Newsletter

KIM & CHANG | A Quarterly Update of Legal Developments in Korea | May 2014, Issue 2

CONTENTS

Selected Representations

Corning acquires stake in Samsung Corning Precision Materials
Tax Tribunal overturns tax assessment applying domestic withholding rate for dividend paid to Luxembourg holding company
Defense of Twitter in domain name litigation

Firm News

Top rankings in five practice areas and recognition of 27 leading individuals - Chambers Global 2014
Korea Law Firm of the Year - IFLR Asia Awards 2014
Regional Firm of the Year - Global Competition Review (GCR) Awards 2014
The highest ranked Korean law firm - Global Arbitration Review's GAR 100 (2014)

CORPORATE

By Jong Koo Park (jkpark@kimchang.com) and Teo Kim (teo.kim@kimchang.com)

M&A Promotion Plan Announced by Government

On March 6, 2014, the Ministry of Strategy and Finance announced its M&A Promotion Plan to revitalize the local M&A market that has contracted significantly since the global financial crisis. The specifics of the plan include:

- Removing restrictions, such as voting right restrictions and strict disclosure obligations, placed on private equity funds under the Monopoly Regulation and Fair Trade Act when their assets exceed KRW 5 trillion.
- Allowing private equity-backed companies to be listed on the stock exchange.
- Increasing the allocation of M&A support fund for small and medium-sized enterprises within the Growth Ladder Fund to up to KRW 1 trillion within 3 years.
- Creating a KRW 1 trillion private equity fund with financial institutions, credit banks and pension funds for stabilizing financially troubled companies.
- Loosening restrictions on calculating merger value by allowing merger premiums to be taken into account.
- Deferring any capital gains tax from stock swaps during company reorganizations until the complete disposal of such stocks.
- Introducing various M&A acquisition structures including reverse triangular merger, triangulation and triangular stock exchange, and improving the M&A process by allowing simplified business transfer.

The full implementation of the M&A Promotion Plan will require amendments to the Monopoly Regulation and Fair Trade Act, the Korean Commercial Code and various other regulations and ordinances. Such legislative developments should be closely monitored and assessed for potential impact to your organization.

Preliminary Announcement on Special Act to Promote Growth and Strengthen Competitiveness of Medium-Size Enterprises

On February 28, 2014, the Small and Medium Business Administration ("SMBA") made a preliminary announcement of the draft on the Enforcement Decree on the Special Act to Promote Growth and Strengthen Competitiveness of Medium-Size Enterprises ("Special Act"), which is scheduled to be implemented as of July 22, 2014.

In order to strengthen the competitiveness of medium-size enterprises ("MSEs") via financial assistance and special tax reductions, the Special Act prescribes that the scope of MSEs eligible for such assistance should be stipulated in the Enforcement Decree. Accordingly, the determination of the scope of MSEs has been subject to much controversy.

The Enforcement Decree draft will exclude the following from the scope of MSEs: corporations belonging to an enterprise group subject to limitations on mutual investment (including foreign corporations under the same limitation) pursuant to the Monopoly Regulation and Fair Trade Act, companies engaged in the financial and insurance/superannuation business and non-profit corporations. Based on the Enforcement Decree draft, companies that are not classified as MSEs will not be able to enjoy the benefits provided by the central and local government such as support for technology innovation, human resources, globalization and management innovation.

Furthermore, the Enforcement Decree draft has defined "MSE nominees" as small and medium-size enterprises with (i) a turnover ranging from KRW 30 billion to 100 billion in the previous business year that has (ii) an annual average growth rate in turnover of 15% or more in the last three years or ratio of R&D investment to sales of 2% or more in the last three years. MSE nominees will be eligible to receive various types of support as set forth under the Special Act.

LITIGATION

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

Supreme Court Decision on Lawsuits for Recovery of Smoking-Related Damages

The Supreme Court recently announced its decision in cases where the surviving family members of decedents had sought compensation, alleging that the decedents died due to lung cancer caused by smoking. The Supreme Court ruled that there was no evidence that cigarettes manufactured by the defendants had a design defect, a labeling defect or any defect that lacked the level of safety generally expected by consumers.

With respect to the alleged safety defect, the Supreme Court ruled that given that consumers smoke cigarettes with the intent to experience the pharmaceutical effects of nicotine, the decision by the defendants not to use a method, which if used, could have removed nicotine and tar from their cigarettes cannot support a finding that there is a design defect in the cigarettes even if such method was available. Furthermore, the Supreme Court ruled that there was no evidence that the defendants could have used a reasonable alternative design that could have reduced the risks of smoking-related damages to consumers.

With respect to the alleged labeling defect, the Supreme Court ruled that it is difficult to acknowledge the existence of a labeling defect in cigarettes in consideration of the fact that despite the allegation that the defendants failed to include explanations or instructions in addition to the warnings included in cigarette packs as required by law, harmfulness of cigarettes is generally well-known in the society through the mass media, legislation, etc. and the decision to start smoking or continue smoking is a matter of individual choice.

With respect to the issue of whether cigarettes lacked the required level of safety, the Supreme Court denied that cigarettes lacked such safety in consideration of the fact that cigarettes have been acknowledged as items of personal preference in Korea from a legal perspective and a cultural perspective, and that the decision to start smoking or continue smoking is a matter of individual choice.

In addition, the Supreme Court ruled that in the absence of special circumstances such as the defendants came to acquire information that their cigarettes, which were smoked by the plaintiffs, were especially more harmful than the cigarettes of other manufacturers, or the defendants had engaged in certain acts to increase the harmfulness of their cigarettes, the defendants did not have an obligation to disclose all the relevant information in this regard. In this regard, the Supreme Court ruled that there was no evidence that the defendants concealed information related to the harmfulness of their cigarettes.

Finally, with respect to the issue of causation, the Supreme Court ruled that even in a case where epidemiological causation is acknowledged, it is difficult to conclude that the individual causation is established between a certain individual's lung cancer and his/her smoking based solely on the fact that such individual had a non-specific lung cancer, a cause of which can arise from internal biological or chemical factors or external factors or a combination of both. Although the Seoul High Court had ruled that causation can be presumed between smoking on the one hand and small cell carcinoma and squamous cell carcinoma on the other hand, provided that certain factual elements are proven, the Supreme Court did not make a ruling on this issue.

The above Supreme Court decision brought a final conclusion to tobacco litigation that has lasted over 15 years. This decision is expected to have a significant impact on other pending smoking and health litigation.

Win for *Soju* Companies in Recent Supreme Court Decision on "Unlawful Concerted Acts" under the Monopoly Regulation and Fair Trade Law

The Korean Supreme Court recently issued a significant decision that clarified the meaning of "unlawful concerted acts" under Article 19 (1) of the Monopoly Regulation and Fair Trade Law ("Fair Trade Law").

The case involved alleged unlawful collusive behavior by the producers of the traditional Korean distilled alcohol beverage *soju* in raising the price of their product. The Korea Fair Trade Commission ("KFTC") had ruled that the *soju* companies had engaged in "unlawful concerted acts" and had imposed fines, which the *soju* companies had appealed to the Seoul High Court. The Seoul High Court confirmed the KFTC's decision.

On further appeal, the Supreme Court disagreed. While the Supreme Court confirmed its prior position that the agreement that unlawfully restrict competition for purposes of Article 19 can be either express or implied, the Court also emphasized the initial requirement for "an agreement" between the companies which, according to the Court, necessarily called for "communication between two or more companies." According to the Court, the mere fact that there were acts which on the outside appeared to be one or more of the presumptively unlawful acts listed in Article 19 of the Fair Trae Law should not be taken as conclusive evidence that there was an agreement between the parties "unless there was evidence showing inter-dependent and related communication between the companies." The Supreme Court also confirmed that it is the KFTC that has the burden of proving that such interdependent communication in fact took place.

