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South Korea

MERGERS & ACQUISITIONS

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This country-specific Q&A provides an overview of mergers & acquisitions laws and regulations applicable in South Korea.

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SOUTH KOREA
MERGERS & ACQUISITIONS

1. What are the key rules/laws relevant to M&A and who are the key regulatory authorities?

(1) Key Rules and Laws

The primary relevant law governing M&As in Korea is the Korean Commercial Code ("KCC"), which applies to all forms of companies. The KCC governs corporate matters (including corporate governance) and provides rules applicable to corporate transactions such as mergers, share acquisition, business or asset acquisition, and capital increase and reduction.

For M&As involving publicly-trading companies, the Financial Investment Services and Capital Markets Act (the "Capital Markets Act") is also applicable. Publicly-trading companies are also subject to rules and regulations of the relevant stock exchange.

Other major laws relevant to M&A include the following:

a. Monopoly Regulation and Fair Trade Act (the "MRFTA")
    - If an M&A transaction triggers anti-trust review, the MRFTA is applicable, which governs, *inter alia*, merger-filing requirements.
b. Foreign Investment Promotions Act and Foreign Exchange Transactions Act
    - These laws apply to an M&A transaction if such transaction involves a foreign party as these laws provide regulation in relation to the foreign investment and the foreign exchange transaction.
c. the Act on Prevention of Divulgence and Protection of Industrial Technology
    - If an M&A transaction involves a Korean company that possesses National Core Technologies (as defined therein), this legislation require the target company to make a prior notice to, or obtain approval from, the applicable government body (i.e., Ministry of Trade, Industry and Energy of Korea).

Other industry-specific laws may be also applicable depending on the type of the industry in which the target company operates. For example, M&A transactions involving companies that engage in business highly regulated by the government (e.g. bank, insurance, aviation, telecommunication, broadcasting, farming, etc.) will be subject to industry-specific legislations such as the Act on Corporate Governance of Financial Institutions, the Insurance Business Act, the Banking Act, and others.

(2) Key Regulatory Authorities

The Korea Fair Trade Commission is the government agency that enforces the MRFTA and is responsible for anti-trust clearances. The Financial Supervisory Service (the "FSS") and the Financial Services Commission (the "FSC") are key regulatory authorities in the enforcement of the Capital Markets Act and other laws regulating the financial services industry. Also, there are other regulatory authorities tasked with supervising specific industry segments.

The Foreign Investment Committee is a relevant authority that has the authority to restrict the foreign investment based on national security concerns. With respect to transactions involving foreign exchange, the Bank of Korea and commercial banks (dealing with foreign exchange) are also important as foreign exchange filings are made to or through them.

2. What is the current state of the market?

Due to factors such as inflation and increasing interest rates last year, the M&A market of 2022 has not outperformed the M&A market of 2021. According to Mergermarket, the total number of deals announced in South Korea during 2022 was 946, a 24.1% increase from 762 deals announced in 2021. The total disclosed deal value was USD 96.4 billion, which marks a 23.8% decline from USD 126.5 billion recorded in 2021.

Cross-border transactions were steadily active in 2022. According to Mergermarket, the total number of inbound M&A deals announced in 2022 was 70, and the total disclosed value was USD 7.5 billion. The total number of outbound M&A deals announced in 2022 was 137, and the total disclosed value was USD 15.8 billion. These cross-border transaction's value has not seen drastic acceleration compared to 2021 which saw 71 deals with a total deal value of USD 26 billion inbound deals and 989 deals with total deal value of USD 23.0 billion outbound deals.

Noteworthy M&A transactions in 2022 were Eutelsat Communication's acquisition of OneWeb (USD 2.4 billion), MBK Partners' acquisition of Medit (USD 1.9 billion), Naver's acquisition of Poshmark (USD 1.6 billion), and Samsung Biologics' acquisition of Samsung Bioepis (USD 2.3 billion).

3. Which market sectors have been particularly active recently?

According to Mergermarket, up to the third quarter of 2022, M&A involving the industrial & chemical sector was the most active, with 35 deals (total deal value of USD 4.9 billion), followed by the TMT sector with 32 deals (total deal value of USD 2.5 billion) and the financial services sector with 12 deals (total deal value of USD 1.1 billion).

