Newsletter

KIM & CHANG | A Quarterly Update of Legal Developments in Korea | August 2015, Issue 2

CONTENTS

Selected Representations

Aramco Overseas Company acquires additional shares of S-Oil
Price Fixing - The Supreme Court clarifies standards for determining the "Completion Date" in collusion cases
Anbang Life Insurance executes acquisition of TONGYANG Life Insurance
JR 17th REIT acquires D-Cube Department Store and signs master lease with Hyundai Department Store

Firm News

Best Asian Law Firm 2015: Gold Award - International Legal Alliance Summit & Awards 2015
South Korea National Law Firm of the Year - Chambers Asia-Pacific Awards 2015
Korea Law Firm of the Year - Who's Who Legal Awards 2015
Employer of Choice 2015 - Asian Legal Business 2015
Ranked 10th Largest Law Firm in Asia-Pacific - The Lawyer Asia Pacific 150

CORPORATE

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

Recent Notable Court Decisions Concerning LBO Transactions

Recently, Korean courts issued notable decisions on leveraged buyout ("LBO") transactions.

Merger-type LBOs. On January 22, 2015, the Seoul Central District Court entered its final judgment for the directors of the target company, Hi-Mart, on an alleged breach of fiduciary duty case in a "merger-type" LBO transaction, and were found not guilty. *Hi-Mart* is the first meaningful court decision to provide a standard for reviewing "merger-type" LBOs.

Security Interest-type LBOs. Since 2006, the Supreme Court has consistently entered verdicts against directors of the target company in a security interest-type LBO transaction, in which the directors approved the provision of target assets as security to support the LBO financing.

However, on March 12, 2015, the Supreme Court affirmed the lower court's "not guilty" verdict and found for the representative director of the target company, Ubistar, in a case commonly referred to as *Onse Communications.* This was a breach of fiduciary duty case brought by the prosecutor's office against the representative director of Ubistar in a security interest-type LBO transaction. This ruling is a deviation from the majority of court decisions on security interest type LBOs.

Capital Reduction / Dividend-type LBOs. In contrast, with respect to "capital reduction / dividend-type" LBOs, the Supreme Court, in a June 2013 case, found that there was no breach of fiduciary duty when the directors approved a capital reduction / dividend payment to support the LBO financing.

Notwithstanding these recent court decisions, in breach of fiduciary duty cases concerning LBO transactions, the Supreme Court continues to stand by its general position that whether or not directors of a target company are found to have breached their fiduciary duty depends on the specific facts and circumstances of each transaction.

Accordingly, we recommend potential acquirers contemplating a LBO transaction to conduct a comprehensive review of the potential legal risks and pitfalls based on the material facts and circumstances of the transaction against legal precedents to date.

Capital Market Reform – FSC Issues Private Equity Funds (PEF) Regulation Improvement Plan

On February 10, 2015, the Asset Management Division of the Financial Services Commission (the "FSC") issued the "PEF Regulation Improvement Plan (the "Plan")." The Plan significantly improves regulatory standards for option-based investments by PEFs, and clarifies several rules which had confused market participants.

Specifically, the Plan replaces the previous principle of general prohibition against option-based investments by PEFs with new authoritative interpretations to generally allow such investments. Under the Plan, the scope of prohibited option investments by PEFs is now limited to "guaranteed profit put options," and it also clearly delineates the scope of permitted options.

As a result, unlike previous regulations which only allowed PEFs to make option investments to guard against abuse of majority shareholder power, the new regulations allow PEFs to creatively make option investments under various transaction structures.

Separately, the FSC published authoritative interpretations in response to certain recurring questions on the establishment and management of PEFs. This effort appears to be a part of recent deregulation efforts by the Korean government to stimulate M&A activities and promote growth of the PEF industry.

