Newsletter

KIM & CHANG
A Quarterly Update of Legal Developments in Korea | February 2014, Issue 1

CONTENTS

Selected Representations

Macquarie Fund acquires Yeongyang Wind Power Corporation
AIA acquires AIA Tower building
Groupon acquires Ticket Monster

Firm News

Band 1 in all 14 areas - The Legal 500 Asia Pacific (2014)
No.1 M&A advisor in Asia Pacific (excluding Japan) - Bloomberg Asia Pacific Legal Advisory M&A Rankings 2013
No.1 M&A advisor in Korea - Mergermarket M&A League Tables of Legal Advisors 2013
Ranked as top-tier tax law firm in Korea - Tax Directors Handbook 2014

CORPORATE

By Jong Koo Park (jkpark@kimchang.com) and Wan Suk Kim (wansuk.kim@kimchang.com)

The FSC Announces Plan for Reform of Private Equity Fund Regulations

The Financial Services Commission ("FSC") announced its plan to reform the policies related to private funds ("Plan") on December 4, 2013 in order to boost dynamics in the capital market. The Plan is intended to (i) minimize the negative effects of private funds and (ii) reform the overall PEF system to enhance the original functions of private funds. Some of the key features of the Plan are provided below.

- **Re-Establishment of Regulatory Scheme for PEFs:** Private funds will be categorized into the two following broad categories: "specialized investment private funds" (i.e., hedge funds) and "management participation private funds" (i.e., PEFs), and they will be regulated separately from publicly offered funds.

- **Reasonable Restrictions on Investors in PEFs:** By requiring a minimum investment of KRW 500 million, the Plan will allow only "qualified investors" with the capacity to take financial risks to invest directly in private funds. Publicly offered funds of the newly permitted fund under the Plan will be able to invest in private funds and provide a means for individuals to invest in private funds (i.e., individuals can now invest in private funds only through publicly offered funds under the Plan).

- **Relaxation of Regulations on Entry, Establishment, Management and Sale of Private Funds**

Category	Current Regulation	FSC's Plan
Entry	Only those who have licenses for collective investment business can manage hedge funds (registration is required for establishment of PEFs).	By simply registering a private collective investment business, one can manage private funds.
Establish-ment	All private funds are required to be registered prior to establishment thereof.	All private funds will be required to file a report to the FSC within 14 days following their establishment and penalties are to be imposed for a failure to timely file such report.
Manage-ment	Restrictions on (i) investing in securities, derivatives and real estate and (ii) providing debt guarantee and collateral.	PEFs and hedge funds will be permitted, up to 50% and 400% of their net assets, respectively, to invest in securities, derivatives and real estate and to provide debt guarantee and collateral.
Sale	Suitability/ appropriateness principles and the duty to explain to investors; blanket prohibition on advertising private funds.	In offering investments in private funds, the offeror will only be obligated to confirm whether the investor is a qualified investor, and certain advertisements and direct sales of products will be permitted.

- **Strengthened Supervision of Private Fund Managers and Borrowings by Private Funds:** All private funds will be obligated to entrust the custody and management of assets to a trust company. The restrictions on borrowing and asset management will be uniformly based on "net assets."

- **Improved Regulation on PEFs of Business Group:** The uniform restriction on the exercise of voting right by private funds or special purpose companies, those which are members of the business group, subject to limitations on cross capital investment will be relaxed and an exception will be available for private funds that are a member of the business groups focusing on financial business.

- **Strengthened Mechanism to Prevent Assistance to Affiliates via Private Funds:** PEFs will be prohibited from transacting with their affiliates in principle while the restrictions on hedge funds' investment in their affiliates will be strengthened.

The FSC has collected opinions and comments on the Plan by holding a public hearing on December 18, 2013 and plans to push for the amendment of the Financial Investment Services and Capital Market Act as promptly as possible.

Extension of Sunset Clause under the Corporate Restructuring Promotion Act

The effective period of the Corporate Restructuring Promotion Act ("Restructuring Act") has been extended by two years to December 31, 2015 from December 31, 2013.

The workout program under the Restructuring Act has been credited with contributing to increased efficiency in the restructuring of insolvent enterprises by allowing such enterprises to promptly complete restructuring processes, thereby normalizing their operation at an earlier stage and minimizing damages which may be suffered by interested parties. It is expected that given the continued demand for corporate restructuring, the extension of the sunset clause will enable the relevant parties to engage in rapid and efficient corporate restructuring when such restructuring is required.

Meanwhile, together with the extension of the sunset clause, the method to challenge a decision by the Creditor Financial Institutions Committee ("Committee") was established. With the introduction of the system for annulment of a Committee decision, in case of any violation of law with respect to the procedure for convening a Committee meeting or manner of adopting resolutions, a creditor financial institution or enterprise showing signs of insolvency may petition for annulment of such resolutions of the Committee within 14 days.

ANTITRUST & COMPETITION

By Sung Eyup Park (separk@kimchang.com) and Tae Hyuk Ko (taehyuk.ko@kimchang.com)

KFTC's First Application of the Consent Decree Process

On November 27, 2013, the Korea Fair Trade Commission ("KFTC") agreed to apply for the first time the consent decree process in its investigation of Naver and Naver Business Platform (jointly, "Naver") and Daum Communications ("Daum") for their alleged violations of Korea's Monopoly Regulation and Fair Trade Law ("FTL").

The consent decree process, adopted in November 2011, allows businesses subject to KFTC investigation to voluntarily propose corrective measures to restore the competitive order and remedy any potential consumer harm. After a public notice and comment period, the KFTC may approve the proposed measures and conclude the investigation without finding any liability. This process, which expedites the investigation process, has never been applied prior to this Naver and Daum case.

Naver and Daum requested the KFTC to initiate the consent decree process for its investigation regarding: (i) display of Naver's and Daum's charged services along with search results; (ii) unclear distinction between sections for keyword advertisements and search results; (iii) restrictions on the ability of advertisers to change advertisement agencies; (iv) preferential negotiation rights granted to Naver for network search advertising (only applicable to Naver); and, (v) dispatch of Naver employees to its affiliated company (only applicable to Naver).

The KFTC agreed to initiate the consent decree process in this case for the following reasons:

- Online search service market is a dynamic market, where technological innovation is an important factor that must be considered.

- Online search services are closely related to the everyday life of Korean consumers, and therefore, a prompt restoration of competitive order is necessary.

- Corrective measures voluntarily proposed by Naver and Daum would be more viable than those imposed by the KFTC and sufficiently effective in restoring the competitive order if proper measures are put in place.

- Regulatory agencies in foreign countries have applied the consent decree process to similar cases.

After a 30-day negotiation with Naver and Daum, the KFTC agreed to a draft consent decree announced on December 31, 2013. This preliminary agreement included remedial measures worth KRW 100 billion for Naver and KRW 4 billion for Daum to restore the competitive order and improve consumer welfare.

The 40-day public notice and comment period for the draft consent decree began on January 2, 2014. During this period, the KFTC has consulted with the Prosecutor-General in writing and notified other relevant administrative bodies (including the Ministry of Science, ICT and Future Planning and the Korea Communications Commission) of the draft decree. The final consent decree agreement will be finalized within 14 days after the end of the notice and comment period.

Consent Decree System Introduced in the Amendments to the Act on Fair Labeling and Advertising

On December 31, 2013, the plenary session of the National Assembly passed the Amendments to the Act on Fair Labeling and Advertising ("AFLA") which introduces the consent decree system. The consent decree system allows businesses to voluntarily propose corrective measures for their misleading advertisements. Such system allows for a prompt resolution of an investigation and may provide consumers with substantial and immediate relief from such misleading advertisements. The consent decree process under the AFLA amendments is not significantly different from the consent decree process under the Monopoly Regulation and Fair Trade Law ("FTL").

The following are the key features of the consent decree system under the amended ALFA:

Applicability

- The consent decree system is applicable to any violations of the AFLA, except serious and evident violations that require criminal punishment. Also excluded are cases that meet criminal referral requirements under the FTL or where the applicant revokes the application for the consent decree.