The decision is significant because the Supreme Court apparently applied a stricter standard for the finding of "an agreement" for anti-competitive conduct when the parties were able to offer a plausible alternative explanation for parallel conduct that otherwise appeared to be the result of collusive behavior. The Supreme Court declined to infer an agreement to fix prices amongst the soju producers because in this case, the National Tax Service had restricted the leading soju producer's ability to increases prices (to levels below the rate of inflation), and the Court found it plausible that under such circumstances, the other producers had no choice but to limit their price increases up to the levels approved by the National Tax Service. Accordingly, the Court ruled that there was insufficient evidence of unlawful price-fixing agreement despite the fact that there had been meetings by the chief executive officers of the soju producers, which are typically regarded to be a venue for discussing prices, and price increase related information had been exchanged amongst the various producers. Thus, the decision indicates that even in the presence of facts that create a presumption of collusion under Article 19 of the Fair Trade Law, such presumption can be overcome by evidence of plausible alternative explanations.

Kim & Chang served as lead counsel for the *soju* producers from the KFTC investigation stage through all related appeals and in the successful outcome at the Supreme Court.

ANTITRUST & COMPETITION

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

The KFTC's 2014 Policy Priorities

On February 20, 2014, Chairman Dae-Lae Noh of the Korea Fair Trade Commission ("KFTC") reported the KFTC's 2014 Business Plan ("Plan") to the Office of the President. Chairman Noh also presented KFTC's policy priorities at the Korea Fair Competition Federation on March 21, 2014 and at the National Policy Committee of the National Assembly on April 10, 2014.

Rectification of Unfair Trade Practices

- For state-owned enterprises, the KFTC will increase enforcement activities concerning unfair subcontracting and toll-gating or work tunneling practices involving their affiliates.
- The KFTC will review enforcement of the laws on Subcontracting / Distribution / Franchising that were newly introduced in 2013.
- The KFTC also plans to publish detailed guidelines specifying a basis and criteria for legal assessment of an inventory push-out practice often conducted against dealers.
- The KFTC will focus on conglomerate company's discriminatory practices against small-to-medium sized production and distribution companies; unfair trade practices by platform providers, such as portals and app stores; unlawful exclusion of competitors and tying practices in ICT hardware, such as network or broadcasting equipment; and enterprise software markets.

Facilitation of Innovation-Fostering Market Environment

- The KFTC plans to introduce another set of guidelines to prevent technology takeovers by large conglomerates against the interests of small-to-medium businesses, while simultaneously monitoring activities and standardized contracts in industries involving technology-focused small-to-medium businesses.
- The KFTC will focus on providing guidelines on review standards concerning patent abuse by Non-Practicing Entities.

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Strengthening Enforcement of Fair Trade Law in Areas Closely Related to General Consumers' Daily Lives

- The KFTC plans to focus on collusive practices in markets for daily necessities and on abuses concerning electronic commerce, advertisement and standardized contracts.

Responding to Globalization of Competition Law

- The KFTC will continue to cooperate with competition agencies in other jurisdictions to actively review global merger transactions and to intensify enforcement against unlawful collusion in global intermediate products and raw materials markets.

The KFTC's Announcement of Amendment to Detailed Guideline for Calculation of Administrative Fine

On February 12, 2014, the Korea Fair Trade Commission ("KFTC") announced an amendment ("Amendment") to the Detailed Guideline for Calculation of Administrative Fine ("Guideline"). The Amendment will become effective as of August 19, 2014; for conduct completed prior to the effective date of the Amendment, the previous Guideline will apply. The key features of the Amendment are as follows:

Scope of Aggravation

- The Amendment broadens the scope of aggravation for repeat violations of the Monopoly Regulation and Fair Trade Law ("FTL") under the current Guideline by adjusting the relevant threshold from "more than three violations within three years, or five or more aggregate penalty points" to "more than two violations within three years, or three or more aggregated penalty points."

Scope of Mitigation

- First, for a mere participant that violated the FTL, the ceiling for mitigation has been reduced from 30% to 20%. Unless the violator was forced to participate due to deception or duress, the maximum mitigation percentage of 30% will continue to apply.

- With respect to mitigation for cooperating with an investigation, the ceiling for such mitigation has been reduced from 15% to 10%, if the cooperator begins cooperating with the investigation after an examiner's report has been issued.

- The Amendment abolishes mitigation which used to be granted to companies that received best practices recognition for their participation in the KFTC's voluntary compliance program. However, a separate mitigation factor (up to 10% mitigation) has been introduced for cases in which the violation occurs due to unforeseeable reasons despite the implementation of self-compliance measures.

- With respect to mitigation for voluntary correction, the definition of the term "voluntary correction" has been narrowed down to "acts of actively rectifying the effects of the violation beyond mere suspension of the conduct in violation of the FTL." In particular, the limit for this type of mitigation has been reduced from 30% to 10% for cases in which the violator has failed to remove the effects of its violation despite its efforts to rectify.

- Under the amended standards, if the violator objectively proves that it has been incapable of maintaining its business for reasons such as impaired capital (i.e., total liabilities exceeding total assets), the administrative fine may be mitigated by up to 50%. However, if the financial difficulty is merely an "anticipated difficulty," no mitigation may be granted. Also, the Amendment strikes out the section of the current Guideline, which allows the KFTC to grant more than 50% in mitigation, if the weighted average of the net income for the past three years is in the negative.

KFTC Approves First Consent Decree

On March 12, 2014, the Commissioners of the Korea Fair Trade Commission ("KFTC") approved a consent decree with Korea's major Internet portal companies, Naver and Naver Business Platform (collectively "Naver") and Daum Communications ("Daum"). This was the first time since its introduction that a consent decree was used to conclude a case before the KFTC. With this consent decree, the KFTC's investigation of Naver and Daum for their alleged abuse of market dominance ended without any finding of liability.

The consent decree process allows the businesses subjected to the KFTC investigation to conclude the case without a finding of liability.

This case dealt with issues such as whether the Internet portal companies displayed their own premium services together with search results making it unclear the distinction between search results and keyword advertisements. The KFTC's approval of the consent decree in this case is significant in that it has established the consent decree as a tool for promptly resolving cases in dynamic and innovative markets, such as the online search market.

Because the Monopoly Regulation and Fair Trade Law allows companies to apply to conclude an investigation through a consent decree in cases other than cartels and those meeting the threshold for filing a criminal complaint, it remains to be seen whether the consent decree will be more widely used to conclude subsequent investigations going forward.

Kim & Chang represented Naver in this case.

Supreme Court Affirms Lower Court's Decision on System Operator's Abuse of Superior Bargaining Position

On February 13, 2014, the Supreme Court affirmed the lower court's decision reversing the KFTC's finding of abuse of superior bargaining position (coerced purchases) by some cable TV system operators ("SO") and imposition of corrective measures and fines. The Supreme Court affirmed the lower court's holding that the implicated SOs did not coerce the purchase of commercial time slots to program providers ("PP").

In sum, the Supreme Court's decision held that:

- Unlawful coercion of purchases includes forcing objective circumstances that would inevitably lead to such purchases.

- The Court does not find that there was coerced purchases given that: (i) it is difficult to find that the bargaining position of the five largest multiple program providers ("MPP") are considerably different from those of the implicated SOs; (ii) the implicated SOs have not made any statements to the effect that they would provide disadvantages in channel allocation to PPs who refused to buy commercial time, and in fact, there is no direct evidence of such disadvantages provided to unwilling PPs; (iii) some witnesses who testified for the KFTC during the KFTC's investigation have retracted or changed some of their statements during the administrative appeal process; (iv) it is difficult to find that the PPs did not want to buy the commercial slots; and (v) the prices for the commercial slots offered by SOs were markedly lower than the prices offered by ground broadcast operators or PPs.

The Supreme Court accepted the arguments put forward by the SOs that there was no unlawfully coerced purchase given the relationship between the parties and the surrounding circumstances. Kim & Chang represented the implicated SOs in this case.

