

Introduction of “Labor Directors” (Board Level Employee Representation) in Public Institutions

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I. Introduction

On January 11, 2022, an Act on introduction of a “labor director” system (known as “board level employee representation” in Europe) was enacted during the National Assembly plenary session. This was accomplished through a revision of the Act on the Management of Public Institutions (hereinafter referred to as the “Public Institutions Management Act”) requiring public corporations and quasi-governmental institutions to appoint one outside director to the board of directors that will represent the majority of workers and who has been recommended by that majority of workers. Although the labor director system had been introduced as an ordinance within the existing local self-government system, this is the first time it has been legislated, and is expected to have significant ripple effects on society as a whole. Since the amended law will take effect six months after the date of promulgation according to this supplementary provision, it is expected that introduction of the labor director system will begin in earnest in all public institutions in the second half of this year.

Currently, 351 entities are designated as public institutions in 2021—37 public corporations, 96 quasi-governmental institutions, and 218 other public institutions. According to the Public Institutions Management Act, the Ministry of Strategy and Finance is the competent ministry, evaluating the management of public institutions affiliated with it and supervising their work. The labor director system introduced this time applies only to public corporations and quasi-governmental institutions, and is not mandatory for other public institutions.¹

The labor director system is one in which workers participate in management decision-making, as outside directors in meetings of the board of directors, the highest decision-making body in public institutions, to receive reports on important management issues, and become the major agents of deliberation and decision-making. In existing boards of directors, decisions and implementation were unilaterally led by the chairperson of the board (head of the institution), but it is expected that the labor director will raise detailed concerns on key issues on behalf of the employees, who are the main stakeholders of the institution.

Herein, I will take a look at the background to introduction of the labor director system in public institutions enacted this time and review how it has run through the outside director system for workers in Seoul.

¹ Lim. Seiwoong, “Labor Director System Bill passed by the Planning and Finance Committee,” Daily Labor News, Jan. 6, 2022.

II. Background to the Introduction of a Labor Director System in Public Institutions

1. Current status of the labor director system in other countries

As mentioned, the labor director system is known as board level employee representation in Europe, where it developed and where 19 of the 31 nations have adopted it. If we classify this according to the target of application, it can be divided into countries where the labor director system is universally applied to the public and private sectors, countries where it is applied only to the public sector, and countries where it is not applied at all. Thirteen countries, including Germany, France, and Sweden have introduced a labor director system in both the public and private sectors, while six (Ireland, Spain, Portugal, Poland, Czech Republic, and Greece) have introduced the labor director system only in the public sector.² Nations with British-American shareholder capitalism, such as the United Kingdom, the United States, Canada, and Japan, have not adopted the labor director system.³

The system became the subject of great international attention during the financial crisis caused by the subprime mortgage crisis in 2008. The co-decision-making system, which is the basis of the labor director system, was considered an anachronism due to excessive welfare costs. However, Germany was able to recover from the financial crisis sooner than other nations and continued to grow, so a re-evaluation began to take place. The “German model” came to the fore as the co-decision-making system was seen to prevent large-scale layoffs and serve as an important driver in German economic recovery while maintaining purchasing power.⁴

2. Introduction of the labor director system in Seoul, etc.

In May 2016, former Mayor of Seoul, Park Won-soon decided to introduce a labor director system, which requires one or two worker representatives to participate in boards of directors, at 15 investment-funded institutions. In 2016, the Seoul Metropolitan Government was the first local government to enact the relevant ordinance (Ordinance on the Operation of the Seoul Metropolitan Government's Worker Director System) and introduced the labor director system to investment-funded institutions in Seoul. This ordinance stipulates that institutions with 100 or more workers must adopt the system, while institutions with fewer than 100 employees can adopt it or not upon resolution of their boards of directors. Starting with appointment of the

² Kim, Kang-Sik, Nam, Jae-Hyeok, “Is it necessary to legislate the labor director system?” *Journal of Orderly Economy*, Vol. 24, No. 1, Korean Society for Orderly Economics, March 2021, p. 98.