Items to be Submitted

- Materials that evidence the alleged misconduct;
- Corrective measures (such as suspension of business practices) and measures to remedy consumer misunderstandings; and
- Corrective measures necessary to hold consumers and/or other business operators harmless.

Process

- Business operators under investigation by the Korea Fair Trade Commission ("KFTC") propose corrective measures;
- The KFTC receives public comments on the draft consent decree, particularly from related regulatory bodies or interested parties; and
- The consent decree is finalized after deliberation and approval by the KFTC's plenary meeting or relevant sub-committees.

Revocation

Revocation may occur:

- When the proposed corrective measures are no longer appropriate because of significant changes in the related facts, including changes in market conditions;
- When a consent decree is obtained based on incomplete or inaccurate information provided by the applicant or based on any other unjust method; or
- When applicants do not fulfill the corrective measures in the consent decree without any justifiable reason.

The amendments to the AFLA will come into effect as of April 29, 2014.

LITIGATION

By Byung-Chol (BC) Yoon (bcyoon@kimchang.com) and Ji Hyun Kang (jihyun.kang@kimchang.com)

Korean Patent Court Recognizes Protection of Use Patents

The Patent Court has recently upheld the validity of a patent directed towards the use of a pharmaceutical product for the first time. A "use" patent refers to a patent directed to a specific use of a certain product. Prior to this case, courts have applied relatively strict interpretations regarding the requirements for pharmaceutical product use patents, most of which were invalidated.

In the Patent Court decision, the court ruled that a patent cannot be invalidated for lacking inventiveness if a reasonable person skilled in the art will not likely accept the literal interpretation of a certain disclosure of the cited prior art reference in view of the overall intent and specific experimental data disclosed in that reference. In coming to this ruling, the Patent Court rejected the Plaintiff's argument that the claimed invention can be readily inferred from a particular portion of the cited prior art reference. As to the qualification as a prior art reference, there was a standard in Korea that a prior art reference containing some errors or insufficient descriptions in the experimental data or results can still serve as a basis in determining novelty and inventiveness if a person skilled in the art would have had no difficulty in understanding the overall technology and citing the reference as prior art. The Patent Court's decision is significant in further developing the use patent standard by holding that, if the portion of the disclosure on which the analysis relies is different from the findings of the reference as a whole and the specific experimental results disclosed, then that portion of the reference cannot be used to deny inventiveness of the claimed use invention.

In a related matter, a separate infringement action was filed that sought preliminary injunction for the same patent. The court in that case rejected the defendant's abuse of right or public domain arguments. Specifically, the court ruled that where a patent may be subject to partial invalidation, the invalidation grounds can be remedied by a correction procedure and any argument based on such invalidation grounds will not be considered, even if the correction is yet to be confirmed. This was the first case to address the issue on whether an abuse of right or public domain defense in a patent infringement action can be overcome by plaintiff's argument that a petition for correction would remedy the grounds for invalidation and the defendant's invention falls within the scope of protection provided to the patent holder, even if no final decision on the correction was issued.

Kim & Chang successfully obtained favorable decisions in the above cases by developing the relevant legal principles through careful analysis of the facts and relevant documents, and contributed to shaping the first case protecting medicinal use patents.

SECURITIES

By Sun Hun Song (shsong@kimchang.com), Tae Han Yoon (thyoon@kimchang.com) and Sang Woo Yoon (sangwoo.yoon@kimchang.com)

Change in Short Sale Rules

On November 13, 2013, the Financial Services Commission announced the Measures for Improving the Short Sale System ("Measures"). The Measures immediately lifted the ban on short selling of shares in financial companies. Such ban had been in force since October 1, 2008.

As summarized below, the Measures overall aim is to strengthen the regulation of and disclosure requirements applicable to short sale. The Measures are expected to be reflected in the Financial Investment Services and Capital Markets Act and other relevant regulations in the near future.

- **Public Disclosure of Short Sale Position on Investor-by-Investor Basis:** According to the Measures, an investor must post its short sale position on the website of the Korea Exchange if its position exceeds 0.5% of the total issued and outstanding shares of any particular issuer. The public posting must be made by 9 a.m. on the third business day from the day the investor's position exceeds the 0.5% threshold. Subsequently, the investor must update the posting on short sale position if there is a change in the position amounting to 0.1% or more or if the position falls below the 0.5% threshold. The relevant laws and regulations are scheduled for revision during the first half of 2014.

- **Stricter Regulation of Existing Short Position Reporting Requirement:** (i) The Measures stipulate a basis to impose sanctions, such as a correction order or an administrative fine, on investors that violate the requirement to report short sale positions to the Financial Supervisory Service ("FSS"). This requirement has been in force since August 2012. The relevant laws and regulations are scheduled for revision during the first half of this year. (ii) Under the Measures, each short sale position report submitted to the FSS must also be publicly disclosed. The rules of the Korea Exchange are also expected to soon be amended to reflect this new public disclosure requirement. (iii) The FSS short sale reporting requirement will not apply to investors with a short sale position of less than KRW 100 million, even though the position may exceed the otherwise applicable reporting threshold of 0.01%. The Measures, on the other hand, require investors with a short sale position of KRW 1 billion or more to submit a report to the FSS regardless of whether the position exceeds the reporting threshold of 0.01% or not.

BANKING

By Sang Hwan Lee (shlee@kimchang.com) and Joon Young Kim (joonyoung.kim@kimchang.com)

Amendments to the Banking Act Enforcement Decree

On October 21, 2013, the Financial Services Commission ("FSC") proposed amendments to the Banking Act Enforcement Decree ("Amendment"). The public notice and comment period ended on December 2, 2013, and the Amendment will become effective after the evaluation of the Office of Legislation.

The details of the Amendment are as follows:

Prohibiting Compulsory Sale of Bank Products Relating to Loan Transactions

- The Amendment prohibits certain acts such as compulsory sale of banking services in relation to loan transactions.

- The Amendment views certain acts as compulsory sales if the monthly income from a savings/installment savings account sold during one (1) month before/after the drawdown date exceeds 1% of the loan amount, regardless of the borrower's intent.

- If insurance or fund products are sold to a small and medium-sized company or a person who has low credit during one (1) month before/after the drawdown date, it is considered a compulsory sale even if the bank's monthly income from the insurance or fund products is less than 1% of the loan amount.

Lifting Restrictions on Overseas Expansion

- Banks, regardless of their credit ratings, are no longer required to file any prior reports to the FSC with regards to M&A with a bank's local subsidiary with capital lower than 2% of the bank's core capital.

Expanding the Scope of Additional/Concurrent Business

- Bank's silver bar business: Silver bar sales agency business (without prior report) is permitted as additional business and silver savings account trading business (with prior report) is permitted as concurrent business

- Loan brokerage business: Loan brokerage business (with prior report) is permitted as concurrent business.

Increased Capital Regulations on Domestic Banks in Line with Basel 3 Enforcement

From December 1, 2013, the Financial Services Commission ("FSC") announced to enforce Basel 3 which is the strengthened safety and soundness regulation applied to the banking sector.

The details of Basel 3 are as follows:

Subdivision of Minimum Capital Regulations

- Each minimum capital requirement that should be retained by a bank in relation to the bank's risk weighted assets is subdivided by the type of capital.

- Common equity must comprise of 4.0% of risk-weighted assets from January 2014 and 6.0% of risk-weighted assets from January 2015.

- Tier 1 capital must comprise of 5.5% of risk-weighted assets from January 2014 and 6.0% of risk-weighted assets from January 2015.

- The total capital must comprise of 8% of risk-weighted assets.

Subdivision of Pre-Requisite of Prompt Corrective Action

- The existing pre-requisite of the Prompt Corrective Action based on total capital ratio will be subdivided into total capital ratio, tier 1 capital ratio and common equity ratio.

Plans for Future Implementation of Other Basel 3 Regulations

- In order to introduce other Basel 3 regulations in 2015 and 2016 (such as Liquidity Coverage Ratio), the FSC will amend the relevant regulations through consultation with related government agencies during 2014.