SECURITIES

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

Proposal for Amending Presidential Decree of Financial Investment Services and Capital Markets Act and Financial Investment Business Regulations

The Financial Services Commission ("FSC") plans to amend the Presidential Decree of the Financial Investment Services and Capital Markets Act ("FSCMA PD") and the Financial Investment Business Regulations ("FIBR") in order to reflect various policy measures announced earlier by the government and bolster its existing regulatory system. The FSC has also introduced a new measure for ensuring the stability of the derivatives market as a way to prevent the recurrence of a recent accident caused by a mistaken order made by Hanmag Securities for the trading of listed index options.

- **Strengthened Public Disclosure Requirement for Transactions between Affiliates, Involving a Financial Investment Company:** A financial investment company will be required to disclose publicly in its business report and its annual, semi-annual and quarterly reports of its activities relating to securities issued by its affiliates, such as their subscription, underwriting, purchases, sales or injection into trusts or collective investment vehicles. This disclosure requirement aims to foster transparency in such inter-affiliate transactions.

- **Strengthened Regulation of the Sale of Subordinated Bonds Issued by a Financial Investment Company or Its Affiliate:** A financial investment company will be prohibited from soliciting general investors to purchase subordinated bonds issued by the financial investment company itself or its affiliate or injecting them into any fund, trust or discretionary asset pool managed by the financial investment company.

- **Active Upper and Lower Price Limits for Trading of Listed Derivatives:** There already exist simple upper and lower price limits and a circuit breaker for the trading of derivatives during regular trading hours. However, as they are inadequate to control sudden drastic price changes, actively applied upper and lower price limits will be newly introduced. Based on this new system, the execution of a given derivatives transaction will be possible only within a certain range above or below the price executed immediately prior.

- **Korea Exchange Authorized to Cancel an Error Trading Executed:** Currently, only the parties to a given error trading can adjust its price through mutual agreement if they already executed the error trading. Going forward, the Korea Exchange will be empowered to cancel such error trading at its own authority without consent from the relevant parties, if necessary to ensure the market stability in a situation similar to the recent Hanmag Securities error trading accident. In connection with the cancellation, the Korea Exchange will be allowed to impose monetary penalties on the party that made a trading error.

BANKING

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

3-Year Plan for Economic Innovation & Plan for Implementing Finance Policy Matters

On March 13, 2014, the Financial Services Commission ("FSC") held a meeting for members of the financial services industry to discuss the government's 3-Year Plan for Economic Innovation ("3-Year Plan") and Plan for Implementing Finance Policy Matters ("Implementation Plan"). The FSC said it planned to work together with the industry in implementing the financial services section of 3-Year Plan. The key provisions are as follows.

Economy Supported by Strong Infrastructure

- **Public sector reform**
  - Require disclosure of all information other than confidential business information and have public institutions voluntarily formulate plans for stabilization.
  - Decrease debt ratio of public institutions to 200% or less and implement system for managing total number of bonds issued.

- **Protect consumer rights and interests**
  - Establish Financial Services Consumer Protection Board that is separate from the financial prudence monitoring body.
  - Enact Financial Services Consumer Protection Law, which will be the framework statute for protecting consumers of financial services.
  - Research and analyze consumer complaints to reform unreasonable practices.

- **Strengthen protections for personal information**
  - Investigate actual industry practices regarding personal information protection and devise strategy to fundamentally prevent recurrence of widespread leakage of personal information.

Dynamic and Innovative Economy

- **Create business environment in which start-ups and second chances are valued**
  - Gradually eliminate application of joint guarantee requirement to founders of start-ups who meet certain qualifications, beginning with policy finance.
  - Develop technology evaluation system to encourage financial assistance.
  - Encourage switch from collateral and guarantee-driven services to mortgage and investment based services.

- **Implement system for virtuous cycle of capital circulation**
  - Utilize policy finance, such as growth ladder funds, to expand infusion of private venture capital.
  - Adopt crowd funding and other innovative funding mechanisms (implement security measures such as cap on investment amount).

- **Revitalize the M&A market**
  - Deregulate PEFs and expand scale of acquisition finance vehicles, such as growth ladder funds.

Balancing Domestic Consumption and Exports

- **Reform structure of household debt**
  - Set management index for household income to debt ratio and appropriately manage increase rate of household debt.
  - Improve loan structure through soundness management, provision of asset-backed securities, tax incentives, etc.

- **Foster financial services**
  - Reform regulations on financial service sites and implement technology evaluation system (enhance financial support system for promising enterprises in the service industry).

- **Encourage hiring of female and young labor.**
  - Systemically reform employment practices targeting young people (discourage overreliance on past experience in hiring).
  - Encourage "returnship" programs (for female workers) and part-time employment.

Next Steps

- Set up technical evaluation database within this year to encourage utilization of technical assessment data in financial services industry.
- Overall, manage the implementation system through economy ministers' meeting.
- Establish taskforce at FSC for development of financial services sector (taskforce to be jointly led by Vice-Chairman of FSC and Chairman of Financial Development Assessment Commission).

Amendments to Bank Business Supervisory Regulations

On February 25, 2014, the Financial Services Commission ("FSC") announced amendments to the Bank Business Supervisory Regulations ("Amended Regulation") effective as of March 1, 2014. The Amended Regulation, among other things, includes measures for increasing the soundness of bank management, such as expanding the scope of companies that should be included in a bank's main debtor group. The Amended Regulation also strengthens the government's risk management powers by allowing the Bank Risk Management Commission to deliberate and resolve a greater number of matters, allowing subsidiaries of banks to engage in more businesses to support such subsidiaries expanding their business to overseas and strengthening internal control over the provision of economic benefits to transaction counterparties. Further details are provided below.

Expanded Scope of Companies Included in Main Debtor Group

- The following companies should be included in a bank's main debtor group: group companies and their affiliates whose credit balance from a financial institution as of the previous year was 75/100,000 or more compared to the aggregate credit balance from all financial institutions as of one year prior to that previous year.
- Strengthen ex ante management of new main debtor groups to reduce insolvency risk and increase soundness in bank management.

Increased Risk Management

- Risk Management Commission to undertake risk analysis and, based on such analysis, deliberate and determine capital management and procurement plans, criteria for categorizing soundness of assets, and criteria on accumulation of allowance for bad debts.

Expand Scope of Businesses for Subsidiaries

- Allow banks to own overseas subsidiaries that operate as bank holding companies (decrease restrictions on acquisition of foreign banks).

Increase Notification Requirement regarding Late Payment Charges

- Require banks to publish data and comparison notices regarding late payment charges on their websites (must publish amounts as well as rates) so as to allow consumers to have a better idea of the potential penalties.

Tighten Internal Controls on Provision of Economic Benefits to Trading Counterparties

- Persons who provide or receive cash or other valuables to or from entities or affiliated personnel must in principle make prior report to a compliance auditor and retain related records for 5 years (exception made for goods or meals of less than KRW 30,000, and condolence/congratulation payments, condolence flowers and wreaths of KRW 200,000 or less).

- Provision of benefits in excess of KRW 1 billion to transaction counterparty must be published on the website.

INSURANCE

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

Amendments to Insurance Section of Korean Commercial Code

On February 20, 2014, certain proposed amendments to the Insurance Section of the Korean Commercial Code ("Amendments") were passed at a plenary session of the National Assembly and the Amendments will come into force on March 12, 2015, one (1) year after its announcement by the President. The key points of the Amendments are summarized below.

- The insurer's existing obligation to inform the policyholder of important terms of the insurance contract has been stipulated in the Amendments. The insurer must explain the terms of the insurance contract to the policyholder and, when failing to do so, the policyholder will be entitled to terminate the contract within three (3) months from the date on which the insurance contract was entered into, extending the period of the right to exercise cancellation (amended Article 638-3).