³ Choi, Jun-seon, “Critical Review of the Labor Director System of Public Institutions”, *Monthly Labor Law*, JoongAng Economy, March 2021.

⁴ Kim, Hong-seop, “Duality of the German co-decision-making system,” *German Language and Literature*, Vol. 78, Korean Society of German Language and Literature, 2017, p. 41.

first labor director at the Seoul Research Institute in 2017, 22 labor directors have been appointed in 16 institutions in three years in Seoul, as of 2020.⁵ Gyeonggi Province introduced the system in November 2018, when it enacted related ordinances, following the inauguration of Governor Lee Jae-myung. Since then, it has been implemented in Gwangju Metropolitan City and Incheon Metropolitan City. As of the end of 2020, 62 labor directors have been appointed and are working in 49 local public institutions.⁶

3. Tripartite agreement on introduction of the labor director system in public institutions

The labor director system in Seoul Metropolitan City and local governments, which was introduced in 2017, has stabilized, and the need to expand the positive role of the system at public institutions has emerged. In turn, the Economic, Social and Labor Commission has begun to discuss, in depth, expanding the system.

On November 18, 2020, the Economic, Social and Labor Commission's Public Institutions Committee announced an "Agreement for the Sustainable Development of Public Institutions," along with the "Introduction of the Labor Director System at Public Institutions." Then, on February 19, 2021, the Economic, Social and Labor Commission agreed at a plenary meeting to introduce the labor director system at all public institutions nationwide.⁷ This agreement then led to amendment of the Public Institutions Management Act as a legislative bill.

III. Legislation of the Labor Director System in Public Institutions and Role of the Labor Director

1. Details of the legislated labor director system

According to the amendment of the Public Institutions Management Act passed at the plenary session of the National Assembly on January 11, 2022, the labor director system must be introduced at all public corporations and quasi-governmental institutions. Other public institutions are not subject to mandatory application. The labor director is a non-standing director and must have been employed for at least 3 years. There is to be one labor director, who shall be appointed for a two-year term, followed by the potential for renewal every year. Persons recommended by the workers' representative (referring to the representative of the labor union if there is a labor union organized by a majority of workers) or with the consent of

⁵ Lee, Jeong-hee, "Experimentation with the Seoul Metropolitan Government's Labor Director System, its Results and Tasks," *Monthly Labor Review*, Korea Labor Institute, March 2020, p. 3.

⁶ Lee, Jongsun, "ESG Management Paradigm and Introduction of the Labor Director System in the Post-Corona Era," *Monthly Labor Law*, JoongAng Economy, March 2021.

⁷ Kim, Kang-Sik, Nam, Jae-Hyeok, "Is it necessary to legislate the labor director system?" *Journal of Orderly Economy*, Vol. 24, No. 1, Korean Society for Orderly Economics, March 2021, p. 91.

a majority of workers is selected and appointed upon recommendation by the executive recommendation committee. The specific details will be determined by the Enforcement Decree. The labor director remains a part-time position so as to maintain his/her status as an employee, as full-time directors cannot simultaneously be employees so would have to take a leave of absence. Where the board level employee representation system is in operation overseas, and in local governments in Korea, all labor directors are part-time. The reason labor directors must have been employed for at least 3 years is to ensure some level of experience in management of the institution.⁸

2. The role of the labor director

According to Article 17 (Establishment and Functions of the Board of Directors) of the Public Institution Management Act, public institutions must make important decisions on overall management while establishing and operating a board of directors. The head of a public institution is the chairperson, who is also chairperson of the board of directors. The board of directors consists of that chairperson, directors, and an auditor, and must make decisions on major management topics for the institution. In particular, the head of the institution (the chairperson) must report to the board of directors on major details related to management, accounting, and overall operation of the institution.

The employee appointed as a director attends a board of directors' meeting as an outside director to deliberate and decide on major agenda items with the board of directors.

(1) The labor director deliberates and decides on major agenda items with the board of directors.