INSURANCE

By Woong Park (wpark@kimchang.com), Young Hwa Paik (yhpaik@kimchang.com) and Byung Min Choi (byungmin.choi@kimchang.com)

Improvement on Operating Expense System for Savings-Related Insurance Products

On December 27, 2013, the Financial Services Commission ("FSC") adopted a resolution for a proposed amendment to the Insurance Business Supervisory Regulations which primarily "improves the operating expenses system for savings-related insurance products" ("Amendment"). The Amendment was adopted to strengthen the efforts in the continuance and management of insurance and to increase the premium refund ratio for early termination of an insurance contract through insurance agents (including insurance companies, insurance agencies, etc.). The following is a summary of the details of the Amendment.

Increase in Commissions Distribution Ratio Payable to Insurance Agent after Conclusion of Insurance Contract

The commission distribution ratio will be gradually increased to fifty percent (50%) for a solicitor through the general distribution channel, while the distribution ratio for bancassurance distribution channel and cyber-mall distribution channel will also increase by seventy percent (70%) and one hundred percent (100%), respectively.

Classification /Distribution Channel		Current	2014	2015	2016	2017
Distribution Ratio of Annuity Savings-Related Insurance	General Solicitor	30%		40%	50%	50%
	Life Annuity	25%			35%	40%
	Banca-ssurance	30%		60%	70%	70%
	Cyber-Mall	30%		80%	100%	100%

The increase for 2015 will be effective from January 1, 2015, while the application of the proposed increases from 2016 will be determined after reviewing the enforcement results at the end of 2015.

Reduction in Commissions for Bancassurance Distribution Channel and Cyber-Mall Distribution Channel

Commissions for savings-related insurance products sold through bancassurance distribution channel or cyber-mall distribution channel will be gradually reduced to fifty percent (50%) compared to the general solicitor distribution channel.

Classification	Current	2014	2015	2016	2017
Cost of Conclusion of Insurance Contract via Bancassurance Distribution Channel and Cyber-Mall Distribution Channel (as compared to General Solicitor Distribution Channel)	70% (no separate limitation for the Cyber-Mall Distribution Channel)		60%	50%	50%

The reductions for 2015 will be effective from January 1, 2015, while the application of the proposed reductions from 2016 will be determined after reviewing the enforcement results at the end of 2015.

Obtaining Post-Acquisition Sales Commissions for Variable Life Insurance Products through On-line Sales Allowed

On-line sales for variable life insurance products that deduct sales commissions from reserves and not from the insurance premiums, which is similar to savings and fund products, are now permissible without any prior reporting requirement.

FSC Announces Plan to Improve Competitiveness of the Financial Services Industry

On November 27, 2013, the Financial Services Commission ("FSC") announced its Plan to Improve the Competitiveness of the Financial Industry ("Plan") to strengthen the quality and value of the Korean financial services sector. The following is a summary of the measures set forth in the Plan relating to the insurance business:

- Promotion of fair competition: The Plan (i) allows insurance companies to solicit foreign patients, (ii) promotes a "level playing field" with quasi-insurance such as mutual aid, (iii) promotes the use of "big data" and (iv) provides a platform for innovative sales distribution channels for financial services products (e.g., unmanned automated store);

- Increase in demand for financial services: The Plan envisions to (i) establish comprehensive pension portals, (ii) establish an organization to supervise consulting activities for retirement planning, (iii) support efforts to improve longevity risk management and (iv) reform regulation on long-term asset management;

- Promotion of the private pension market: The Plan envisions to (i) provide commission discounts for long-term maintenance of individual pension and mandatory annuitization for certain portion of benefits, (ii) protect retirement pension for up to KRW 50 million and (iii) promote reverse mortgage by expanding eligible applicants and products;

- Promotion of life-cycle asset management: The Plan introduces (i) "one stop" shopping distribution channel and (ii) independent and professional financial services product consultants;

- Protection of financial services consumers: The Plan offers to protect financial services consumers through legislation of the Financial Consumer Protection Act and establishment of the Financial Consumer Protection Agency;

- Greater expertise and transparency in financial supervision: The Plan offers financial regulators to concentrate supervisory activities in high-risk areas and to revisit unofficial guidance and guidelines; and

- Improvement of corporate governance: The Plan provides to legislate the *Act on Corporate Governance of Financial Institutions* and to introduce "Best Practices for Corporate Governance."

Further, the FSC has prepared a detailed plan for the insurance business that will "develop a sound insurance industry which the consumers can trust." In order to achieve this vision, the FSC has suggested the following four (4) objectives:

- Enhanced role for a social safety net: This includes deregulation on insurance products to accommodate the demand for insurance by senior citizens, introducing a "Lifetime Total Health Insurance" (proposed name) and allowing payment of medical fees from annuity savings;

- Ensured continued growth momentum of the insurance industry: This relates to deregulation on financial reinsurance and derivatives investment and introduction of short-term and small-amount insurance;

- Reform of distribution channels: This relates to establishing an "online insurance supermarket," introducing a single insurance agency and upgrading and re-classifying insurance solicitors as general financial consultants; and

- Enhancement of insurance consumer trust: This relates to (i) displaying minimum standards and product comparison for high-demand products, (ii) promoting pension products with post-acquisition sales commissions, (iii) introducing independent claim adjusters, (iv) strengthening the system for preventing and investigating insurance fraud and (v) introducing measures to protect defrauded insurance consumers.

We expect that the foregoing policy measures will bring new business opportunities for insurers, but will also require greater responsibility for consumer protection. Therefore, insurers need to closely monitor the changing regulatory environment for financial services supervision and strategically plan for new business opportunities.

Revisions to the Reinsurance Best Practices Guidelines

On November 26, 2013, the Financial Supervisory Service ("FSS") announced its revisions and implementation of the Reinsurance Best Practices Guidelines ("Guidelines"). The following is a summary highlighting the key revisions to the Guidelines.

- **Calculation and Payment of Appropriate Ceding Commissions:** The Guidelines prohibit the application of different reinsurance ceding commissions to the same risk without any reasonable grounds, which violates the premium rate calculation principle under the Insurance Business Law.

- **Regulation on Reinsurance Transactions by Non-Licensed Foreign Reinsurers:** Under the Guidelines, domestic insurers cannot be a counterparty to a non-licensed foreign reinsurer with respect to illegal reinsurance transactions. This will strengthen regulations against reinsurance transactions by non-licensed foreign reinsurers.

- **Management of Contractual Relations through Reinsurance Brokers:** In order to improve business relations regarding reinsurance contracts, reinsurance brokers must provide domestic insurers with information on business relations under the relevant reinsurance contract if the domestic insurer is reinsured by the reinsurance broker.

- **Exception to Foreign Insurer Branches on Mandatory Operation of a Risk Management Committee:** The Guidelines provide an exception to small-sized domestic branches of foreign insurers with respect to the requirement to establish, operate and maintain a risk management committee when the head office conducts audits relating to risks and appropriateness of reinsurance strategies.

LABOR & EMPLOYMENT

By Weon Jung Kim (wjkim@kimchang.com) and Hyun Jae Park (hyunjae.park@kimchang.com)

Supreme Court Decisions on Ordinary Wage – Action Plan for Employers

On December 18, 2013, the Supreme Court, sitting en banc, rendered its decisions on the ordinary wage cases of Kabul Autotech. The Supreme Court's ruling provided some guidance on how to resolve a substantial portion of the employers' past obligations related to ordinary wages.

However, there still remains risk regarding an employer's future obligation to increase ordinary wages, which may become an imminent and significant burden on the employers. Accordingly, an employer should establish and execute a systematic plan aimed at minimizing these ordinary wage risks as provided below.

Risk Analysis on Past Ordinary Wage Obligations and Settlement

To reduce past risk on ordinary wage obligations, it is important to analyze whether various bonuses and allowances fall under the ordinary wages in light of the Supreme Court rulings. Furthermore, it is necessary to check the company's financial condition and analyze whether or not any additional wage claims violate the "good faith principle". Based on such risk analysis, companies must establish and execute a strategy for negotiating with employees.

