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The Honourable Lee Kwi-nam
Minister of Justice
Ministry of Justice
Republic of Korea
Building #5, Gwacheon Government Complex
Jungang-dong1
Gwacheon-si, Kyunggi-do
Korea

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

Re: Draft Bill on Anti-Takeover Defences

Dear Minister Lee,

We are writing on behalf of the undersigned foreign institutional investors, whose collective assets under management total over US\$2.4 trillion, regarding proposed amendments to the Commercial Code that would allow Korean companies to deploy anti-takeover devices, also known as “poison pills”. As long-term global investors, we collectively hold substantial stakes in listed Korean corporations and are firmly committed to good governance and active proxy voting.

We wish to express serious reservations regarding recent efforts by the Ministry of Justice (MOJ) to introduce poison pills in Korea as a defence against hostile takeovers. As a matter of principle, we typically oppose poison pills because they are often used to shield management and protect the interests of related parties at the expense of public minority shareholders and wider economic efficiency and competitiveness.

Our specific concerns and comments with regard to the MOJ’s draft bill are threefold. Firstly, we believe that the market for corporate control in Korea does not warrant the introduction of rigid anti-takeover defences. We see little evidence of significant hostile takeover activity in Korea, emanating from either foreign or domestic investors.

Secondly, certain aspects of the draft bill are quite vague and could cause confusion in the market. For example, the provision that forms the basis for discriminating against potential hostile acquirers only allows the board to take such action “if necessary in order to preserve and enhance the company’s value and the shareholders’ general interest”. In practice, it will be extremely difficult for any board to argue that a poison pill would definitely enhance their company’s value over time. Indeed, the consequence is likely to be conflict between a company’s shareholders rather than greater harmony.

Our third concern relates to the “special resolution” required if a company wishes to amend its Articles and introduce a pill. While the draft bill sets the bar quite high—at least one third of outstanding shares must vote in the shareholders’ meeting and at least two thirds of all

votes must be in favour—the probability is that any board that could secure such a high level of shareholder support would not need an artificial anti-takeover defence in any case. In the unlikely event that a hostile acquirer came along, the chances of existing management retaining shareholder support would be high. In other words, adopting a pill introduces new forms of risk without a commensurate reward to the company as a whole.

In terms of the strategic positioning of the Korean securities market, we strongly believe that the risks of introducing poison pills would vastly outweigh any benefits that a small number of companies and their boards might gain. Since the Asian Financial Crisis, Korea and Korean industries have made tremendous efforts in reshaping their corporate governance systems and practices. These reforms have played a critical role in rebuilding investor confidence in the country and reducing, over time, the so-called “Korea Discount”. Indeed, there is evidence that these improvements have led to a “governance premium” for well-governed Korean companies.

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

We appreciate the opportunity to express our views on this issue and would welcome the opportunity to engage in further discussion with the Ministry. Please contact one of the following people to discuss this matter further:

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Sincerely,

George Dallas
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On behalf of:

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