- The Amendment specifies the authority and powers of insurance agents. Thus, an insurance agent is granted with the right to receive insurance premiums, to deliver insurance policies, to notify or receive a declaration of intent including subscription, termination, etc. Also, insurance brokers that conduct an insurance brokerage business for a specific insurer have the right to receive the insurance premium (when it provides the receipt issued by an insurer) and the right to provide an insurance policy. Meanwhile, the internal agreement of limiting the rights of insurance agents between the insurer and the insurance agent shall not apply to a policyholder who does not know of such limitation (newly enacted as Article 646-2).

- The statute of limitations period for the right to claim payment of insurance proceeds or the return of unearned premiums or reserves is extended from two (2) years to three (3) years (amended Article 662).

- An insurer providing liability insurance shall not be liable for an increase in the amount of damages caused by failure of the insured to notify the insurer in a timely manner; however, in the event that the insured has previously provided notice to the insurer of the occurrence of an insured event, then the insured is not obligated to provide additional notice to the insurer (amended Article 722).

- In the event that a policyholder of a group life insurance policy designates a person who is not an insured (including his/her legal heir(s)) as a beneficiary, then the policyholder must secure the prior written consent from the insured to designate such beneficiary unless the constituent documents of such group specify otherwise (newly enacted as Article 735-3 (3)).

Insurers will need to take appropriate actions, such as amending the relevant terms and conditions of the insurance policy forms and checking the underwriting guidelines and internal business processes and control systems to address the changes made in the Amendments.

Government Announces Comprehensive Plan to Prevent Personal Information Leakage in Finance Sector

The Korean Government announced on March 10, 2014 that it has prepared the Comprehensive Plan to Prevent Personal Information Leakage in the Financial Sector ("Plan") in order to provide fundamental and comprehensive preventive measures against personal information leakages and recurring hacking incidents in credit card companies, which have recently made headlines.

The Plan was established with the following four main goals: (i) to protect financial consumers' rights during all phases of personal information processing - collection, storage, use and destruction - and increasing the responsibilities of the financial institutions; (ii) to establish a system where the financial institutions take full responsibility for information leakage, such as increasing the CEO's liability; (iii) to enhance the security measures against intrusions, such as hacking; and (iv) to establish plans to respond to potential damages arising from the personal information already transferred to third parties or when leaked.

In particular, the responsibilities of financial companies were emphasized in relation to information leakage accidents.

- Increase the responsibility of the CEO where the financial companies prepare annual reports on information protection status and related policies, directly report to the CEO and board of directors and submit such report to the regulatory authorities.
- Financial companies will bear strict responsibility for information leakage accidents even for the information provided to agents or third parties.
- Increase the level of punitive fine imposed on financial companies in case of information leakage accidents, increase the level of punishments to the maximum level under the finance-related law, and strengthen institutional sanctions, such as the business suspension of financial companies.

The Government seeks to immediately implement some aspects of the Plan and work towards passing pending bills for amending the relevant laws within the first half of 2014. The Government also announced its intention to continuously review compliance with the Plan by establishing a Customer Information Protection Normalization Task Force.

Given the Government's clear intent to impose severe sanctions on financial institutions involved in personal information leakage or hacking incidents, financial institutions must strictly comply with the relevant laws for the collection, storage, use, and destruction of personal information, undertake regular management reviews of personal information provided to the loan sales agents and other third parties, properly document the results of such reviews, and prepare a manual for responding to information leakage accidents.

REAL ESTATE

By Yon Kyun Oh (ykoh@kimchang.com) and Seung-Hwan Cheong (shcheong@kimchang.com)

Amendments to Enforcement Decrees of Real Estate Investment Trust Act

The Real Estate Investment Trust Act was amended (and such amendment was promulgated on July 16, 2013 and became effective on January 17, 2014), to require an appraisal of the target real estate at the time a business license is issued and introduce an eligibility review system with respect to major investors in self-managed real estate investment trust companies so that security is provided to real estate investments by real estate investment trust companies ("REITs"). Certain amendments to the Enforcement Decree of the Real Estate Investment Trust Act have also been enforced since January 17, 2014 ("Amendments") to provide the necessary details of the amended Real Estate Investment Trust Act.

Key points to the Amendments are summarized below.

- At the time of issuing a business license for a REIT, the Korea Appraisal Board and the Association of Property Appraisers are designated as the institutions which may recommend an appraisal business operator to provide an appraisal of the target real property of such REIT. The Minister of Land, Infrastructure and Transport may request the Korea Appraisal Board to conduct a review, if necessary, to confirm the reasonableness and validity of the relevant business plan.

- For reviewing the eligibility of a major shareholder of self-managed REIT (i.e., shareholder owning 5% or more of equity), the Amendment provides for detailed requirements for, among others, financial structure, liabilities-to-equity ratio and sources for loans.

- Entities which manage/operate deposited funds and insurance reserves of post offices will not be subject to restrictions on public offerings of shares of REITs (i.e., 30% or more of the total shares should be offered to the general public) and the ownership restriction on a shareholder and its specially related parties (i.e., 30% or less in the case of self-managed REITs and 40% or less in the case of consigned-management REITs), thereby promoting investments in REITs.

Amendments to Framework Act on Construction Industry

Certain amendments to the Framework Act on the Construction Industry ("Amendments") became effective on February 7, 2014, which (i) introduces a payment guarantee system to secure payment of construction prices in private construction projects where there is a lack of security measures to ensure payment, (ii) invalidates contract provision markedly unfair to only one of the parties to the contract and (iii) requires the relevant parties to participate in meditation applied in connection with a dispute related to construction.

According to the Amendments,

- For private construction projects, in case the contractor has provided a performance guarantee to the project owner, the contractor may also demand that the project owner provides a guarantee or collateral for the payment of the construction price. If the project owner refuses, the contractor may suspend the construction or terminate the construction contract by giving notice.
- The provisions of a contract which are markedly unfair to only one of the parties thereto are void. Some examples of such provisions are:
  - Provisions that do not allow any change in the contract price or contract period without any justifiable reason or that require only one of the parties to be responsible for such change;
  - Provisions unreasonably reducing or increasing only one of the parties' liability for damage compensation for a breach of contract; and
  - Provisions taking away or restricting only one of the parties' rights recognized under the relevant laws without any justifiable reason.unreasonable practices.
- In case one party applies to the Construction Dispute Mediation Commission for mediation, the other party must attend the mediation. Failure to attend will result in an administrative fine of up to KRW 5 million.

LABOR & EMPLOYMENT

By Weon Jung Kim (wjkim@kimchang.com) and Sung Wook Jung (sungwook.jung@kimchang.com)

Major Changes in Labor Laws and Regulations in 2014

The following is an outline of the major changes to labor laws and regulations in 2014.

Labor Standards Act

- In case a female employee gives birth to two or more children at a time (multiple births) on July 1, 2014 or after, her pre- and post-natal leave (maternity leave) shall be extended as follows:

Before Revision	After Revision
- 90 days' leave total in pre- and post-natal periods - 45 days' leave minimum in the post-natal period - 60 days with pay	- 120 days' leave total in pre- and post-natal periods - 60 days' leave minimum in the post-natal period - 75 days with pay

- In case a female employee who is less than 12 weeks or more than 36 weeks pregnant requests two hours per day of reduced working hour, the employer must approve such request provided that if such female worker's daily work hour is less than 8 hours, then the daily work hour can be reduced to 6 hours. The employer is not allowed to reduce the wage for the reason of such reduced work hours. The foregoing shall apply to workplaces with 300 or more employees from September 25, 2014 and to workplaces with less than 300 employees from March 25, 2016.

Act on the Protection of Fixed-Term and Part-Time Workers

The followings are effective from September 19, 2014:

- Employers are now obliged to pay a premium wage (equivalent to 50% of the employee's ordinary wage) to a part-time employee for overtime work even if the number of his/her total work hours (including the overtime work) is no more than 8 hours per day or 40 hours per week.

- If it is found that an employer has intentionally and repeatedly discriminated against fixed-term and part-time employees, the Labor Relations Commission may impose punitive sanctions in the amount of up to 3 times the damages incurred by the relevant fixed-term and/or part-time employee.