Wage System Reform

To reduce future risk on ordinary wage obligations, it is advisable for companies to review whether or not bonuses or allowances fall under ordinary wages and, if necessary, reform the wage system to simplify the wage system and enhance performance-based remunerations.

Review HR System and Issues Deriving from Wage System Reform

In reforming the wage system, an employer should not only consider the effects of the reform on various personnel affairs (e.g., performance evaluation and compensation), but should also consider the changes to the overall HR operation system. In addition, by reviewing the issues related to the wage system reform, such as extending the retirement age, it is important to minimize potential issues and to maintain consistency in HR operation.

Negotiation Strategy to Execute Reformed Wage System

Once a plan to address the risk related to ordinary wages is established, it is critical to begin communicating with the employees or engaging in reasonable negotiations with the labor union. For that purpose, it is advisable to devise a roadmap and develop negotiation points for each stage of the negotiation.

Minimize Ordinary Wage Related Costs and Improve Productivity

To manage the increased costs due to the rise in ordinary wages (e.g., overtime allowance, unused leave allowance, etc.), it is important to manage inefficiencies through improving work process. For mid- to long-term business planning, increasing profit through greater productivity should also be considered.

Planning and executing these tasks may be delicate, which not only requires careful legal review, but also requires a comprehensive approach taking into consideration the HR system and the relationship between the company management and its employees and/or labor unions.

REAL ESTATE

By Yon Kyun Oh (ykoh@kimchang.com) and Jee Yong Seo (jeeyong.seo@kimchang.com)

Amendments to Enforcement Decrees of Real Estate Investment Trust Act

Following the recent amendments to the Real Estate Investment Trust Act ("REIT Act") ameliorating certain regulations on real estate investment trust ("REIT") securities, certain amendments to the Enforcement Decrees of the REIT Act ("Amendments") providing details on the amended REIT Act have become effective as of January 17, 2014.

The following are key highlights of the Amendments.

- Previously, the National Pension Service and certain other pension funds ("Exempt Entities") were exempt from the REIT public offering requirements, as well as the cap on the maximum percentage of REIT shares that could be owned by a single shareholder. Pursuant to the Amendments, the Korea Post Office was added to the list of Exempt Entities.

- Previously, the subsidiary-REIT of a parent-REIT was also entitled to the above exemptions if any single Exempt Entity owned more than 50% of the parent-REIT. Since the Amendments, the subsidiary-REIT is now entitled to the same above-described exemptions if one or more Exempt Entities, on an aggregate basis, owns more than 50% of the parent-REIT.

- Previously, REITs were required to invest at least 70% of its assets in real estate; provided, that for purposes of this test, majority interests (i.e., 50% or more) in entities whose real estate assets consist of 80% or more were deemed to constitute real estate assets. Since the Amendments, REITs are now also able to invest in equity interests in special purpose vehicles established for the purpose of real estate development, as well as partnerships and indirect subsidiaries (provided, that 80% or more of the assets of such partnerships and indirect subsidiaries are comprised of real estate).

- Previously, REITs were not permitted to invest more than 5% of its assets in shares issued by another single entity, except in certain limited cases. Under the Amendments, REITs are now expressly permitted to acquire beneficial interests in real estate trusts as an exception to the foregoing 5% rule.

In addition, the Amendments have strengthened measures to secure the soundness of REIT investments, for example, by providing that only appraisers recommended by the Korea Appraisal Board or Korea Association of Property Appraisers are qualified to appraise real estate owned by REITs and requiring owners of 5% or more of the shares in self-managed REITs to satisfy certain strict qualifications.

Amendments to City and Residential Environment Maintenance Act

Certain amendments to the City and Residential Environment Maintenance Act (the "Amendments") became effective as of December 24, 2013. The Amendments are designed to vitalize the stagnant development business by increasing the scope of floor area ratio incentives available to re-development projects and streamlining the procedures for cash settlement.

Under the Amendments, floor area ratio incentives which are granted to re-development projects can be applied to areas other than Metropolitan Overpopulation Restriction Districts, thereby promoting re-development projects in areas which would otherwise have low project feasibility. The Amendments also enable partnership entities engaged in any development projects to reduce their financial costs by permitting such partnership entities to complete cash settlements with its partners within 90 days from the day after the local government approves the partnership entity's development management and disposition plan.

TAX

By Woo Hyun Baik (whbaik@kimchang.com), Christopher Sung (chrissung@kimchang.com) and Jae Hun Suh (jaehun.suh@kimchang.com)

Final Tax Law Changes for Year 2014

On January 1, 2014, the National Assembly finally passed the tax law amendment for 2014. In doing so, the original proposal was amended by the National Assembly with the passage of new legislation not part of the original package and exclusion of others from the new tax laws. The main highlights of the tax law amendment are as follows.

Increase in the Minimum Corporate Income Tax Rate for Large Companies

Even if corporate income tax payable is nil after taking tax credits and exemptions, companies are still subject to a minimum corporate income tax ("Minimum CIT"). The new tax law increases the applicable Minimum CIT rate for one of the taxable income brackets. Specifically, for large companies that have taxable income exceeding KRW 100 billion before tax credits and exemptions, the previous Minimum CIT rate of 17.6% (including local income tax) will increase to 18.7% (including local income tax) under the new tax law. The applicable Minimum CIT rates for other taxable income brackets will remain unchanged. Please see the table below for a comparison of the Minimum CIT rates before and after the revision to the tax law.

(Unit: KRW)

Taxable Income	Minimum CIT Rate*	
	Before Amendment	After Amendment
Below 10 billion	11.0%	11.0%
10 billion ~ 100 billion	13.2%	13.2%
Above 100 billion	17.6%	**18.7%**

* Local income tax is included.

Foreign Employee Subject to 18.7% Flat Tax Rate

The original proposed tax law amendment would have applied a 18.7% flat income tax rate (including local income tax) on earned income of foreign employees for the first five years of their employment in Korea. In case a foreign employee began his/her work 5 years before January 1, 2014, the flat income tax rate would not have been applicable for 2014. In addition, the original proposed tax law amendment also provided an exception to the application of the flat tax rate for certain foreign employees who exercise control (either directly or indirectly) over the management of a Korean entity.

However, unlike the original proposal, the new tax law continues to apply the flat income tax rate to foreign employees who have worked for 5 years in Korea prior to January 1, 2014. Moreover, under the new tax law, the flat income tax rate would also be applicable to a foreign employee working in a company subject to foreign investment tax exemption even though he/she exercises control of the management of such company.

Limitation on R&D Tax Credit for Large Companies

Limitation of R&D tax credit available to large companies (excluding middle and small-sized companies) will be reduced from 6% to 4%.

Reduction on Capital Gains Tax for Sale of Land and Residential Real Estate Property

Prior to the amendments, capital gains tax was levied at the rate of 33%, in addition to corporate income tax, when companies sold land not related to its business and residential real estate property. Under the new tax law, capital gains tax rate on such sale will be reduced to 11%.

Supreme Court Decision on Tax Transfer of Korean Shares Held by Foreign Company

In case an unwinding company transferred the shares of a Korean company to a surviving company at the time of merger, the Supreme Court held that the transfer of such shares of the Korean company is a taxable event and thus subject to capital gains tax and securities transaction tax based on the following reasons:

- Asset transfer arising from a merger is regarded as a taxable event under the Corporate Income Tax Law and the method for calculating capital gain is stipulated therein (the exception for tax deferral in case of a tax-qualified merger does not apply here).

- In case of a foreign company, the transfer of shares in a Korean company is subject to capital gains tax and unlike share transfer by a domestic company, there are no special rules for deferring capital gains tax.

- Although securities transaction tax is exempt in case of a tax-qualified merger under the Special Tax Treatment Control Law, such rule does not apply here and the transfer of shares of a domestic company at the time of merger is subject to securities transaction tax.

In addition, the Supreme Court further held that transfer of shares in a Korean Company by a foreign company to a newly established entity as part of a business spin-off should be regarded as a taxable event based on a similar reasoning as provided above.