ANTITRUST & COMPETITION

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

Korean Government Implements Amendment to the Fair Franchise Transactions Act

On April 7, 2015, the Korean government implemented an amendment and an attendant Presidential Decree to the Fair Franchise Transactions Act ("Franchise Act") regarding the permissibility of "immediate termination" provisions in franchise contracts (collectively, the "Amendment").

Prior to the amendment, the Franchise Act prohibited franchisors from immediately terminating franchise contracts with franchisees, even if the franchisees engaged in illegal conduct that resulted in severe harm to the franchisor's reputation. As a result, franchisors found it difficult to effectively maintain consumer confidence, and to protect other franchisees who suffered as a result of harm to the franchisor's reputation.

The Amendment addresses situations where the franchisor wishes to make an immediate termination due to harm to brand image by a franchisee's illegal conduct. According to the Amendment, if a franchisee violates a law related to the operation of the franchise business, the franchisor's reputation is clearly harmed, the franchisee's illegal conduct causes a severe hindrance to the operation of the franchise business, and the franchisees are either sanctioned or fined (i.e., through an administrative sanction designed to rectify the wrongdoing, a business suspension due to the wrongdoing, or a fine imposed as punishment for the wrongdoing), then the franchisor may immediately terminate its franchise contract with the wrongdoer franchisee.

SECURITIES

By Sun Hun Song (shsong@kimchang.com), Tae Han Yoon (thyoon@kimchang.com) and Soobin Ahn (soobin.ahn@kimchang.com)

FSC Promulgates an Amendment to the Enforcement Decree of the FSCMA

On March 3, 2015, the Financial Services Commission (the "FSC") promulgated an amendment to the Enforcement Decree of the Financial Investment Services and Capital Markets Act (the "FSCMA") to become effective immediately ("FSCMA Amendment"). On the same day, the FSC also promulgated an amendment to the Financial Investment Business Regulations, which also became immediately effective ("FIBR Amendment" and together with FSCMA Amendment, the "Amendments") and codified the FSCMA Amendment in detail.

Among others, the Amendments cover the following main issues:

- relaxing the regulation of operating a branch that can cross sell various financial products from different financial sectors (the "Converged Finance Branch");
- permitting a securities company undergoing M&A to temporarily manage principal-guaranteed personal pension trusts;
- restricting the scope of call money transactions that can be brokered by a brokerage firm; and
- providing the basis to deny or cancel foreign investor registration of Korean nationals from using names of foreign companies for the foreign investor registration purpose.

Relaxed Physical Segregation Requirement for Operating a Converged Finance Branch

To alleviate consumer inconvenience of having to visit multiple sales offices to purchase different types of financial investment products offered by a financial institution (e.g., a bank, a securities company, etc.), the FSC has introduced the concept of a Converged Finance Branch. Per the revised Financial Holding Company Supervisory Regulations, which took effect on December 1, 2014, affiliates under a financial holding company, such as a bank or a securities company, can share their business meeting and consulting rooms without physical separation (i.e., affiliates can have a Converged Finance Branch where they sell products in the same space). In practice, some financial holding company affiliates have already started operating their Converged Finance Branches.

The Amendments go further by allowing affiliates of all financial investment companies, even if they are not part of a financial holding company, to operate a Converged Finance Branch by sharing a common customer consulting space and entrance. However, as in the past, the affiliates are still subject to the same level of restrictions against information sharing and concurrent position holding.

Securities Company Undergoing M&A Permitted to Manage Personal Pension Trusts, in Which Principal Amounts Are Guaranteed

In order to strengthen the global competitiveness of the Korean financial industry and promote M&A activity, the Amendments permit a securities company with a trust business license to manage principal-guaranteed personal pension trusts if the securities company acquires or merges with another securities company by March 31, 2018.

Specifically, if a securities company, through M&A, (a) increases its equity by at least 20%, resulting in the equity of KRW 100 billion or more, or (b) increases its equity by at least KRW 300 billion, then the securities company can introduce and sell personal pension trust products and manage them for three years from the date of the M&A. Even after the three-year period, the securities company can continue soliciting new customers and managing the trust assets set during the three-year period.