- The amended law also expands the scope of correction orders. If one (1) fixed-term or part-time employee is found to have been subject to discriminatory treatment by an employer, correction orders can be issued to not only the relevant one (1) fixed-term or part-time employee, but also other similarly situated fixed-term or part-time employees.

Act on the Protection of Dispatched Workers

The followings are effective from September 19, 2014:

- If it is found that an employer has intentionally and repeatedly discriminated against dispatched workers, the Labor Relations Commission may impose punitive sanctions in the amount of up to 3 times the damages incurred by the relevant dispatched workers.

- The amended law expands the scope of correction orders. If one (1) dispatched worker is found to have been subject to discriminatory treatment by an employer, the Labor Relations Commission's correction orders can be issued to not only the relevant one (1) dispatched worker, but also other similarly situated dispatched workers.

Equal Employment Act

- Not only the employees but also the employers are now required to go through the same sexual harassment prevention training in the workplace from January 14, 2014.

- The coverage of childcare leave eligibility has been expanded from the previous "preschoolers aged 6 or below" to children "8 years in age or younger, or a second grade or lower at elementary school" (effective for employees who apply for childcare leave on January 14, 2014 or thereafter).

ENVIRONMENT

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

Draft Act on Compensation and Relief of Environmental Pollution Damage

The Korean Government has launched a government project to establish a system to compensate and insure against environmental pollution damage, and is pursuing the introduction of a legal relief system for environmental pollution damage. Such Government initiative is intended to address the current situation where environmental pollution accidents inflict serious damage on society due to the enormous amount of tax money that is required for curing the pollution, while companies that caused the accident sometimes go bankrupt because they cannot bear the financial burden of paying the compensation. Moreover, the victims of environmental pollution accidents are often unable to obtain proper compensation due to the burden of proving that their injury resulted from the pollution or due to the prolonged litigation process which is unavoidable in light of the nature of environmental pollution.

Current Progress of Draft Legislation

Starting from March 2013, the Government received opinions from various groups by organizing a forum of interested parties comprised of the industry, National Assembly, academia and civic groups. On July 30, 2013, Assemblyman Wan-Young Lee tabled a draft Act on Compensation and Relief of Environmental Pollution Damage. After three rounds of consultation with the Ministry of Trade, Industry and Energy ("MOTIE") and the industry in November 2013, a final agreement was reached on December 16, 2013 through the united administrative consultative council of the Ministry of Environment and MOTIE.

Current Progress of Draft Legislation

Issue	Major Content
Strict Liability of Polluter and Limitation on Liability	• Impose strict liability for environmental pollution damage pursuant to the installation and operation of facilities emitting pollution. • Set limitation on maximum liability (KRW 200 billion); the minimum amount will be stipulated in the Enforcement Decree taking into account the size of facility, among other factors. • The above will not apply to willful misconduct or gross negligence or violation of the law.
Facilities Subject to Liability and Scope of Compensation for Damage	• Facilities subject to liability: facilities handling harmful chemical substances and facilities emitting air, water, soil, waste, noise and vibration pollution. • Scope of Compensation for Damage: damage to person and property of a third party.
Mitigated Burden of Proof for Victim of Environmental Pollution Damage	• Causation will be assumed in case of substantial probability between the installation and operation of a facility emitting pollution and the occurrence of damage. • Grant right to claim disclosure of and inspect information on the installation and operation of facility as necessary to meet the burden of proof regarding damage.

Issue	Major Content
Application for Environmental Pollution Liability Insurance	• The following facilities must apply for environmental pollution liability insurance: facilities handling harmful chemical substances; certain facilities emitting air and water pollutants; facilities treating designated waste; and facilities subject to specific soil pollution management. • Minimum insurance amount will be stipulated in the Enforcement Decree based on the amount insured and scale of facility.
Fund to Compensate Environmental Pollution Damage	• The fund is intended to compensate environmental pollution damage where (i) the use of the pollutant or polluter is unclear, does not exist, or is incompetent, or (ii) the upper limit of compensation has been exceeded. • Source of revenue for the fund: Government contribution, reinsurance premium and earnings derived from operation of the fund.

Future Plans

- The government is planning on legislating the Act by June 2014 after resolution from the regular session of the National Assembly and review by the Environment and Labor Committee and Judiciary Committee. By December 2014, an industry conference will be formed to draft the secondary regulations, collect the industry's opinion on the detailed implementation criteria and make a preliminary announcement of the lower statutes.

- Moreover, the authorities are planning to develop an insurance product by December 2014 via calculating the premium rate, developing standard terms and preparing the criteria for evaluating environmental pollution damage. In addition, the authorities are developing a program for insurance operation and management from August 2014 through the end of 2015 in order to administer policyholders, take administrative measures and manage statistics.

Once the draft of the Act on Compensation and Relief of Environmental Pollution Damage ("CREPD Act") is legislated, there may arise many controversial issues concerning not only the cost of compulsory application for insurance policy but also the allocation of liability for environmental pollution damage or the scope of compensation. Accordingly, companies should pay attention to and prepare for the upcoming draft of CREPD Act and lower statutes.

TAX

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

Changes to Presidential Decrees of Tax Laws for 2014

The Government amended the Presidential Decrees and the Ministerial Decrees of various tax laws on February 21, 2014 and March 14, 2014, respectively. Some examples of the amended Presidential Decrees and Ministerial Decrees are discussed below.

Exchange Rates Applicable for Valuation of Foreign Currency-Denominated Assets and Liabilities

Corporations, other than financial institutions, can choose to elect either (i) the standard exchange rate as of date of acquisition or occurrence or (ii) the standard exchange rate as of the end of the fiscal year as the exchange rate to be applied on the valuation of foreign currency-denominated assets and liabilities. Corporations were originally prohibited from changing their elected exchange rates; however, a recent amendment to the Presidential Decree of the Corporate Income Tax Law now allows corporations to change their election method every 5 years.

Clarification on Independent Business Unit for Qualified Tax-Free Spin-Off

One of the requirements for a qualified tax-free demerger (spin-off) is that the spin-off must comprise an independent business unit. Amendments to the Presidential Decree and the Ministerial Decree of the Corporate Income Tax provide that a spin-off of a business unit consisting only of certain shares and assets and liabilities related to such shares will not be regarded as a qualified tax-free spin-off of an independent business unit. Exceptions to this rule are: (i) a spin-off of all stocks held for 3 years or more by the majority shareholder and (ii) an establishment of a holding company via a spin-off will be regarded as spin-off of an independent business unit.

Dividend from Capital Reduction Excluded from Dividend Income

As dividends received through reduction of capital are generally treated the same as the return of capital to the shareholders, such dividends will not be regarded as dividend income under the amendments to the Presidential Decree of the Personal Income Tax Law.

Tax Benefit for Medium Sized Enterprises

Previously, only small sized enterprises were able to enjoy special tax credit rates which they can apply to reduce their taxable income. However, according to the amendments to the Presidential Decree of the Tax Incentives Limitation Law, special tax credit rates are now also available to medium sized enterprises for calculating tax credits such as R&D tax credit.

INTELLECTUAL PROPERTY

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

Proposed Revisions to Korean Patent Act to Implement Patent Law Treaty

The Patent Law Treaty ("PLT") is a multinational agreement that seeks to harmonize the patent system in its member countries. The Korean government submitted a proposed amendment to the Korean Patent Act ("Proposed Amendment") before the National Assembly on September 5, 2013 in order to implement the PLT, and the National Assembly has recently passed the Proposed Amendment Bill on April 29, 2014, which should be published shortly.