4. What do you believe will be the three most significant factors influencing M&A activity over the next 2 years?

We can expect some challenges for active M&A market players due to lack of internal liquidity and high interest rate for M&A loans ranging up to 8% to 9%. We believe that M&A activity in Korea over the next 2 years will be significantly influenced by the following factors.

First, the interest rate will likely be the main factor influencing M&A activity. The decrease in M&A activity in 2022 despite recovery from COVID-19 is interpreted to be mainly affected by the sharp increase in interest rates. We expect the 2023 base interest rate of the Federal Reserve Bank and Bank of Korea will greatly affect the direction of the M&A market.

Second, while private equity fund deals slowed in 2022, totaling 325 deals with total deal value of USD 35.5 billion, which is a decrease from 286 deals with total deal value of USD 59.2 billion in 2021, we expect deal volume will be higher in 2023. Particularly in hopes of recovering their investment from the past years during the pandemic, and the high level of dry powder remaining from 2022, there are prospects that private equity funds will start selling or buying out at a large quantity of shares.

Lastly, we expect activist funds, whose activity became prominent starting from 2022, will have an effect on future M&A Activity. SM Entertainment, one of Korea's largest entertainment agencies, is in a management dispute after recently being targeted by activist funds. The controlling shareholder of Osstem Implant also decided to sell shares to MBK Partners and Unison Capital Korea consortium after being challenged by an activist fund. We expect activist funds will become more active and will be a factor driving M&A activity.

5. What are the key means of effecting the acquisition of a publicly traded company?

Acquisition of control of a publicly traded company can be achieved by direct share transfers over the counter by agreement between the seller and buyer, tender offers, and purchases through the stock exchange.

6. What information relating to a target company will be publicly available and to what extent is a target company obliged to disclose diligence related information to a potential acquirer?

All Korean companies (publicly-traded and private) are required to register certain fundamental information in their commercial registries, which are publicly available and accessible online. The matters disclosed in the commercial registry of a company include the trade name, the total number of shares authorized to be issued, the par value per share, the total number and class of shares issued and outstanding, the details and number of each class of shares, the location of a principal office and information on the directors/statutory auditors. Other than the information in their commercial registries, private companies are not required to make any other information publicly available.

For publicly-traded companies and private companies that are obliged to submit an annual report, regular disclosures must be made on its business through quarterly, semi-annual and annual reports which are made available to the public on DART (Data Analysis, Retrieval and Transfer System), a public disclosure website maintained by the FSS. In addition, such companies must submit timely reports setting forth information on material events having an effect on the management or assets of the company (e.g., merger, spin-off, comprehensive exchange of shares, transfer of a material business (assets), sale or transfer of treasury stocks and issuance of convertible bonds or bonds with warrants). Such reports are also made available to the public on DART.

Besides publicly-traded companies, private companies that exceed certain threshold regarding its assets, liabilities or the number of employees, the Act on External Audit of Stock Companies requires those companies to submit the external audit report to the Securities and Futures Commission, which disclose such audit reports on DART.

Setting aside the statutory requirement to disclose information as mentioned above, no particular requirements would be imposed on sellers in relation to disclosure requested by a potential acquirer. The scope and extent of diligence is determined depending on the discussion, negotiation, and deal dynamics between the parties, which may be subject to restriction imposed under anti-competitive legislations, such as no gun-jumping and no exchange of sensitive information between competitors.

7. To what level of detail is due diligence customarily undertaken?

The scope of due diligence conducted in Korea is similar to that conducted in other jurisdictions in material respect. The scope of due diligence is determined on a case-by-case basis depending on the particular needs of the relevant parties, the nature of the proposed transaction and the characteristics of the target company. Common areas of due diligence involve legal, tax, business and accounting issues. Environmental, HR and technology, including IT separation, issues may also be covered. Legal due diligence generally covers such areas as corporate general, permits and licences, regulations, contracts, assets, intellectual properties, insurances, litigations, HR, fair trade and personal information.

8. What are the key decision-making organs of a target company and what approval rights do shareholders have?

The principal decision-making body of a company is its board of directors, which is ultimately responsible for the management of the company. Although the representative director of the company is delegated to run the day-to-day operation of the company, the board oversees the representative director’s activities, and the important decisions are reserved to the board of directors for decision.

In the M&A context, however, the authority of the board of the target company can vary depending on the nature of the transaction. For example, the board does not have any rights to approve or disapprove a share transfer transaction involving the target company, unless the articles of incorporation of the target company specifically stipulates that the share transfer should be approved by the board of directors.