Restriction on the Scope of Call Money Transactions That Can Be Brokered by a Money Brokerage Firm

Consistent with the FSC's policies to lower excessive reliance on call money in the short-term funding market, the Amendments substantially limit the scope of call money transactions that a brokerage firm can broker.

Under the Amendments, the brokerage firm can broker call money transactions with respect to only certain financial companies such as banks, securities companies acting as a primary dealer of government/public bonds or subject to open market operation, or asset management companies.

Consequently, small to medium-sized securities companies, insurance companies, credit card companies, credit specialty finance companies, savings banks, general finance companies, and other secondary financial market players can no longer participate in the call market.

As this new restriction can pose difficulty to financial companies in their short-term funding, the FSC plans to vitalize alternative markets, such as those based on repurchase agreement ("RP") and short-term electronic bonds.

Providing the Basis to Deny or Cancel Foreign Investor Registration Obtained by Korean Nationals Using Names of Foreign Companies

In order to regulate Korean nationals from making investments into Korea from offshore accounts under the guise of a foreigner (by using names of special purpose companies set up overseas), the Amendments provide the basis for denying an application for foreign investor registration if a Korean national submits the application in the name of a foreign company, which does not conduct substantial offshore business.

The Amendments also provide the basis for retroactively canceling existing foreign investor registration if the ground for denial arises after the foreign investor registration was granted.

After the Amendments take effect, the Financial Supervisory Service ("FSS") plans to monitor foreign investors who are suspected of being so-called "black-haired foreigners" (i.e., Korean nationals disguised as foreign investors), and cancel their foreign investor registration.

Other Notable Points

Besides the above, the Amendments set forth the procedures for canceling the registration of a foreign fund, if the foreign fund is no longer sold in Korea after it is registered.

Also, if a securities company conducts derivatives transactions as proprietary trading, it must establish and abide by, a daily loss limit of only up to 50% of its net operating capital.

BANKING

By Sang Hwan Lee (shlee@kimchang.com) and Hak Jin Lee (hakjin.lee@kimchang.com)

FSC and FSS Announce Reforms to Audit and Sanctions of Financial Companies

On On April 22, 2015, the Financial Services Commission ("FSC") and the Financial Supervisory Service ("FSS") announced the "Plans for Reforming Audit and Sanction of Financial Companies" (the "Plans").

The Plans can be summarized into three main aspects: (i) enhancement of autonomy and responsibility of financial companies; (ii) reinforcement of defense rights; and (iii) strengthened monetary sanctions.

The key changes under the Plans are:

Reform of Regulatory Audit Procedure

On-site audit to be divided into "soundness audit" and "compliance audit"

Whereas audits are currently divided into general and special audits, general audits will be phased out to reduce the burden on financial companies. Instead, the FSS will perform "soundness audits," which will examine financial soundness of the company and "compliance audits," which will inspect breaches of rules or regulations (effective January 2016).

Internal audit and follow-up measures relating to credit or financial incidents to be performed by financial companies

Where individual loans become non-performing or financial incidents occur, the relevant financial company will conduct an internal audit and complete a sanctioning process on its own. The FSS will only conduct an *ex post facto* review of the internal control process, such as the appropriateness of measures taken. However, the FSS will conduct a regulatory audit where there is systematic illegal lending, negligence, embezzlement, or serious breach of consumer rights.

Delivery of Audit Opinion in place of obtaining a Confirmation Letter

Previously, the FSS collected a Confirmation Letter from financial companies when a violation of relevant regulations was found. In place of such Confirmation Letter, an "Audit Opinion," setting out the FSS auditors' findings, will be issued in the name of the head of the FSS audit team to financial companies. This change was made in response to criticisms that Confirmation Letters forced officers and employees to make signed confessions in connection with regulatory breaches during the audit process.