One of the key changes in the Proposed Amendment is the lowered standard for determining the filing date of a patent application (Articles 42-2 and 42-3 of the Proposed Amendment). The current Patent Act ("Act") adopts a first-to-file system, and thus priority is given to applicants who file their application first. However, the application filing date is recognized only if the elements required by the Act are satisfied, which includes that a patent specification in the Korean language be filed together with the application. The translation of the foreign language specification into Korean results in a delay of the application, and thus the Proposed Amendment has eased the language and formalities requirement of the specification to resolve this problem. More specifically, the Proposed Amendment will acknowledge the filing date of an application as long as the description of the invention is in writing, irrespective of the formalities, and even if the specification is in a foreign language (only English is acceptable thus far). This change will allow applicants to secure an earlier filing date even if they simply attach a foreign language research paper to the application without a further translation or formal specification.

In addition, the Proposed Amendment will implement a correction system for Korean translations of foreign language patent applications and international applications, but within the scope of the original foreign language version (Articles 42-3(6) and 201(6)). Also, in association with this correction system for translations, the Proposed Amendment will expand the scope for modifying patent specifications to include the original foreign language version as well (Article 47(2) and 208(4)). For the Korean national phase entry of an international patent application, the current Act requires that the Korean translation be submitted within 31 months of the priority date. The Proposed Amendment extends this deadline by allowing the applicant to request a one month extension for submitting the Korean translation when it expresses its intent to enter the Korean national phase (Article 201(1)).

The most of amended articles in the Proposed Amendment which includes several important changes to procedural aspects, such as the standard for recognizing an application filing date, will go into effect on January 1, 2015.

"Free" Software May Be Expensive Infringement of Copyright

A recent ruling from the Seoul Central District Court has highlighted the dangers to companies of failing to supervise their employees' installation and use of software for work purposes in violation of the software license terms. The February 21, 2014 ruling held that employees' use of "free for personal use" software at work without paying the requisite license fees rendered the employees' company vicariously liable for copyright infringement (Case No. 2013GaHap25649).

The software in question was originally offered free for any use, but a newer version of the software changed the program license terms to require licensing fees from corporate users while remaining free for personal use. Users who had previously installed the original version were prompted by the software to upgrade by clicking through one dialog box which installed the newer version, and then clicking through another which asked users to accept the new license terms. Several companies whose employees continued to use the newer version of the software without paying the license fee were warned that they were committing copyright infringement and asked to pay damages, which led to the companies filing for a confirmatory judgment of no infringement at the Seoul Central District Court.

As an issue of first impression, the Court held that the temporary storage of a computer program in memory in the course of executing the program constitutes "reproduction" under the Copyright Act (which is defined as "the fixation of works or the reproduction of works in tangible media of expression by means of printing, photographing, photocopying, sound or visual recording or other means, temporarily or in perpetuity"). In this case, because the upgraded software was installed before the new software license was accepted (in other words, under the existing license), the act of installing the software itself (and thus "reproducing" the software) could not be copyright infringement. However, the Court found that when the software was executed, the "fixation" of the executed program (even temporarily) to the "tangible medium" of computer random-access memory (RAM) was sufficient to constitute a separate "reproduction." Therefore, the Court found that any unauthorized use of the software in question after installation (i.e., under the new license terms) would constitute copyright infringement. As a result, the Court awarded the software maker damages of KRW 20,000 (approximately USD 20) per copy of the program used without paying the license fees.

The Court rejected the companies' argument that such temporary storage in memory was exempt from copyright infringement under Article 35bis of the Copyright Act, which permits certain types of temporary reproduction during use of a computer "for smooth and efficient information processing." The Court held that this article was intended to address acts such as incidental buffering and caching of computer information necessary to view digital content on the internet (e.g. streaming), and not the act of running a program in computer memory in general (which is an act of independent economic value).

While the case is currently being appealed, the District Court's ruling highlights the risks that can accrue to a company through employees' unpaid use of "free for personal use" software, which is typically fully usable even without paying any fees, and addresses a number of previously-open questions in Korea regarding the application of copyright law to the use of computers and software.

Supreme Court Rules Distinctiveness May Be Evaluated at Time of Deciding a Scope Confirmation Trial

The Supreme Court en banc recently overruled established precedent up to date holding that "even if an entire mark or its composite element had little to no distinctiveness at the time of registration, such portion or entire mark may be considered when determining similarity at the time of deciding a scope confirmation trial, if they acquired well-known status among consumers due to continued use" (Supreme Court Case No. 2011hu3698, decided on March 20, 2014).

The above case was a scope confirmation action to determine whether the use of Unistar Co., Ltd.'s mark 

("Subject Mark") on sneakers fell within the scope of protection of New Balance Athletic Shoe, Inc.'s registration for the mark  ("Registered Mark") designating umbrellas, sneakers, etc. and first registered in 1984.

In its decision, the Supreme Court noted that at the time the Registered Mark was granted registration, the composite elements, ' ' and '  ,' lacked distinctiveness. However, due to New Balance's extensive use of the  portion ("Used Mark") on its products, the Supreme Court acknowledged that since at least 2009, consumers were well aware of the source of the products bearing the Used Mark. Therefore, the Supreme Court held that at the time of deciding this scope confirmation action, at least the  portion of the Registered Mark, which is identical to the Used Mark, had acquired sufficient distinctiveness so that consumers can distinguish the source of the products.

Furthermore, the court reasoned that the '  ' portion of the Subject Mark was the main distinctive portion that was conspicuous to consumers, and that there was risk of consumer confusion because the essential portions '  ' and '  ' of the compared marks were identical to each other. As such, the Supreme Court held that Unistar's Subject Mark fell within the scope of protection of New Balance's Registered Mark.

In its prior decisions, the Supreme Court ruled that a portion of a trademark that was previously non-distinctive at the time of registration may not be evaluated as a distinctive portion for purposes of determining a scope confirmation action even if it subsequently acquired secondary meaning. This prior decision has been overruled by the above en banc decision, deciding that the scope confirmation decision is not binding for future trademark infringement litigations or invalidation actions and has limited function only to confirm the scope of a registered trademark, and the registration remains in effect until and unless there is a final and conclusive decision holding the registered trademark invalid.

This recent Supreme Court decision is considered to have strengthened protection for trademark registrations which include a portion that has acquired distinctiveness over time.

TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

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

Recent Developments in Broadcasting Regulations

Recent regulatory developments in the ever-changing broadcasting environment are summarized below.

Amendment to the Enforcement Decree of the Broadcasting Act Promulgated

On February 5, 2014, the Korean government promulgated an amendment to the Enforcement Decree of the Broadcasting Act ("Amendment") in an effort to relax restrictions on the ownership and management of system operators ("SOs", i.e., CATV broadcasting business operators).

The key aspects of the Amendment are as follows:

- **Abolishment of the Territorial Restriction:** Previously, one SO, including its affiliates, could only operate its SO business in up to 1/3 of all SO territories. (Since there are currently 77 SO territories, this restriction essentially limited one company from owning SOs in more than 25 territories.) However, the Amendment has removed this territorial restriction.

- **Easing of the Subscriber Restriction:** Previously, one SO (including its affiliates) could only have up to 1/3 of the total number of CATV subscribing households as its subscribers. However, the Amendment has relaxed this restriction so that one SO (including its affiliates) can now have up to 1/3 of the total number of CATV, satellite broadcasting and IPTV subscribing households as its subscribers.

As a result, a SO is now permitted to operate its business in more than 25 territories, and mergers and acquisitions between large MSOs (multi-SOs) may be permitted.

Foreign Shareholding Limitation in Korean Program Providers to Be Abolished for Indirect Investments Made by American Companies

Pursuant to the Korea-US Free Trade Agreement ("KORUS FTA"), the current 49% foreign shareholding limitation in Korean program providers ("PPs", i.e., channel operators) will be abolished for indirect investments made by American companies by March 15, 2015. The KORUS FTA allows the Korean government to continue the same shareholding limitation on direct investments in PPs, but requires the Korean government to abolish the shareholding limitation on indirect investments in PPs within three years after the KORUS FTA comes into force. Since the KORUS FTA became effective on March 15, 2012, this means that the Broadcasting Act must be amended by March 15, 2015 to allow the Korean subsidiaries of American companies to own up to 100% of Korean PPs. It should be noted that the relaxation on foreign indirect investment does not apply to general service channels, news channels and home shopping channels.