1) Management goals, budgets, operating plans and mid- to long-term financial management plans, 2) settlement of accounts, 3) acquisition and disposal of basic assets, 4) changes to the articles of incorporation, 5) enactment and changes to internal regulations, etc.

(2) The head of the agency reports major tasks to the board of directors.

1) State audits, company audits, major audit details, 2) collective bargaining results and budget, 3) other matters required to be reported by the head of the agency.

IV. Legal Limitations and Implications for Operation of the Labor Director System in Seoul Metropolitan City

1. Legal limitations of labor directors

There are two categories of legal limitations in operating the labor director system. First, if

⁸ Lim. Seiwoong, "Labor Director System Bill passed by the Planning and Finance Committee," Daily Labor News, Jan. 6, 2022.

there is a majority union, the labor directors are recommended by the union, or in the absence of such a majority union, are decided by the consent of a majority of the workers. The question is whether the labor directors can maintain their union membership. Currently, the labor directors of local governments should give up their membership in the union, as becoming an outside director is one of the disqualifiers for union membership, according to Article 2, item 4 of the Trade Union and Labor Relations Adjustment Act, which says, “provided that participation of the employer or any person acting on behalf of the employer’s interests at all times is not permitted.” However, if the labor director has to withdraw from union membership as they would then represent the employer’s interests, his/her status may become unclear.

Second, it is about the level of participation of the labor directors. As an outside director, their authority may be limited to listening to management information and making decisions in a passive position. Under the current ordinance, labor directors have the same powers as outside directors. Accordingly, the labor director has no authority like (i) the right to submit agenda items to the board of directors and or to withhold (postpone) deliberation, (ii) the right to request an audit on management matters, (iii) the right to read management information documents and the right to request data provision, (iv) the right to participate in the executive recommendation committee, etc.⁹

2. Outcome of Seoul’s labor director system

The evaluation of labor director activities within the board of directors is generally positive. Directors representing workers are participating in boards to monitor, and as they convey the viewpoint of labor to the board, a fundamental change in the perception of the sustainability and publicness of the entire organization is sprouting.¹⁰

The role of the labor director can be said to have brought about positive results in the following areas.¹¹ First, introduction of the labor director system ensures diversity in composition of the board of directors, which public institutions at the central and local government level are being asked to ensure. However, those directors’ positions have been limited to a small group of professionals such as professors and lawyers centered on experts. The participation of an employee representative on the board of directors for the institution has helped bring changes in the way the board operates. Labor directors with extensive experience in the field attend and earnestly discuss the agenda presented, helping to revitalize the board. Decisions that had

⁹ Noh, Gwang-pyo, “Status of Seoul Metropolitan City’s Labor Director System and Improvement Plan,” *Monthly Labor Law*, JoongAng Economy, Oct. 2020.

¹⁰ Lee, Sang-Jun, Lee, Jeong-Hee, “Operational Status of and Issues in the Seoul City’s Labor Director System,” *Labor Review*, March 2020, P. 20.

¹¹ Noh, Gwang-pyo, “Status of Seoul Metropolitan City’s Labor Director System and Improvement Plan,” *Monthly Labor Law*, JoongAng Economy, Oct. 2020.

previously been made unilaterally now have been decided based upon practical debates.

Second, the labor director system converges demands from the field. The board of directors is the final decision-making unit for overall organizational management, including personnel and organization, budgeting and settlement of accounts, and business plans. Labor directors ensure the perspectives of labor and of employees are present in board meetings, which otherwise have tended to be overlooked. The voices of workers are communicated to the management through the union, but not to the board of directors, the highest decision-making body. Labor directors bring the variety of problems for employees to the board, making the problems clearer.

Third, labor directors help mediate and arbitrate labor-management conflict. Because the workplaces within the institution are dispersed and many workplaces have multiple unions, conflicts between labor and management may be frequent. Labor directors help coordinate the interests of both parties and resolve such conflicts.

V. Conclusion

By introducing the mandatory labor director system in public institutions, public institutions can promote cooperation and coexistence between workers and employers, and secure transparency in management while keeping the public interest in mind. Overall, the system will contribute to improving the quality of public services.