Supplementing Code of Conduct for FSS Auditors.

For the benefit of financial companies in connection with the audit process, the FSS will develop a Comprehensive Code of Conduct for FSS Auditors. This code of conduct will include: (a) making adjustments to the timing of onsite audits to take into account the financial company's important management schedules; (b) preventing infringement of privacy during the audit; and (c) ensuring access to legal advice from lawyers throughout the audit and sanctioning process.

Reform of Sanctions

Shift from sanctions against individuals to monetary sanctions on institutions

The Plans propose to expand monetary sanctions (such as penalties or fines against institutions) both in scope and amounts rather than imposing sanctions against individuals.

With regard to sanctions against individuals, the scale will be revised so that it would be simplified either from the current five levels to two levels (light or heavy sanctions), or left with only an upper limit sanction while removing the lower limit. A task force, which was established in April 2015, will lay out detailed plans.

Expansion of the notification of matters on which financial companies need to take self-corrective measures (formerly known as "request for appropriate measures") and onsite measures.

The audit and sanction regulations will be amended so that the responsible staff would not be subject to disciplinary actions by the FSS on the basis that the measures taken by the financial company were inadequate. Effective July 2015, for onsite measures applicable to minor matters, it is proposed that the notification period be extended to 15 business days following the completion of a general audit, and 10 business days following the completion of a special audit (rather than the completion date of the on-site audit).

FSC Introduces Internet-Primary Bank in Korea

Introduction

From January to April 2015, the Financial Services Commission ("FSC") operated the Internet-Primary Bank Task Force ("TF"), which was a joint private and public sector effort. The TF reviewed related legislative bills and system reform plans regarding the introduction of the Internet-primary bank in Korea.

An Internet-primary bank is a bank that conducts most of its business via online channels (e.g., ATM, the Internet, mobile), and operates either few or no offline office. It is expected that the introduction of the Internet-primary bank will enhance consumer benefits by granting favorable interest rates, improving commission and customer access, and triggering competition within the banking industry through the development of new and innovative IT-based services.

On April 16, 2015, the FSC held a seminar to discuss measures to introduce a customized Korea Internet-primary bank ("Korea Internet Bank"). The TF presented the results of its discussions and industry officials shared their opinions. Additional presentations and discussions included a business model for a Korea Internet Bank, as well as its implications and schemes to reform bank ownership structure in order to introduce the Internet-primary bank.

As the governor of the FSC reiterated at the April 16 seminar, the time is ripe for the establishment of the first Internet-primary bank in Korea. Additionally, on May 18, 2015, as part of deregulatory efforts, the FSC announced measures to simplify the real name verification process under the "Act on Real Name Financial Transactions and Guarantee of Secrecy" (i.e., non-face-to-face real name verification).

Establishment

As for the establishment of the Korea Internet Bank, on June 18, 2015, the FSC, after gathering various opinions, announced a two-track approach:

- approving one or two Internet-primary banks for a test run under the existing policy of separating banking and commerce; and
- approving additional Internet-primary banks after easing the separation of banking and commerce through amendments to the Banking Act.

On July 10, 2015, the FSC released an approval manual for banks, and held an information session on the manual on July 22, 2015.

In September 2015, the FSC is planning to receive application for preliminary approval. A bill to increase the shareholding limitation of non-financial business operators (except for business groups subject to limitations on cross-shareholding) for banks from 4% to 50% in connection with the Internet-primary bank will be submitted to the National Assembly within the year.

FSC Eliminates the Requirement of Authenticated Certificate in Electronic Financial Transactions

Effective March 18, 2015, through the Notice of the Financial Services Commission, Article 37 of the Regulation on Supervision of Electronic Finance ("the "Electronic Finance Regulation") was amended to no longer require the use of an authenticated certificate in electronic financial transactions.