Previously, it was unclear whether the share transfer of a Korean company by a foreign shareholder was subject to capital gains tax and securities transaction tax in case of a merger or a spin off. However, the above Supreme Court decision confirmed that such share transfers will be subject to Korean tax.

ENVIRONMENT

By Yoon Jeong Lee (yjlee@kimchang.com) and Jeong Hwan Park (jeonghwan.park@kimchang.com)

K-REACH and Chemicals Control Act: Advance Notice of Draft Subordinate Statutes

On February 18, 2014, the Ministry of Environment of Korea ("MoE") announced an advance notice for the draft subordinate statutes of the K-REACH and Chemicals Control Act ("CCA"). Provided below are the key provisions of the legislation that is to take effect on January 1, 2015.

K-REACH

Topic	Key Provisions of Subordinate Statutes
Reporting Requirement	• Under K-REACH, a person who manufactures, imports or distributes a new chemical or existing chemical in excess of 1 ton per year shall report the intended use and volume of the chemical to the MoE every year. • The draft subordinate statutes provide the following exceptions: - A distributor may skip the report of sales volume and intended use. - A person who sells product to end users (e.g., hypermarket, supermarket, etc.) need not comply with the reporting requirement.
Registration Requirement	• Under K-REACH, a person who manufactures or imports a new chemical or existing chemical subject to registration in excess of 1 ton per year shall register the chemical before manufacturing or importing the chemical. • The draft subordinate statutes provide that the MoE will publish a list of existing chemicals subject to registration in advance in the official gazette or on the MoE Internet homepage. manufacturing or importing the chemical.
Low Volume Simplified Registration	• K-REACH requires that new chemicals must be registered, while the draft subordinate statutes stipulate that new chemicals in volumes of less than one ton will need fewer documents for registration.
R&D Exemption	• While K-REACH does not specifically provide any exemption for registration regarding chemicals that are manufactured or imported for R&D purposes, the draft subordinate statutes provide registration exemptions for such chemicals provided that confirmation by the MoE is obtained. • R&D-exempt chemicals may be transferred to other locations including other workplaces and research centers.
Polymer Exemption	• Polymers may be exempt from the registration requirement pursuant to confirmation by the MoE. However, certain low-risk polymers, such as cationic polymers, must be registered.
Chemical Information Sharing	• A person who transfers a registered chemical or a mixture of chemicals that contains a registered chemical must provide the following information to the transferee: chemical name, risk and toxicity information, safety related information, etc. - If the composition or content volume constitutes a trade secret as defined under the Unfair Competition Prevention and Trade Secret Protection Act, the above requirement shall not apply. (However, if the chemical is classified as toxic, then the information sharing requirement will apply.)

CCA

Topic	Key Provisions of Subordinate Statutes
Preparation and Submission of an Impact Assessment	• The CCA provides that a person who intends to set up and operate toxic chemicals handling facilities shall prepare, in advance, an impact assessment report that evaluates the impact of a potential chemical accident on the surrounding environment and population; however, under the draft subordinate statutes, facilities that process only a small amount of toxic chemicals may provide fewer documents (details will follow in the Ministerial notice), and that a grace period shall apply to facilities to which the current Toxic Chemicals Control Law apply.
Reporting of Outsourcing Toxic Chemicals-related Work	• The CCA provides that businesses retained to handle toxic chemicals on an outsource basis shall report the outsource arrangement; the draft subordinate statutes further specify that such report must be made within 10 days from the start of the arrangement.
Preparation and Publication of Contingency Plan	• Under CCA, a person who handles accident prone chemicals in excess of a certain amount shall prepare and submit a contingency plan every five years. - The supplementary provisions of the draft enforcement regulations provide a grace period to persons who have submitted a self-prevention plan pursuant to the current Toxic Chemicals Control Law and a method on how to publicize the contingency plan to the local general public – notice may be given to the local public via delivery to the apartment superintendent's office, the dong or myeon town offices or the head of a tong or ban neighborhood association.

The MoE plans to promulgate the draft subordinate statutes in the second half of 2014. Before promulgation, the MoE will collect the opinions of interested parties on the draft statutes through March 31, 2014 (i.e., the end date of the legislative announcement period) followed by the regulatory screening process and review by the Office of Legislation. In addition, the MoE plans to operate a K-REACH helpdesk and to conduct various training sessions on the new legislation from February 2014. Publication of the list of existing chemicals subject to registration and the applicable grace periods is tentatively scheduled for October 2014.

INTELLECTUAL PROPERTY

By Jay (Young-June) Yang (yjyang@kimchang.com) and Kwi Yeon Song (kwiyeon.song@kimchang.com)

Amendments to Invention Promotion Act and Related Enforcement Decree

The Invention Promotion Act ("IPA") has been amended primarily to reinforce employees' procedural rights in connection with compensation for employee inventions. The amended IPA went into effect on January 31, 2014. The Enforcement Decree of the IPA was also revised, and went into effect on the same day.

The purpose of the amendments is to enable employees to participate in the compensatory process by strengthening their bargaining power and procedural rights, and to establish a fair compensation culture by actively inducing large corporations to introduce an employee invention compensation system. Companies should now consider implementing a more structured system regarding employee invention compensation. The details of the key amendments are discussed below.

Changes to Automatic Non-Exclusive License Granted to Employers

Under the previous IPA, the employee who created the invention holds ownership and title in the invention in the absence of a contractual provision or internal employment regulation holding the contrary. The employer is automatically entitled to a royalty-free nonexclusive license to use employee inventions.

According to the amendment, employers other than small or medium-sized entity employers as defined under Article 2 of the Small or Medium Sized Entity Framework Act (i.e., a manufacturing entity that has not less than 300 regular employees or a company with 8 billion Korean Won or more in sales or capital) are no longer given an automatic non-exclusive license. These employers must have a contract or employment regulation in place where the employee agrees to assign or grant exclusive license to use the employee inventions to the employer in advance.

Establishing Procedural Requirements for Employee Compensation of Inventions

The amended IPA requires the employer to adopt an internal compensation rule to specify the type of compensation, amount and payment method, etc., and must consult with employees before adopting or amending the compensation rule as well as obtain consent from more than half of the employees when amending the rule in a manner less favorable to the employees (Articles 15(1) – (4) of the IPA). If the employer complies with the foregoing requirements, compensation provided under such rules will be deemed reasonable, so long as the compensation is determined based on the profits that the employer gained or expects to gain from the employee invention and the degree of contribution by the employer and the employee in creating the said invention (Article 15(6)).

Formation and Operation of Employee Invention Review Committee

The amendment also includes the establishment and operation of an Employee Invention Review Committee ("Review Committee") for conflicts between the employer and employee with regards to the compensation of the invention. If the employee demands that a Review Committee be formed, the employer must form a Review Committee and have the committee complete its review within 60 days. Companies should exercise due care with this particular amendment as the revised IPA imposes a fine of up to 10 million Korean Won in the event a Review Committee is not formed and review is not carried out despite an employee's request (Article 60(1). 1).

As the amendments to the IPA and revisions to the Enforcement Decree intend to further protect the employees' rights to employee inventions, employers should also be mindful of the new changes and review their internal regulations regarding the compensation and assignment of employee inventions. This is particularly important for employers that are not small or medium sized entities, which require a more comprehensive and transparent internal regulation to be granted automatic royalty-free nonexclusive license to use employee inventions.

Local Public Recognition of Trademark No Longer Required to Defeat Cybersquatters

After a lengthy dispute spanning over more than four years, Kim & Chang was successful in obtaining a Supreme Court ruling that foreign companies are not required to prove the local public recognition of their trademark within Korea to recover a domain name comprised of or including their trademark (Case No. 2011da57661, decided on September 12, 2013).

Cybersquatters utilize the first mover's advantage to register domain names in bad faith. As part of an effort to regulate cybersquatting in Korea, Article 12 of the Internet Address Resource Act ("IARA") allows a legitimate right holder to file a petition to the court for the de-registration or transfer of a domain name that was registered and used in bad faith, such as for the purposes of impeding the legitimate right holder's own domain name registration or to gain unjust profits. Until now, the Korean courts did not provide any clear guidance on whether foreign companies that own publicly recognizable trademarks in their home countries, but not in Korea, may avail themselves of this particular provision.