Certain matters are reserved for decision making by the shareholders. Special resolutions of a general meeting of shareholders, which require an affirmative vote of two-thirds of the voting shares present, representing at least one-third of the total outstanding capital shares, includes matters such as amendment to the articles of incorporation, merger, spin-off, comprehensive exchange of shares, material business transfer, capital reduction, stock split, grant of stock option, dismissal of directors or statutory auditor, and dissolution. Ordinary resolution matters which require an affirmative vote of a majority of the voting shares present, representing at least one-fourth of the total outstanding capital shares includes matters such as appointment of directors and statutory auditor, determination of remuneration for directors and statutory auditor, approval of financial statements, and payment of dividends.

In certain transactions in certain transaction structures that involve corporate reorganization of the target company such as a merger, spin-off, comprehensive exchange of shares and material business transfer, the board of directors of the target company can make the initial decision, which should be later approved by the shareholders of the target company.

9. What are the duties of the directors and controlling shareholders of a target company?

A director of a company owes fiduciary duty (duty of care as a prudent manager and duty of loyalty) to his or her company. The duty of care requires directors to act on an informed basis after considering relevant information and with adequate deliberation. The duty of loyalty requires that a director must act in what he or she believes to be in the best interests of the company as opposed to his or her own interest in situations where conflict of interest arises. Although theoretically these are different duties, the general understating of the Korean court is that duty of loyalty is a reiteration of duty of care.

When reviewing whether a director has fulfilled his or her duties, the court applies the business judgment rule, which is a concept similar to that recognized in common law jurisdictions. Although there is no Korean statute that has specifically adopted this concept, the Korean court precedents have recognized similar principles. According to the court precedents, a director is deemed to have fulfilled his/her duty of care even if such decision results in loss or damage to the company, when the relevant director has (i) sufficiently collected, investigated and examined the necessary and appropriate information to the extent reasonably available, (ii) reasonably believed that such decision is in the best interests of the company, and (iii) reached such decision in good faith following due process, unless the decision making process or the content of such decision is not significantly unreasonable.

If a director violates the duty of care, he or she may be held liable to the company or even to third parties and could be required to pay damages. It should be noted that, in addition to civil liability, a director may even be subject to criminal liability if the failure to fulfil the duty of care is resulted from willful misconduct.

For controlling shareholders, the KCC does not generally impose any duties on controlling shareholders to their company. However, if such controlling shareholder instructs a director of the company using his/her influence over the company, such shareholder can be personally liable for the violation of the duty of care as a *de facto* director of the company.

10. Do employees/other stakeholders have any specific approval, consultation or other rights?

In stock transfer transactions, there are no statutory rights given to employees or other stakeholders of the target company in connection with such transaction.

In other forms of transactions, some stakeholders may have consultation or other rights. For example, the KCC stipulates certain creditor protection procedures in cases of certain corporate reorganizations such as merger or demerger. With respect to employee rights, in business transfer transactions, the in-scope employees can oppose to the transfer and decide to remain at the transferor company or resign from the transferor. In the case of a statutory demerger (spin-off), the court upholds consultation rights for the transferred employees. In the case of merger, no approval, consultation or other rights are recognized for employees or other stakeholders.

11. To what degree is conditionality an accepted market feature on acquisitions?

Typically, absence of an injunction or legislation preventing or restricting closing of the transaction, and no breach by either party of representations and warranties and covenants are typical conditions to closing of the transactions. Also, in transactions where regulatory approvals are required (such as merger filings), receipt of such approval is typically included as a condition. However, there are no general rule, and the degree of conditionality of a deal is dependent on the bargaining powers of the parties.

12. What steps can an acquirer of a target company take to secure deal exclusivity?

Deal exclusivity is often insisted in an auction or bidding situation where a bidder ensures exclusivity of its status if it is selected as the preferred bidder. The acquirer can negotiate a grant of deal exclusivity from the seller and secure such exclusivity by entering into an exclusivity agreement, letter of intent or MOU that includes a legally binding exclusivity clause. Such binding exclusivity arrangements typically cover the period until execution of the definitive agreements, and once the definitive agreements are entered into, in most cases, the acquirer is protected by the legally binding provisions requiring the seller to close the transaction subject to terms and conditions thereof, without having specific exclusivity or no-shop clauses.