This is in line with the amendments that were announced on October 15, 2014, to Article 21(2) and (3) of the Electronic Financial Transaction Act (to become effective on October 16, 2015), which required the use of an authenticated certificate. In essence, the FSC is introducing the principle of technology neutrality by no longer restricting to the use of a particular technology or service.

Since the amendments to the Electronic Finance Regulation abolish the requirement to use an authenticated certificate, it is expected that financial companies will have more technological discretion over the selection of certification methods, but in turn, will have greater responsibility for safety and security. Consumers will enjoy increased utility when using electronic finance through a variety of simplified certification methods.

The details of the amendments to the Electronic Finance are:

- **Amendment**: The requirement to use an authenticated certificate or an equivalent certification method (in terms of safety) was amended to require use of a safe certification method.

- **Deletion:** The provision setting forth the notion that a certification method evaluation committee may be established under the FSS to assess the safety of certification methods other than the authenticated certificate was deleted.

BEFORE AMENDMENT	AFTER AMENDMENT
Article 37 (Standards for Use of Authenticated Certificate) ① All electronic financial transactions shall be conducted by using an authenticated certificate under the Digital Signature Act or a certification method equivalent there to in terms of safety ("Authenticated Certificate, etc."). However, this shall not apply to cases where the Governor of the FSS determined that the application of the Authenticated Certificate, etc. is technologically or systematically difficult. ② The FSS may establish a certification method evaluation committee to assess the safety of certification methods other than the authenticated certificate. ③ The Governor of the FSS shall determine detailed matters of the certification method evaluation committee including formation, operation and tasks.	Article 37 (Standard for Use of Certification Method) A financial company or an electronic finance business operator shall use a safe certification method in consideration of the type, nature, and risks relating to the electronic financial transaction. (Paragraph (2) deleted)

INSURANCE

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

The Cabinet Passes the Proposed Amendment to the Insurance Business Act

On June 2, 2015, the Cabinet passed the proposed amendment to the Insurance Business Act (the "IBA"), which aims to strengthen consumer protection and streamline regulation of the insurance business in the following ways.

Strengthening of Consumer Protection

- In the case of group insurance for which the insured bears the insurance premium (e.g., mobile phone insurance), insurance companies will be required to provide the insured with materials describing the important terms of the insurance policy.

- A new provision will be introduced, which will allow comparison and disclosure of interest rates of loans by insurance companies.

- Insurance companies will be required to deal with claims for insurance proceeds filed by their policyholders in a fair and transparent manner. Further, insurance companies will be prohibited from engaging in any improper act regarding payment of insurance proceeds, such as willful provision of false information to claimants.

Streamlining Regulations

- Two obligations under the IBA will be abolished.
  - First, under the proposed amendment, an insurance company will no longer be required to file a report prior to engaging in a concurrent business for which an insurance company obtained approval or license under other laws.
  - Second, under the proposed amendment, an insurance company will no longer be required to file a report prior to engaging in an ancillary business, where the ancillary business is one for which another insurance company has filed a report.

- An exceptional clause, which will allow execution of a new policy in the case of policy transfer, will be introduced (e.g., where a domestic branch office of a foreign insurance company seeks to transfer its insurance policies upon being converted into a corporation).

Strengthening Sanctions against Insurance Companies, etc.

- In case an entity or person, which / who has been subject to either a sanction of registration revocation or business suspension as an insurance agency, operates an insurance agency business by registering the new insurance agency under another entity or person's name, such registration will be revoked.

- Legal grounds will be established for imposing light sanction, including the issuance of caution and warning, on insurance solicitors for breach of relevant laws and regulations.

- Administrative fines for breach of relevant laws and regulations will be increased.

Enhancement of Regulations on Unfair Transactions between Insurance Company and Large Shareholder

- In addition to certain types of transactions with large shareholders*, all transactions with large shareholders other than standardized transactions will be subject to additional board resolution and public disclosure requirements.

