Whose Interests Should the Managers Serve?
– Insights from the Recent Korean Cases on LBO Transactions

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ABSTRACT

It has long been debated whose interest the manager of a company should serve. Many scholars have argued that the only purpose of a company is the maximization of the shareholder value. An alternative concept, the “stakeholder” model, argued that the manager may, or even should, consider the interest of other stakeholders such as employees, creditors, community, suppliers and customers. In Korea, this debate has been framed under the doctrine that the directors owe duties toward “the corporation itself.” Although this doctrine (or rhetoric) may sound logical as a direct deduction from the concept of “separate legal personality,” it does not provide the ultimate answer to the real question – whose interests the managers should serve.

This became a serious issue in a few recent Korean Supreme Court cases involving LBO transactions. In a criminal case in 2006, the defendant, who was the 100% owner of an SPC, became CEO of the target company after the SPC acquired majority shares of the target and caused the target to provide its asset as collateral in favor of the SPC; the Supreme Court held that the defendant was guilty of criminal breach of trust, because, by causing the target to provide its asset as collateral in favor of its majority shareholder, he jeopardized the “corporation itself.” Similar reasoning has been seen in many other court cases in Korea.

The author argues that the formalistic understanding of the legal personality maintained by the Korean courts does not provide the right answer to our question. At the same time, however, the author does not believe that such formalistic understanding should be completely replaced with the shareholder supremacy theory, since it has some merit that shareholder supremacists often miss. The author claims that the stakeholder model helps us explain and critically analyze the “corporation itself” doctrine held by the Korean courts, without entirely throwing out relative merit that this apparently clumsy doctrine has. When we consider the real interests behind the corporate veil, including those of the shareholders, and, to a lesser degree, other stakeholders, we can clarify the legitimate limit of the LBO transaction and distributions to the shareholders.

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