13. What other deal protection and costs coverage mechanisms are most frequently used by acquirers?

Although not frequently used, the definitive transaction documents may include exclusivity or no-shop covenants, and confidentiality obligations. For the purpose of ensuring the coverage of costs in the case of break-up of the transaction, the acquirer often resorts to indemnification provisions whereby the acquirer can seek indemnity if the transaction is terminated due to breach of the seller's obligations. Break-up fees are not commonly requested by the acquirer independently. Rather, reverse break-up fees or contract deposit is more commonly requested by the seller for certainty of deal and break-up fees may be requested reciprocally.

14. Which forms of consideration are most commonly used?

The form of consideration which is most commonly used is cash.

15. At what ownership levels by an acquirer is public disclosure required (whether acquiring a target company as a whole or a minority stake)?

An acquirer of a listed company is subject to public disclosure obligations when its ownership in such company hits certain thresholds, namely 5% and 10%.

Once an acquirer (alone or together with its specially related persons) holds or will hold 5% or more of the total voting shares of a listed company (by entering into a binding agreement), such person must file a report with respect to such shareholding with the FSC and the Korea Exchange (the "KRX") within 5 business days. In addition, upon reaching such level of interest, subsequent disclosures must be made for any change of 1% or more in the shareholding of such acquirer.

If an acquirer's ownership reaches 10% or more of the total voting shares of a listed company, a separate report must be filed with the Securities and Futures Commission and the KRX within five business days. Furthermore, if such acquirer's shareholding changes (other than certain exceptions prescribed in the Capital Markets Act), it must report to the KRX within five business days from the occurrence of such change.

16. At what stage of negotiation is public disclosure required or customary?

Under the applicable rules of the stock exchanges in Korea, a listed company must disclose certain information regarding its M&A transaction once the decision (i.e. the board resolution) is made in connection thereto. In addition, the rules of the stock exchanges also provide that a listed company must disclose information that it deems necessary when there is a decision or an event which may materially affect the company's stock price or the investors' investment decisions.

17. Is there any maximum time period for negotiations or due diligence?

There are no limitations (maximum or minimum) under Korean law on the time period in which the parties are required to conduct negotiations and/or due diligence.

18. Are there any circumstances where a minimum price may be set for the shares in a target company?

There are no general requirements under Korean law that set certain minimum price for shares in a target company.

19. Is it possible for target companies to provide financial assistance?

There is no general prohibition under Korean law on target companies providing financial assistance to acquirers. However, such provision of financial assistance to acquirers may result in breach of fiduciary duties of directors of the target company. In this regard, the directors of the target company should be mindful of their duties to the target company because, providing financial assistance to an acquirer may be considered to be harming the target company while benefiting the majority shareholders of the target company or the acquirer, depending on the nature of such assistance.

20. Which governing law is customarily used on acquisitions?

The parties are free to choose the governing laws of agreements and the governing law of the agreement is sometimes heavily negotiated in cross-border transactions. However, in transactions that involve Korean target companies, Korean law is customarily selected as the governing law.

21. What public-facing documentation must a buyer produce in connection with the acquisition of a listed company?

When a buyer launches a tender offer to acquire a target listed company, the offeror is required to make certain public notices and disclosures in connection with the offer. The offeror must give public notice of the tender offer on two or more newspapers circulated nationwide. On the same day of the above notice, the offeror must also file a tender offer statement with the FSC and the KRX. The statement will be made available to the public through the DART website. The tender offeror or tender offer agent must prepare a tender offer prospectus (accurately reflecting the details set forth in the public notice and tender offer statement) on the same date that the public notice is made, and submit such tender offer prospectus to the FSC and the KRX.

In addition, whether or not acquired through a tender offer, an acquirer of a listed company is subject to public disclosure obligations when its ownership in such company hits certain thresholds, namely 5% and 10%.

In the case where the acquirer itself is also a company listed on the stock exchange, the acquirer must make a public disclosure of the M&A transaction if such transaction meets certain materiality threshold. It must be noted that, when making such disclosure, it must attach the relevant acquisition agreements (redaction of sensitive information is permitted).

22. What formalities are required in order to document a transfer of shares, including any local transfer taxes or duties?