This specific case involved the Varsity Spirit Corporation, the owner of the NCA mark in the U.S., which is also an abbreviation for the "National Cheerleaders Association." The Varsity Spirit Corporation did not own any trademark registrations in Korea and the mark did not have any local recognition. An action was filed to recover the domain name <nca.com> from an individual that had registered the subject domain name after the mark NCA was registered in the U.S. The registrant was also operating a website under the domain name in bad faith, such as selling cheerleading related apparel and products, and providing links to competitors of Varsity Spirit Corporation.

The registrant insisted that Varsity Spirit Corporation was not a "legitimate right holder" according to Article 12 of the IARA because the mark NCA did not have any public recognition in Korea. However, the courts rejected the registrant's argument and reviewed the totality of the circumstances, such as the public recognition of the mark NCA in the U.S., especially in connection with cheerleading apparel.

In the final appeal, the Supreme Court specifically stated that local public recognition of the subject mark was not required under Article 12 of the IARA, and thus issuing a noteworthy ruling that clarified the ambiguities of past decisions.

BROADCASTING & TELECOMMUNICATION

By Dong Shik Choi (dschoi@kimchang.com) and Jung Un Lee (jungun.lee@kimchang.com)

Guidelines on Regulation of Internet Access Service Traffic

On December 4, 2013, the Ministry of Science, ICT and Future Planning (the "MSIP") announced its "Guidelines on Regulation / Use of the Network and Transparency of Traffic Management" ("Guidelines") to prevent arbitrary management of internet traffic by internet access service providers ("Service Providers") and to establish a system for allowing users to freely access traffic management information.

The key features of the Guidelines are summarized below.

Applicable Scope of Guidelines

The Guidelines apply to internet access services in general, with the exception of managed service.

Ground Rule for Traffic Management

Service Providers must take appropriate measures to promote network upgradability in tandem with corresponding increases in internet traffic. Traffic management must be implemented only on a limited basis and within a reasonable scope.

Standards for Determining the Reasonableness of Traffic Management

The following elements will be the basis for determining the reasonableness of traffic management schemes employed by the Service Providers: (i) whether information relating to traffic management is sufficiently disclosed to the users (transparency); (ii) whether the traffic management scheme in question conforms to its intended goal and purpose (proportionality); (iii) whether implementation of the traffic management constitutes an unreasonable discrimination against other similar contents (non-discriminatory); (iv) the technical characteristics of the wire/wireless network in question.

Types of Reasonable Traffic Management

The following types of traffic management may be deemed reasonable: (i) where such traffic management is necessary to maintain security and safety of the network by preventing DDoS, malware, hacking, communication disruption, etc.; (ii) where a service provider implements a traffic management scheme as a minimum necessary measure to protect multiple users from network congestion and to guarantee an environment for fair and equal use of the internet by all users; or (iii) where such traffic management is required for enforcement of related laws or where such traffic management is requested by users based on related laws or user agreements.

Disclosure of Information/User Protection

Service Providers must disclose information relating to their services such as the terms and conditions, procedures and method, etc. of their traffic management schemes and must also inform users upon implementing measures necessary for traffic management.

For the implementation of traffic management, the Service Provider must reflect relevant information to terms and conditions of its service, and also disclose traffic management information on the Service Provider's internet website by June 2014.

In addition to the above, the MSIP announced its plans to allow VoIP services on all mobile rate plans by 2014. The MSIP is expected to continue monitoring the relevant market and the manner in which Service Providers implement their traffic management schemes to supplement the Guidelines on a regular basis.

INTERNATIONAL ARBITRATION & CROSS-BORDER LITIGATION

By Byung-Chol (BC) Yoon (bcyoon@kimchang.com), Byung-Woo Im (bwim@kimchang.com) and Harold Hyunshik Noh (hyunshik.noh@kimchang.com)

Amendment to KCAB Internal Regulations: Arbitrators Appointed Outside Korea and First Case

The Korean Commercial Arbitration Board ("KCAB") has revised its internal regulations so that the Secretariat has the discretion to appoint an arbitrator who is residing outside of Korea without the parties' agreement in cases where the Secretariat appoints the arbitrators (especially in the case of appointing the chairperson). This amendment applies to all arbitration cases received by the KCAB Secretariat on or after March 1, 2013, and was applied for the first time in a recent case where Kim & Chang represented a party.

Although the current KCAB International Arbitration Rules ("International Rules") allows the Secretariat to appoint an arbitrator of a third country regardless of whether he/she is a resident of Korea, this only applies to cases where the relevant arbitration agreement was made on or after the effective date of the International Rules on September 1, 2011. In practice, for cases with arbitration agreements pre-dating the effective date of the International Rules, the Secretariat had a very limited pool of nominees to choose an arbitrator. The limitation was especially an issue for the substantial portion of KCAB cases involving disputes between Korean and U.S parties, as most of the foreign arbitrators registered with the KCAB are U.S. lawyers working in Korea, who would be not be eligible for appointment. Moreover, in the absence of a specific agreement by the parties, it was impossible for the KCAB to appoint well-known British, European and Asian arbitrators residing outside of Korea.

The KCAB Secretariat has applied its amendment to internal regulations in a recent case where Kim & Chang was representing a party, to appoint an arbitrator from a third country who was residing in Japan, in the absence of the parties' agreement. Going forward, such flexibility will allow the KCAB to tap into a wider pool of internationally recognized arbitration professionals, and is expected to be a positive development, especially for international parties with KCAB arbitration clauses pre-dating September 1, 2011.

SELECTED REPRESENTATIONS

Macquarie Fund acquires Yeongyang Wind Power Corporation

On December 12, 2013, a fund managed by Macquarie Korea Opportunities Management Ltd. ("MKOM") acquired from Acciona S.A. a 100% stake in Yeongyang Wind Power Corporation for an aggregate purchase price of KRW 162 billion (USD 151 million). Yeongyang Wind Power Corporation owns a wind farm in north Kyungsang province with the capacity of 61.5 megawatts.

Kim & Chang represented MKOM on all aspects of the transaction from the execution of the memorandum of understanding to the closing of the transaction, including legal due diligence, negotiation and execution of related agreements, merger filing, acquisition of a convertible bond and acquisition financing.

AIA acquires AIA Tower building

On December 2, 2013, AIA International Limited ("AIA") acquired certain strata interests in the AIA Tower building (formerly known as the N Tower building) located at Soonhwa-dong, Joong-gu, Seoul. The AIA Tower building is a strata office building that received its use permit on May 22, 2013. AIA plans to use the AIA Tower building as its main office building in Korea and will also lease out a portion of the building.

Kim & Chang contributed to the successful closing of this transaction by providing comprehensive legal advice to AIA, including negotiating and implementing the acquisition documentation and documenting and managing the relationship with other strata owners at the AIA Tower building.

Groupon acquires Ticket Monster

On January 2, 2014, the US social commerce company, Groupon Inc. ("Groupon") through its acquisition vehicle, Groupon Trailblazer, acquired 100% equity stake in LivingSocial Korea Inc., a 100% stakeholder of the Korean social commerce company, Ticket Monster Inc. ("Ticket Monster"), from its former shareholder, LivingSocial Inc. The acquisition is part of Groupon's global business transition from a flash sale email model to a mobile commerce marketplace. Ticket Monster was seen as a perfect fit for Groupon given its mobile penetration and expertise in the local market and the significance of the Korean market as one of the world's largest e-commerce markets.

Kim & Chang acted as counsel for Groupon in all aspects of the transaction from the legal due diligence to advising on regulatory matters, transaction documents and closing matters and filing a business combination report with the Korea Fair Trade Commission.

MBK acquires ING Life Insurance Korea

On December 24, 2013, MBK Partners ("MBK") acquired a 100% stake in ING Life Insurance Korea from ING Insurance International II B.V., an affiliate of ING Group N.V.