- Where an insurance company has violated ad hoc disclosure obligations for transactions with a large shareholder, under the proposed amendment, administrative fines - of up to KRW 100 million - will be imposed.

- When an insurance company engages in unfair transactions with a large shareholder, the maximum level of criminal penalties and administrative fines that may

* Examples of transactions with large shareholders include: (i) credit extension to a large shareholder; and (ii) acquisition of bonds and shares issued by a large shareholder.

be imposed will be raised.

- In addition, where a large shareholder has gained unfair profits from the transaction with an insurance company, under the Proposed Amendment, administrative fines will be imposed.

Other Amendments

- When amending the insurance association's regulation on review of advertisements, FSC's prior approval will be required. Also, for prior advertisement review system that is operated by the insurance association, the proposed amendment will include legal grounds for regulating them.
  - The regulators will be able to render corrective orders on advertisement review done by the insurance association when the insurance advertisement reviewed by the insurance association is found to be illegal and unfair.
- Request for consultation and joint audit on financial soundness of mutual aid associations.
  - The FSC will be able to request consultation with the supervisory central government agency on the mutual aid association's financial soundness..
  - In turn, the central government agency supervising mutual aid associations will be able to request the FSC to conduct a joint audit to ensure the mutual aid association (in question) maintains its financial soundness.

The FSC hopes that the proposed amendment to the IBA is passed at the National Assembly within this year, and is making efforts toward such a goal.

LABOR & EMPLOYMENT

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

Supreme Court Decides on the Criteria for Distinguishing Worker Dispatch from Subcontracted Worker

On February 26, 2015, the Supreme Court rendered decisions regarding subcontracted workers. In particular, the Court provided specific factors to consider when determining whether a subcontracting arrangement will be deemed worker dispatch, which can potentially result in an illegal dispatch relationship and create a *de facto* employment relationship.

In the Hyundai Motor Company decision, the Supreme Court recognized that the workers of the service provider were *de facto* employees, holding that the "subcontract" arrangement between the service provider and the recipient was in fact a worker dispatch.

On the other hand, in the Korea Railroad decision, the Supreme Court did not find a worker dispatch relationship between the KTX train crew and Korea Railroad Corporation. The Court held that the KTX train crew was employees of KTX (i.e., the service provider's employees) and not of the Korea Railroad Corporation.

In Korea, there are two general ways a company may employ workers other than its own:

- through workers dispatched from a licensed manpower supply company ("Dispatched Workers"); or
- through workers of a service provider company under a subcontracting agreement ("Subcontractors").

The primary difference between the two lies in who supervises and controls the Dispatched Workers and Subcontractors. The factors previously cited by the lower courts and labor authorities to distinguish worker dispatch from a subcontracting arrangement have been somewhat vague and abstract. These factors include service provider's degree of independence, service recipient's authority, service recipient's degree of supervision and control, and the underlying purpose of the contract.

Criteria

However, in the February 26 decisions the Supreme Court provided clarification with more concrete criteria on the level of supervision and control exercised by the service recipient that would constitute worker dispatch versus a subcontracting arrangement.

For instance, in the Hyundai Motor Company and the Korea Railroad decisions, the Supreme Court ruled that the following factors should be considered when determining whether a subcontracting arrangement between a service provider and recipient should be deemed worker dispatch:

- whether the service recipient exercised substantial supervision and control over the service provider's workers, including issuing direct or indirect instructions;
- whether the service provider's workers were in fact integrated into the workforce of the service recipient, and worked directly with the service recipient's workers;
- whether the service recipient managed the service provider's workforce, including hiring, training, educating, evaluating and monitoring attendance and/or leaves;
- whether the scope of work performed by the service provider's workers was consistent with and limited to the specific scope set forth in the subcontracting agreement;
- whether the work performed by the service provider's workers requires expertise and technical skills, and can be distinguished from the work of the service recipient's workers; and
- whether the service provider maintains facilities or manpower as an independent legal entity in providing the required services.