Joint Study Group Established to Revise Two-Track Regulatory Scheme

Criticism of the two-track regulatory regime has increased due to the recent expansion of the paid-for television market and growing competition between different broadcast media. In response, the Ministry of Science, ICT and Future Planning and the Korea Communications Commission began to revise the regulatory scheme by creating a joint study group ("Joint Study Group") for establishing a combined Broadcast and Internet Protocol Television (IPTV) Act.

Currently, the Broadcasting Act regulates cable television and satellite television, while the IPTV Act regulates IPTV. The Joint Study Group plans to enhance regulatory fairness by comprehensively reviewing the existing regulatory regime - including the existing business classification scheme, ownership-entry rules and conduct regulation regime - to transform the present vertical regulatory system that is classified by the equipment used, to a horizontal regulatory regime that is classified by the type of service provided.

A proposal for the integrated Broadcast IPTV Act is expected to be submitted to the National Assembly during the first half of 2015. In this regard, relevant business stakeholders should carefully monitor this and other changes in the regulatory landscape.

SELECTED REPRESENTATIONS

GS acquires stake in STX Energy

On February 28, 2014, GS Holdings and its co-investor, LG International, acquired 64.4% and 7.5% stakes, respectively, in STX Energy from Orix Private Equity.

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

IMM PE invests in T-Broad Holdings

On February 25, 2014, a private equity fund managed by IMM Private Equity acquired a minority stake in T-Broad Holdings, an affiliate of Taekwang Group, and also subscribed to convertible preferred shares issued by T-Broad Holdings.

By acquiring shares of T-Broad Holdings and entering into an agreement with its largest shareholder, Taekwang Industry, the eventual goal of this deal is to have T-Broad Holdings go public. Kim & Chang represented IMM Private Equity and provided comprehensive legal services in all aspects of the transaction, including transaction structuring, legal due diligence, regulatory advice on PEF, contract drafting and negotiation and closing of the transaction.

Toray Advanced Materials Korea acquires stake in Woongjin Chemical

On February 28, 2014, Toray Advanced Materials Korea Inc., a chemical materials manufacturing company, a chemical materials manufacturing company, acquired a 56.21% stake in Woongjin Chemical Co., Ltd. from Woongjin Holdings Co.

Kim & Chang represented Toray Advanced Materials Korea Inc. in all aspects of the transaction, including legal due diligence, drafting and negotiations of the share purchase agreement and related agreements, merger filings in Korea, China and Germany and closing of the transaction.

Woori Bank acquires stake in Bank Saudara

On January 28, 2014, Woori Bank and its co-investor, PT Bank Woori Indonesia, acquired 27% and 6% stakes, respectively, in PT Bank Himpunan Saudara 1906 ("Bank Saudara") from Arifin Panigoro and PT Medco Intidinamika. Through a subsequent merger between Bank Saudara and PT Bank Woori Indonesia, Woori Bank plans to ultimately acquire a 66.7% stake in Bank Saudara.

Kim & Chang provided comprehensive legal services to Woori Bank in connection with the transaction, including reviewing the transaction structure, drafting and negotiating the underlying agreements including the share purchase agreement and shareholders agreement, obtaining government permits and licenses (including an approval from the Korean Financial Supervisory Service) and assisting with the closing of the transaction.

Corning acquires stake in Samsung Corning Precision Materials

On January 15, 2014, Corning Incorporated ("Corning") acquired Samsung Display's ("Samsung") 42.56% stake in Samsung Corning Precision Materials Co. ("SCP"), formerly an equity venture between Corning and Samsung, resulting in Corning's full ownership of SCP. In connection with the acquisition, Samsung made an additional USD 400 million investment by subscribing to the newly issued Corning convertible preferred shares, resulting in Samsung securing 7.4% stake in Corning.

The main purpose of this acquisition was to allow both Corning and Samsung to focus on and extend their leadership positions in their respective core businesses while also strengthening product and technology collaborations between the two companies. Kim & Chang represented Corning and provided comprehensive legal services, including formulating the structure of the deal, negotiating with Samsung, drafting transactional documents and executing the closing of the transaction.

S-Oil acquires Ulsan oil storage site of Korea National Oil Corporation

S-Oil was selected as the successful bidder in a limited competitive bidding undertaken by Korea National Oil Corporation for the sale of its oil storage site in Ulsan and entered into a sale and purchase agreement to purchase the site that is 280,000 pyeong wide ("Site"). S-Oil plans to construct facilities for decomposition of heavy oil and petrochemical complex on the Site.

Kim & Chang represented S-Oil in this large scale real estate transaction. S-Oil participated in a bid for the sale of assets of a public corporation and was successfully selected as a successful bidder. Kim & Chang provided comprehensive legal services including obtaining governmental permits and approvals for the development and use of the Site, conducting environmental investigations.

Tax Tribunal overturns tax assessment applying domestic withholding rate for dividend paid to Luxembourg Holding Company

The tax authorities applied the applicable domestic withholding tax of 25% (excluding resident surtax) on the dividends paid by a Korean company to its holding company located in Luxembourg. The tax authorities determined that the lower withholding rates (10% or 15% depending on the shareholding ownership ratio) available under the Korea-Luxembourg Tax Treaty ("Tax Treaty"), cannot be applied in this case since the holding company which received the dividend came under the purview of Article 28 of the Tax Treaty which denies treaty benefits to certain holding company as defined under the special Luxembourg laws (currently the Act of 31 July, 1929 and the Decree of 17 December, 1938 or any similar law enacted by Luxembourg after the signature of the Tax Treaty).

However, the taxpayer successfully argued that the holding company in question is different from the one contemplated under Article 28 of the Tax Treaty and thus the dividend payment paid to such holding company should be eligible for the lower withholding rate provided under the Tax Treaty. The Tax Tribunal agreed with the taxpayer and cancelled the withholding tax assessment made by the tax authorities.

Article 28 of the Tax Treaty has been repealed and is no longer in effect.

Kim & Chang represented the taxpayer in this case.

Appeals Court to dismiss claims filed by distributors of a mobile telecommunications company

On March 20, 2014, the Seoul High Court dismissed most of the claims made by six LG Uplus ("LG U+") distributors against LG U+ in a complaint for damages, in which they alleged that LG U+'s practice of imposing sales targets violated the Monopoly Regulation and Fair Trade Act ("MRFTA") and harmed their businesses. The Seoul High Court reasoned that (i) LG U+'s various business policies for distributors are not unfair business practices under the MRFTA since they constitute ordinary trade practices for encouraging distributors to attract new subscribers and (ii) even if they did impose sales targets, the distributors failed to provide sufficient evidence that their businesses were harmed by the sales targets, and even if there was harm, such harm cannot, on its own, be viewed as damages caused by an unfair business practice.

In reaching this decision, the Seoul High Court essentially overruled the Seoul Central District Court's decision, rendered on September 27, 2012, which had (i) concluded that LG U+'s practice of imposing sales targets violated the MRFTA and (ii) awarded damages pursuant to the "gist of all arguments" approach and Article 57 of the MRFTA by solely relying on the distributors' unsubstantiated submissions on the alleged damages inflicted on their businesses. The Seoul High Court's decision is also significant because it clarifies the standard for differentiating between sales targets that are unlawful under the MRFTA and ordinary trade practices, as well as the scope of Article 57 on calculating damages. In light of growing concerns toward abuse of superior bargaining power and recent allegations of MRFTA violations directed at companies that have taken measures to maintain their distribution networks, this decision is expected to be a helpful guide on what constitutes a lawful, ordinary business practice.

Kim & Chang was retained for the appeal after another major law firm failed to obtain a favorable decision by the lower court. Through its extensive fact-finding and legal arguments, Kim & Chang successfully persuaded the Seoul High Court to overturn the Seoul District Court's ruling.