Because the transaction involved the acquisition by a private equity fund of control over management of an insurance company, the acquisition raised complex issues related to the approval of necessary permits and licenses by the regulatory authorities. Kim & Chang advised MBK on all aspects of the transaction, including structuring the transaction, conducting legal due diligence, drafting and negotiating all the transaction documents, advising on acquisition financing and assisting with the closing of the transaction, as well as making filings for government permits and licenses by supervisory authorities.

H&Q acquires stake in JobKorea from Monster Worldwide

On December 19, 2013 H&Q acquired a 49.9% interest in JobKorea, Inc., a Korean online job-search service provider, from Monster Worldwide, Inc.

Kim & Chang provided comprehensive legal services to H&Q in connection with the transaction, including reviewing the transaction structure, conducting legal due diligence, drafting and negotiating the underlying agreements including the unit transfer agreement and shareholders agreement, obtaining government permits and licenses including filing of a business combination report with the Korea Fair Trade Commission, drafting and negotiating an acquisition financing agreement and assisting with the closing of the transaction.

Carlyle acquires Yakjin Trading

On December 23, 2013, Yakjin Holdings Inc. established by The Carlyle Group ("Carlyle") acquired a 100% stake in Yakjin Trading Corp. ("Yakjin Trading") from private shareholders and the Korean Asset Management Corporation. Yakjin Trading is a major garment OEM company in Korea with manufacturing facilities in Vietnam, Indonesia and Cambodia and a strong customer base with large multinational fashion retailers (including GAP, Banana Republic, Old Navy, L Brands, American Eagle and Walmart).

Kim & Chang provided comprehensive legal services to Carlyle in connection with the transaction, including structuring the transaction, conducting legal due diligence, drafting and negotiating all the transaction documents, advising on acquisition financing and assisting with the closing of the transaction.

Hahn & Company acquires Woongjin Foods

On December 6, 2013, Hahn & Company acquired a 57.87% stake in Woongjin Foods from Woongjin Holdings.

Kim & Chang advised Hahn & Company on all aspects of the transaction, including reviewing the transaction structure, advising on the regulations related to private equity funds and various other related regulation, including competition law and bankruptcy law, drafting and negotiating related agreements, filing for government permits and licenses and assisting with the closing of the transaction.

SkyLake and Carlyle acquire Tapex

On July 31, 2013, SkyLake Investment & Co. ("SkyLake"), a Korean private equity fund, and The Carlyle Group ("Carlyle") acquired from KDB Capital and JKL Partners a 100% stake in Tapex Co., Ltd. ("Tapex"). Tapex is a Korean manufacturer of adhesive tape.

Kim & Chang represented SkyLake and Carlyle on all aspects of the transaction, including legal due diligence, drafting and negotiation of the share purchase agreement and shareholders agreement, filing for government permits and licenses and closing of the transaction.

Anchor acquires shares in Geo Young from GS PIA

On October 31, 2013, affiliates of Anchor Equity Partners (Asia) Limited ("Anchor") acquired a 57.6% stake in Geo Young Corporation Ltd. ("Geo Young") by purchasing from affiliates of Goldman Sachs Principal Investment Area the shares of Geo Young and purchasing from Geo Young its convertible bonds.

Kim & Chang advised Anchor on all aspects of the transaction, including review of the transaction structure, legal due diligence, drafting and negotiation of related agreements, filing for government permits and licenses and closing of the transaction.

Insurance business license issued to Kyobo Lifeplanet

Kyobo Lifeplanet Life Insurance Co., Ltd. ("Kyobo Lifeplanet") obtained an insurance business license from the Financial Services Commission on October 30, 2013. This is significant because Kyobo Lifeplanet is Korea's first licensed online life insurance company.

Kim & Chang advised Kyobo Lifeplanet on various legal and regulatory matters related to the application and requirements for the insurance business license.

Insurance business license issued to Hyundai Highcar for additional lines of business

On December 11, 2013, Hyundai Highcar Direct Auto Insurance Co., Ltd. ("Hyundai Highcar") obtained a license from the Financial Services Commission to develop, market and sell additional lines of business (i.e., casualty-expense liability insurance). Hyundai Highcar is now licensed to sell drivers insurance in addition to its automobile insurance products.

Kim & Chang advised Hyundai Highcare on various legal and regulatory matters related to the application and requirements for obtaining license for additional lines of insurance business.

Mastern REIT No. 7 acquires PCA Life Tower building

On November 1, 2013, Mastern Real Estate Investment Trust No. 7 Co., Ltd. ("Mastern REIT"), a real estate investment trust company established by Mastern Investment Management Co., Ltd. pursuant to the Real Estate Investment Trust Act, acquired the PCA Life Tower building located in Yeoksam-dong, Gangnam-gu, Seoul near the Renaissance Hotel intersection. Because of its location in the heart of Gangnam and its relatively favorable physical condition, multiple bidders were said to have submitted purchase offers for the PCA Life Tower building.

Kim & Chang contributed to the successful closing of this transaction by providing comprehensive legal advice to Mastern REIT, including the due diligence, acquisition and financing documentation.

NPS acquires prime office building in Munich, Germany

In September 2013, the National Pension Service of Korea ("NPS") acquired a Class A office building located in Munich, Germany from Siemens. NPS plans to lease the office building.

In addition to advising NPS earlier this year in connection with its acquisition of an office building located in Paris, France, Kim & Chang provided comprehensive legal advice to NPS, including negotiating and implementing various finance and acquisition documents, such as the limited partnership agreement and asset management agreement.

Mirae Asset acquires Four Seasons Hotel in Sydney

In October, 2013, Mirae Asset MAPS Frontier Australia Private Real Estate Investment Trust No. 1 ("Mirae REF"), a real estate fund established by Mirae Asset Global Investments Co., Ltd. pursuant to the Financial Investment Services and Capital Markets Act ("FSCMA"), acquired the Four Seasons Hotel property located in Sydney, Australia.

One of the most important elements of this transaction was to develop a structure that would maximize profits within Australia, while at the same time satisfying all contractual requirements as well as the various FSCMA regulations applicable to real estate funds ("REFs"), including restrictions on a REF's ability to engage in hotel business and to provide guarantees for its subsidiaries. Kim & Chang was instrumental to the success of this transaction by providing comprehensive legal advice to Mirae REF from the structuring of the transaction to the negotiation of the relevant contracts and compliance with Korean law.

Supreme Court dismisses KFTC's appeal on online music providers' unlawful collusion

Several administrative lawsuits were filed to challenge the Korea Fair Trade Commission's ("KFTC") corrective order and penalty surcharge issued on June 29, 2011 on alleged unlawful collusion of 13 online music providers. On November 14, 2013, the Supreme Court affirmed the judgment of the lower court that reversed the KFTC's original disposition for two of the plaintiffs that were online music providers, holding that there was insufficient evidence of collusion.

The Supreme Court held the following:

- "Unfair Collusive Practice" prohibited under Article 19 (1) of the Monopoly Regulation and Fair Trade Law ("FTL") is defined as "agreeing to an act that unfairly restricts competition." While "agreement" under this provision includes both explicit and implied agreements, parallel behavior does not in and of itself prove the existence of an unlawful agreement, but rather, the KFTC must show evidence of the alleged cartel participant's collusive intent.

- Around the time when the alleged collusive agreement took place (i.e., the agreement among the online music providers to provide music to Non-DRM packages only that offered unlimited number of songs), the plaintiffs did not participate in the meeting with other online music providers. Furthermore, there was no evidence that the plaintiffs exchanged their intent to collude with other online music providers. In addition, the Supreme Court found it plausible that plaintiffs independently decided to provide music to Non-DRM packages with limited number of songs based on the market situation.

The Supreme Court found that there was insufficient evidence that the plaintiffs agreed to collude with other online music providers, affirming the lower court's findings. Kim & Chang represented one of the two online music providers in this favorable Supreme Court decision.

