 1 October 2009 Sections 275 to 279: 1 October 2009	6 April 2008
13	Resolutions and meetings (281-361) Sections 308 & 309: 20 January 2007 Section 333: 20 January 2007 Sections 327(2)(c) & 330(6)(c) are not being commenced for the time being.	1 October 2007



14	<p>Control of political donations and expenditure (362-379)</p> <p>Provisions relating to independent election candidates: 1 October 2008</p> <p>Part 14 comes into force in Northern Ireland on 1 November 2007, except for provisions relating to independent election candidates.</p>	1 October 2007
15	<p>Accounts and reports (380-474)</p> <p>Section 417: 1 October 2007</p> <p>Section 463: 20 January 2007 for reports and statements first sent to members and others after that date</p>	6 April 2008
16	<p>Audit (475-539)</p> <p>Sections 485 to 488: 1 October 2007</p>	6 April 2008
17	<p>A company's share capital (540-657)</p> <p>Section 544: 6 April 2008</p> <p>Sections 641(1)(a) &amp; (2)-(6), 642-644, 652(1) and (3) &amp; 654: 1 October 2008</p>	1 October 2009
18	<p>Acquisition by limited company of its own shares (658-737)</p> <p>Repeal of the restrictions under the Companies Act 1985 on financial assistance for acquisition of shares in private companies, including the "whitewash" procedure: 1 October 2008</p>	1 October 2009
19	<p>Debentures (738-754)</p>	6 April 2008
20	<p>Private and public companies (755-767)</p>	6 April 2008
21	<p>Certification and transfer of securities (768-790)</p>	6 April 2008
22	<p>Information about interests in a company's shares (791-828)</p>	20 January 2007

	Sections 811(4), 812, 814: 6 April 2008	
23	Distributions (829-853)	6 April 2008
24	A company's annual return (854-859)	1 October 2009
25	Company charges (860-894)	1 October 2009
26	Arrangements and reconstructions (895-901)	6 April 2008
27	Mergers and divisions of public companies (902-941)	6 April 2008
28	Takeovers etc (942-992)	6 April 2007
29	Fraudulent trading (993)	1 October 2007
30	Protection of members against unfair prejudice (994-999)	1 October 2007
31	Dissolution and restoration to the register (1000-1034)	1 October 2009
32	Company investigations: amendments (1035-1039)	1 October 2007
33	UK companies not formed under the Companies Acts (1040-1043) Section 1043: 6 April 2007	1 October 2009
34	Overseas companies (1044-1059)	1 October 2009
35	The registrar of companies (1060-1120) Section 1063 (in respect of England, Wales and Scotland): 6 April 2007 Section 1068(5): 1 January 2007 Sections 1077 to 1080: 1 January 2007 Sections 1085 to 1092: 1 January 2007 Sections 1102 to 1107: 1 January 2007 Section 1111: 1 January 2007	1 October 2009
36	Offences under the Companies Acts (1121-1133) Section 1124: 1 October 2007 Section 1126: 6 April 2008	With relevant provisions

37	Companies: supplementary provisions (1134-1157) Section 1137(1), (4), (5)(b) and (6): 30 September 2007 Sections 1143 to 1148: 20 January 2007 Section 1157: 1 October 2008	With relevant provisions
38	Companies: interpretation (1158-1174) Sections 1161, 1162, 1164, 1165, 1169 and 1172 : 6 April 2008 Section 1167: 30 September 2007 Section 1170: 6 April 2007	With relevant provisions
39	Companies: minor amendments (1175-1181) Section 1175 (only for Part 1 of Schedule 9): 1 April 2008 Sections 1180: 1 October 2009 Section 1181: 1 October 2009	6 April 2007
40	Company directors: foreign disqualification etc (1182-1191)	1 October 2009
41	Business names (1192-1208)	1 October 2009
42	Statutory auditors (1209-1264) Sections 1242 to 1244: 29 June 2008	6 April 2008
43	Transparency obligations and related matters (1265-1273)	Royal Assent
44	Miscellaneous provisions (1274-1283) Sections 1274 and 1276: Royal Assent Section 1275: 1 October 2009 Sections 1277 to 1280: 1 October 2008 Section 1281: 6 April 2007 Section 1282: 6 April 2008 Section 1283: 1 October 2009	
45	Northern Ireland (1284-1287)	With relevant provisions

46	General supplementary provisions (1288-1297) Section 1295: With relevant provisions	Royal Assent
47	Final provisions (1298-1300)	Royal Assent