Defense of Twitter in domain name litigation

On February 20, 2014, the Seoul Central District Court dismissed a complaint filed against Twitter Inc. ("Twitter") by a plaintiff who requested the Court to confirm the non-existence of a domain name cancellation claim (i.e., claims to cancel the registration of a domain name) for the domain name "www.twitter.co.kr."

The plaintiff had argued that Twitter could not make a domain name cancellation claim for "www.twitter.co.kr," because he registered this domain name on April 29, 2008 before Twitter registered the "Twitter" service mark in Korea and he was using the domain name to operate a travel website.

However, the Court held that the plaintiff had an improper motive for registering "www.twitter.co.kr," because (i) Twitter was widely known worldwide before plaintiff registered the domain name; (ii) plaintiff did not actually use the website connected to the domain name to operate a travel website and did not appear to have taken any measures in preparation for operating such a website; (iii) plaintiff had 3,180 domain names registered with his address; and (iv) plaintiff was previously issued decisions by the World Intellectual Property Organization (WIPO) to transfer domain names for which he did not have any legitimate rights to use.

Kim & Chang successfully obtained a dismissal of the complaint by conducting extensive fact finding and analysis to persuade the Court that the plaintiff had an improper motive for registering the domain name.

FIRM NEWS

AWARDS & RANKINGS

Top rankings in five practice areas and recognition of 27 leading individuals - Chambers Global 2014

In the recent edition of the *Chambers Global Guide*, a leading global law firm directory published by Chambers & Partners, Kim & Chang was ranked as Band 1 (top ranking) law firm in Korea in five practice areas. In addition, International Arbitration practice has been named in Asia-Pacific region and Corporate/M&A practice has been named in China region.

South Korea
- Banking & Finance (Band 1)
- Corporate/M&A (Band 1)
- Dispute Resolution: Arbitration (Band 1)
- Dispute Resolution: Litigation (Band 1)
- Intellectual Property (Band 1)

Asia-Pacific
- Arbitration (International) (Band 3)

China
- Corporate/M&A (Foreign Desk) - China

In addition, 27 attorneys of Kim & Chang were recognized as leading individuals in their respective practice areas. Mr. Byung-Chol (BC) Yoon (Dispute Resolution: International Arbitration) was selected as a "Star individual."

South Korea
- Banking & Finance: Soo Man Park (Eminent Practitioner), Young Kyun Cho, Hi Sun Yoon, Ick Ryol Huh
- Corporate/M&A: Kyung Taek Jung (Senior Statesmen), Jong Koo Park, Young Jay Ro, Young Man Huh, Nelson K Ahn (Indonesia), Young Hoon Byun (Japan), Stefan Moller (Sweden), Luke Shin (USA, Japan)
- Dispute Resolution - Arbitration: Byung-Chol (BC) Yoon (Star Individual), Eun Young Park, Kyo-Hwa (Liz) Chung (Up and Coming)
- Dispute Resolution - Litigation: Jin Yeong Chung, Jung Keol Suh, Chang Hoon Baek
- Intellectual Property: Young-June (Jay) Yang, Duck-Soon Chang, Chun Y Yang, Sang-Wook Han, Jay J Kim, Young Kim, Man-Gi Paik, Martin Kagerbauer (Germany), Na Young Kim (Associates to watch)

Asia-Pacific
- Arbitration (International): Byung-Chol (BC) Yoon, Eun Young Park

Korea Law Firm of the Year - IFLR Asia Awards 2014

Kim & Chang has again won the "Korea Law Firm of the Year" award at the *IFLR Asia Awards 2014*. With this award, Kim & Chang has been named the top law firm in Korea for twelve consecutive years by IFLR (International Financial Law Review), which is published by Euromoney, one of the world's leading media group. The awards were given based on the firm's performance in 2013.

In addition, 'Cross-border ABS issuance by BMW Financial Services Korea,' in which Kim & Chang acted as legal advisor, was selected as the "Structured Finance & Securitisation Deal of the Year."

The IFLR Asian Awards 2014 ceremony was held at Island Shangri-La Hotel in Hong Kong on February 26, 2014.

Regional Firm of the Year - Global Competition Review (GCR) Awards 2014

Kim & Chang has been selected by the Global Competition Review (GCR) as the recipient of the "Regional Firm of the Year - Asia-Pacific, Middle East & Africa Awards," at the 4th Annual *Global Competition Review (GCR) Awards* held at the W Hotel in Washington, D.C. on March 25, 2014.

GCR, a leading antitrust and competition law journal and news service, recognizes outstanding firms, government agencies and individuals for their work in the competition law arena. Recipients of the award are nominated and voted by GCR's readership.

The highest ranked Korean law firm - Global Arbitration Review's GAR 100 (2014)

Kim & Chang has been recognized as a top 100 law firm in its practice of international arbitration.

The firm was recently ranked 32nd amongst the "Top 100 Law Firms" (also known as GAR 100) by a renowned international arbitration publication, *Global Arbitration Review (GAR) 100*.

GAR is a prestigious and internationally recognized publication in the field of international arbitration. Every year, it announces the top 100 most active international arbitration law firms in the world, and amongst the 100, it awards and gives special recognition to the top 30 of those firms.

Kim & Chang was ranked 24th among the "Top 30 Law Firms" by GAR in 2012.

No.1 M&A Advisor in Korea - Bloomberg Asia Pacific Legal Advisory M&A Rankings Q1 2014

Kim & Chang ranked No. 1 M&A advisor in Korea both by deal volume with USD 8,856 million and 27 deals in the *Bloomberg Asia Pacific Legal Advisory M&A Rankings Q1 2014*.

In addition, Kim & Chang ranked No. 5 in the Asia Pacific region (excluding Japan) by deal volume.

Hwa Soo Chung and Kyungsun Kyle Choi received "All-Star Award" - The Asian Lawyer All-Star Legal Awards 2014

The Asian Lawyer All-Star Legal Awards 2014, hosted by The American Lawyer Magazine (ALM), a renowned legal media, was held in Hong Kong on March 5, 2014.

Ms. Hwa Soo Chung and Ms. Kyungsun Kyle Choi of Kim & Chang received the Individual All-Star Awards for excellence in the Life Sciences and Consumer industry categories, respectively.

In addition Kim & Chang was recognized as a finalist (one of four nominated firms) in the Life Sciences and Consumer industry categories. We were the only Korean law firm to be recognized in more than one category and to be listed in the Individual All-Star category.

ALM selects only one law firm and two individual attorneys in each of the nine industry categories for All-Star Awards in law firms and lawyers practicing in Asia.

Kyung Shik Roh named as "External Counsel of the Year" - Asian-MENA Counsel magazine

Mr. Kyung Shik Roh of Kim & Chang was named as the "External Counsel of the Year" by *Asian-MENA Counsel*, a magazine for the in-house and corporate legal community across Asia and the Middle East.

Asian-MENA Counsel selected over 60 outstanding private practitioners among external counsels in Asia and the Middle East for their expertise, efficiency and knowledge of the market based on of votes and testimonials from in-house counsel.

Activities

Kim & Chang Committee for Social Contribution leads to International Badminton Federation's cancellation of its disciplinary action

Kim & Chang provided pro bono legal service to two national badminton players, Yong-Dae Lee and Ki-Jeong Kim, who were suspended for one year for violating anti-doping test by World Anti-doping Agency (WADA).

Kim & Chang Committee for Social Contribution formed a task force, composed of experts to international arbitration including Mr. Jeffrey D. Jones and Dr. Eun-Young Park, and found evidence that the players did not intend to miss the test.

Eventually, our task force led IBF's cancellation of its disciplinary action to the players and the two were reinstated in upcoming Asian Games.

Kim & Chang Committee for Social Contribution signs agreement of legal support with Korea Special Olympic Committee

Kim & Chang Committee for Social Contribution, a non-profit legal counselling center under Kim & Chang, has signed agreement of legal support with Korea Special Olympic Committee.

Kim & Chang Committee for Social Contribution will provide legal advisory for the athletes and the events related to Korea Special Olympics.

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