Supreme Court decision on the legal character of a fund prospectus

The Supreme Court recently issued a decision on the contractually binding effect of a fund prospectus. In the relevant case, an asset management company managed a fund ("Fund") investing in equity-linked securities ("ELS"), an OTC derivative securities, which were linked to two common shares. Although the prospectus of the Fund stated that the ELS counterparty of the Fund would be BNP Paribas, the asset management company instead entered into an ELS contract with Lehman Brothers for the Fund. In the end, investors in the Fund suffered losses when Lehman Brothers became bankrupt and subsequently filed suit against the asset management company. The Supreme Court held that the asset management company was not liable to the investors because the asset management company had no contractual obligation to have BNP Paribas as the ELS counterparty of the Fund.

This Supreme Court decision is the first explicit ruling ever to address the issue of whether a fund prospectus is contractually binding to investors. It is particularly meaningful in that the Supreme Court reversed the lower court decision which held that the asset management company, in managing the Fund, had the contractual obligation to have the specific ELS counterparty stipulated in the prospectus.

In the lower court case, the asset management company was held liable against the investors for their entire losses because: (i) the prospectus mentioned the credit risk of the ELS counterparty as a major investment risk, (ii) the prospectus stressed the credit rating of BNP Paribas and (iii) the Fund used most of its investor funding for acquiring OTC derivatives products.

The Supreme Court, however, ruled that matters set forth in the prospectus should not automatically be granted a contractually binding effect. The Supreme Court reasoned that (i) changing the ELS counterparty is not the type of major event requiring an approval at an investors' general meeting and (ii) an important factor affecting the investors' decision making was future fluctuation in the value of the shares underlying the relevant OTC derivatives transaction, rather than who the ELS counterparty was, in so far as the ELS counterparty had a credit rating above a certain level. In short, the Supreme Court held that notwithstanding the prospectus, the asset management company was not contractually obliged to have BNP Paribas as the ELS counterparty in managing the Fund.

Kim & Chang, as defense counsel to the asset management company at the Supreme Court level, contributed to securing a favorable decision for the defendant.

FIRM NEWS

AWARDS & RANKINGS

Band 1 in all 14 areas - The Legal 500 Asia Pacific (2014)

Kim & Chang was recognized in the Legal 500 Asia Pacific (2014 edition), a leading global law firm directory published by Legalease, UK legal media, as a band 1 law firm for all 14 practice areas surveyed. Kim & Chang is the only law firm in Korea to receive a top ranking in all surveyed areas.

Practice areas:

- Antitrust and Competition
- Capital Markets
- Dispute Resolution
- Insurance
- Intellectual Property: Patents and Trademarks
- Real Estate
- Tax
- Banking and Finance
- Corporate and M&A
- Employment
- Intellectual Property
- Projects and Energy
- Shipping
- TMT (Technologies, Media & Telecommunications)

In addition, the following Kim & Chang's professionals were selected as leading individuals:

- Banking and Finance: Soo Man Park, Young Man Huh and Young Kyun Cho
- Dispute Resolution: Sang Ho Han, Byung-Chol (BC) Yoon and Eun Young Park
- Capital Markets: Soo Man Park and Young Man Huh
- Intellectual Property: Jay (Young-June) Yang
- Corporate and M&A: Kyung Taek Jung, Young Jay Ro and Jong Koo Park
- Shipping: Byung-Suk Chung and Jin Hong Lee

No.1 M&A advisor in Asia Pacific (excluding Japan) - Bloomberg Asia Pacific Legal Advisory M&A Rankings 2013

Bloomberg Asia Pacific Legal Advisory M&A Rankings 2013 named Kim & Chang No. 1 in the Asia Pacific region (excluding Japan) by deal count of 100 deals and No. 1 M&A advisor in Korea both by deal count of 99 deals and deal volume of USD 17,474 million.

No. 1 M&A advisor in Korea - Mergermarket M&A League Tables of Legal Advisors 2013

Kim & Chang ranked No. 1 M&A advisor both by deal value and count with USD 23,911 million and 65 counts in Mergermarket M&A League Tables of Legal Advisers 2013.

In addition, Kim & Chang was ranked No. 7 by deal value, and No. 5 by deal count in Asia Pacific (excluding Japan) M&A. Kim & Chang was the only Korean law firm to be named in this category. In Asia-Pacific (excluding Japan) M&A Buyouts, Kim & Chang was named No. 1 by deal count of 20 deals and No. 2 by deal value of USD 9,272M.

Ranked as top-tier tax law firm in Korea - Tax Directors Handbook 2014

Kim & Chang was recognized as a top-tier tax law firm in the Tax Directors Handbook 2014, the guide to the world's premier tax law firms published by Legalease, a leading UK publisher of legal market information.

In addition, Mr. Woo Hyun Baik of our firm was selected as one of the "leading global tax lawyers - TDH 250" based on recommendations from clients.

The firm also ranked ninth in the "Law Firm Tax 100," which is a list of the world's leading law firms by the size of their respective tax department. Kim & Chang is the only law firm in Korea that was named in the Law Firm Tax 100.

Activities

Seminar on ‘Recent issues on construction projects in Middle East and strategies for Korean companies’

The Seminar on ‘Recent issues on construction projects in Middle East and strategies for Korean companies,’ co-hosted by Kim & Chang, Korea Chamber of Commerce and Industry (KCCI) and Korea Commercial Arbitration Board (KCAB), was held at KCCI building on November 28, 2013.

The seminar invited lawyers specializing in the Middle East construction and project financing professionals of Export-Import Bank of Korea to speak in 4 sessions.

Mr. Byung-Woo Im of Kim & Chang gave a speech on ‘Various issues that Korean companies investing in Middle East face and strategic responses.’ Attorneys from Freshfields led the discussion in the first session about ‘Recent issues and trend of EPC agreement in Middle East;’ ‘Key points that should be considered for project financing in Middle East’ was presented by Export-Import Bank of Korea during the second session; and KCAB presented ‘Recent issues and cast study related to construction agreements’ in the last session.

Seminar on 'Issues and solutions of offshore tax evasion'

The seminar on 'Issues and solutions of offshore tax evasion,' hosted by Legal Research and Training Institute, was held at Supreme Prosecutor's Office Building on November 28, 2013.

Many practitioners and professionals from government branches and others participated in this seminar and discussed promotion of cooperation among different government branches and related legal issues in connection with offshore tax evasion. Mr. Ik Sang Ji of Kim & Chang participated as a panelist in the second session titled 'Issues regarding residents’ status in the international tax law.'

Seminar on ‘Labeling and advertising for cosmetics in compliance with global standards’

The seminar on 'Labeling and advertising for cosmetics in compliance with global standards,' co-hosted by Korea Cosmetic Association and Korea Health Industry Development Institute, was held at Korea Tourism Organization Building on November 21, 2013.

Ms. Bo Eun Chang of Kim & Chang participated as a panelist and discussed the development trends of the cosmetics industry to ensure both growth of cosmetics industry as well as consumer safety.

Korea P&I Club’s Renewal Strategy Seminar

The Renewal Strategy Seminar, hosted by Korea P&I Club, was held at President Hotel Seoul on November 20, 2013.

Over 200 practitioners and professionals in shipping industry participated in this seminar. Mr. Jin Hong Lee of Kim & Chang gave a speech on legal issues and cases on crew claims.

The 3rd Asia Economics Daily Finance IT Forum

The 3rd Asia Economics Daily Finance IT Forum, co-hosted by the Asia Economics Daily, Asia Economics Pax TV and Financial Security Forum, was held at Korea Federation of Small and Medium Business building on November 8, 2013.

Mr. Jun Hee Lee of Kim & Chang gave a speech about analysis of foreign laws for protection of e-finance consumers in the session titled 'Future of e-finance and consumer protection.'

Academy for Better Company

The Academy for Better Company, hosted by the Federation of Korean Industries (FKI), was held at FKI building on November 19, 2013.

Mr. Jun Ho Lee of Kim & Chang gave a speech about the Foreign Corrupt Practices Act in USA, Bribery Act in UK, and Chinese government's movement of anti-corruption in the session titled the 'Trend of International Business Ethics.'

KIM & CHANG
39, Sajik-ro 8-gil, Jongno-gu, Seoul 110-720, Korea
Tel: +82-2-3703-1114 Fax: +82-2-737-9091/9092 E-mail: lawkim@kimchang.com www.kimchang.com