For a private company which has not electronically registered its issued stock, in addition to a share transfer agreement between the parties, the seller must deliver to the acquirer the share certificates representing the sale shares, if the target company has issued share certificates. The shareholder registry must be also updated to reflect the acquisition. With respect to the shareholder registry, the supreme court decision provided that "a company may neither deny the exercise of rights by shareholders whose names are in the shareholder registry nor acknowledge the exercise of rights by shareholders whose names have not yet been recorded therein", thus it is essential for the acquirer to ensure that its name is recorded in the shareholder registry to formalize its acquisition.

For a publicly-traded company, or a private company but which has electronically registered its issued stock, transfer of shares will become effective when the share transfer is recorded in the account of the acquirer at the relevant account management institutions (typically, the relevant securities companies).

Securities transaction tax (at the rate of 0.5% for unlisted shares or interest) is imposed on the transfer of shares or equity interest, but the government is authorized to adjust the tax rate in certain circumstances. For example, the flexible tax rate set forth in the Presidential Decree is 0.25% (including agriculture and fishery surtax) for shares traded on the stock exchange.

23. Are hostile acquisitions a common feature?

No. Hostile acquisitions are relatively rare in Korea.

24. What protections do directors of a target company have against a hostile approach?

The articles of incorporation of the target company can provide certain defensive measures including, among others, staggered board, super-majority voting and golden parachute. A staggered board is a board made up of different classes of directors that are elected at different times. If a company has a staggered board, the acquirer of such company cannot replace the board at once and consequently delay the acquirer's takeover of the management. Supermajority voting is a tactic by which the articles of incorporation of the company is amended so that voting requirements for certain items (e.g. appointment and dismissal of directors) should be super-majority (instead of what is required under the KCC). A golden parachute consists of substantial benefits to be given to directors if the directors are terminated as a result of the takeover, which effectively increase the acquirer's cost of the takeover.

Also, a board of directors of a target company may, in order to defend against hostile approach and frustrate the acquirer's stake building, consider issuing new shares to the existing shareholders or a third party, repurchasing its own shares from the market (which can have an effect of substantially increasing the acquirer's cost of the takeover), selling its treasury shares to a third party who is friendly to the existing board. In implementing these measures, the directors should be cautious not to breach their fiduciary duties to the company since directors owe their fiduciary duties to the company and not to the shareholder.

Having said that, it is worth noting that anti-takeover devices such as the following are prohibited under the KCC: (i) any form of poison pills granting shareholders the right to acquire new shares out of treasury at discounted prices, (ii) any form of golden shares that could veto certain matters such as mergers, irrespective of the proportion of golden shares issued on a fully diluted basis, and (iii) other forms of securities with anti-takeover attributes such as shares with multiple voting rights.

In addition, the requirements for public disclosure under the Capital Markets Act can significantly affect an acquirer's stake-building and takeover strategy. As mentioned in Section 15, the Capital Markets Act stipulates that an investor who holds or will hold pursuant to a binding purchase agreement 5% or more of the total number of the shares of a listed company must disclose the status and purpose of such shareholding (whether there is intention to exert influence over the management of the company) within five days from (i) to the extent applicable, the execution of the binding purchase agreement and (ii) the acquisition, respectively. In addition, upon reaching such level of interest, subsequent disclosures must be made for any change of 1% or more in the shareholding of such investor.

25. Are there circumstances where a buyer may have to make a mandatory or compulsory offer for a target company?

For listed companies, the Capital Markets Act compels certain over-the-counter purchase of stocks be carried out in accordance with the tender offer procedures under the Capital Markets Act. It stipulates that a person who intends to purchase stocks from 10 or more persons in transactions conducted outside of ordinary stock exchange market trading mechanisms within a six month period must purchase them through a tender offer process if the purchasing entity (together with its specially related / affiliated persons) currently holds 5% or more of the total issued and outstanding shares of the target company or if, after completing such purchases, the purchasing entity (together with its specially related / affiliated persons) holds 5% or more of the total issued and outstanding shares of the target company. This requirement is generally referred to as the mandatory tender offer.

In December 2022, the FSC announced that it would introduce a compulsory tender offer for acquisitions of shares of listed companies. Currently, tender offers are not mandatory in such M&A transactions of shares of listed companies (except the case listed in the preceding paragraph). However, according to the FSC, the Capital Markets Act will be amended that for transactions pursuant to which the purchaser becomes the largest shareholder of the target company by holding 25% or more of the outstanding capital shares thereof, the purchaser will be required to make a tender offer for more than 50% + 1 share of the total issued shares of the target company less the shares the purchaser acquires from the controlling shareholder, at the same price as the price of shares at which the purchaser acquired from the controlling shareholder. The purpose of the amendment is to enable minority shareholders enjoy the management premium during M&A of listed companies. While specific details such as cases of exceptions and sanctions in case of violations have not yet been determined, it is expected that the Capital Markets Act will be amended in 2023, and the amended Capital Markets Act will come into force in 2024, after a one-year grace period.

26. If an acquirer does not obtain full control of a target company, what rights do minority shareholders enjoy?

Minority shareholders continue to enjoy full rights as shareholders, such as voting rights and rights to receive distributions of dividends. However, as shareholders may only participate in the management of a company indirectly through a shareholders' resolution, minority shareholders have limited right to affect the management of the company.

However, several direct measures may be enforced against the company or directors by shareholders holding more than a certain percentage of total outstanding shares, including (i) the right to demand a director to cease improper conduct, (ii) the right to file a derivative action against a misconducting director or statutory auditor and (iii) the right to demand removal of a director or statutory auditor.

If a director is engaged in conduct that violates law or the AOI and such conduct is likely to cause irreparable harm to the company, a shareholder or group of shareholders with 1% or more of the total outstanding shares may, on behalf of the company, file a claim with a court demanding the director to cease his or her engagement in such conduct. In the case of a listed company, a shareholder or a group of shareholders who has held 0.05% or more of the total outstanding shares (0.025% in the case of a company with KRW100 billion or more in paid-in capital) for the preceding six-month period is entitled to the same right.

If the company rejects the shareholder's demand to claim damages on a misconducting director, a shareholder or group of shareholders holding 1% or more of the total outstanding shares is entitled to the right to file, on behalf of the company, a derivative suit against the director or the statutory auditor. In the case of a listed company, a shareholder or group of shareholders with 0.01% or more of the total outstanding shares who has held the shares for the preceding six-month period may exercise such right. It is also noted that following amendment of the KCC in December 2020, shareholders are not only able to file derivative suits against the directors and auditors of the company in which it holds shares, but also against the directors and auditors of the subsidiary of such company.

Additionally, the right to demand the court to remove a director or statutory auditor may be exercised by a shareholder or group of shareholders with 3% or more of the total outstanding shares if the director or statutory auditor is engaged in a material misconduct with respect to his or her duties or violation of the law or the articles of incorporation, and his or her removal is rejected at the general meeting of shareholders. In the case of a listed company, such right can be exercised by a shareholder or group of shareholders holding 0.5% or more of the total outstanding shares (0.25% in the case of a company with KRW100 billion or more in paid-in capital) but only if he has held the shares for six months or longer.

27. Is a mechanism available to compulsorily acquire minority stakes?

Article 360-24 of the KCC grants the controlling shareholder of the company a statutory right by which the controlling shareholder can compel the minority shareholders to accept cash payment for their shares (the "Squeeze-out Right"). For the purpose of the Squeeze-out Right, the controlling shareholder is defined as the shareholder holding for its own account 95% or more of the total outstanding shares in a company. The shareholding percentage of the controlling shareholder takes into account (i) for a corporate shareholder, the shares held by its parent and/or subsidiary and (ii) for a shareholder that is a natural person, the shares held by any corporation in which he/she holds more than 50% of the total issued and outstanding shares. Furthermore, the courts have ruled that any treasury stock held by the corporation constitutes part of the issued and outstanding shares, which would count towards the controlling shareholder's shareholding percentage therein.

There are also other methods by which the acquirer can compulsorily acquire the minority stakes. These methods require a shareholders' special resolution, which should be approved by 2/3 or more of the votes present at the meeting which should also represent at least 1/3 of the total issued and outstanding shares.

i. Reverse stock split: A reverse stock split is a method which consolidates the number of existing shares into fewer shares. By setting the ratio of reverse stock split at certain level, all of the shares held by the minority shareholders may become fractional stocks, which can be then compensated in cash.
ii. Cash-out merger: A cash-out merger refers to a merger between two companies where the shareholders of the target company (merged and disappearing company) receives cash instead of the shares of the surviving company.
iii. Cash-out stock swap: A cash-out stock swap refers to a method by which all of the issued shares of a company is exchanged with the shares of another company, as a result of which the former company becomes the wholly-owned subsidiary of the latter company. But the shareholders of the company which becomes the subsidiary receives cash as consideration instead of the shares of the parent company.

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