Based on the above, the Supreme Court ruled in the Korea Railroad case that the KTX train crew members were not Dispatched Workers, but Subcontractors, on the following grounds:

- the type of work performed by the employees of Korea Railroad (i.e., the service recipient's employees) was clearly distinguishable from that of the KTX train crew members (i.e., the service provider's employees);
- KTX independently managed and operated its customer service function; and
- KTX independently supervised and controlled its employees.

This Korea Railroad decision is meaningful given the Seoul Central District Court's 2014 decision in Hyundai Motors, where the court had recognized an illegal dispatch relationship between the Hyundai Motor Company and employees of its subcontracting company.

As a reference point, failure to satisfy the legal requirements in a worker dispatch relationship will result in a finding of an illegal worker dispatch. In such event, the service recipient will have to hire the relevant worker(s) and pay any difference that arose in comparison to the service recipient's employees. Furthermore, finding of an illegal worker dispatch may result in criminal liability for the service recipient.

In light of the foregoing decision by the Supreme Court, to ensure full compliance with the law, it would be prudent for companies that have Subcontractors to carefully review their current practice, and where a practice may give rise to a finding of an illegal worker dispatch, to adjust accordingly.

ENVIORMENT

By Yoon Jeong Lee (yjlee@kimchang.com) and Joo Hyoung Lee (joohyoung.lee@kimchang.com)

MOE's Leniency Program: MOE Plans to Enforce Regulations to Combat Illegal Manufacturing and Importing of Chemicals

On January 1, 2015, the Act on the Registration and Evaluation of Chemicals ("K-REACH") and the Chemicals Control Act ("CCA") took effect. In this regard, the Ministry of Environment ("MOE") plans to provide guidelines on the violations of K-REACH and CCA, and begin to enforce regulations against the violations in the near future.

The MOE has decided to operate a 6-month leniency programm on the illegal manufacturing and importing of chemicals pursuant to the former Toxic Chemicals Control Act ("former TCCA," which is divided into K-REACH and CCA).

The leniency programm will be effective from May 22, 2015 to November 21, 2015, with the following violations of the former TCCA being subject to leniency application:

- act of not performing the duty to confirm the type of chemicals before manufacturing or importing the foregoing chemicals (violation of Act 9 of the former TCCA); and
- act of manufacturing or importing new chemicals without undertaking toxicity examination (violation of Act 10 of the former TCCA).

Specifically, a company wishing to apply for leniency will be granted exemption from sanctions (e.g., fines, punishments) resulting from violations of the former TCCA if it confirms the chemicals under Article 9 of the current CCA (i.e., in case the company committed the act in (1) above), or files for registration of new chemicals under Article 10 of K-REACH (i.e., in case the company committed the act in (2) above).

Once this 6-month leniency programm expires, the MOE plans to strengthen its measures by providing guidelines for K-REACH/CCA violations (including violations of the former TCCA), and enforce regulations against the foregoing violations.

Pending Legislation: Proposed Amendment to Regulations on Unfair Environmental Labeling and Advertising Guides Companies and Consumers

The Proposed Amendment to the Environmental Technology and Environmental Industry Support Act (the "Act") is currently pending legislation before the National Assembly.

On March 20, 2015, as part of the legislative scheme, the Ministry of Environment ("MOE") held a public hearing on the relevant "Guideline to Determine Unfair Environment-related Labeling and Advertising" (MOE's Public Notification; "Guideline"), and heard opinions from interested parties such as companies and consumers.

Under the current Act, a manufacturer, a manufacturer-seller, or a seller ("Manufacturer, etc.") is prohibited from engaging in any of the following types of labeling and advertising activity with respect to the environmental nature of the manufactured goods which may deceive the consumer or create false perceptions about the goods:

- false or exaggerated labeling and advertising;
- deceptive labeling and advertising;
- unfairly comparative labeling and advertising; and
- libelous labeling and advertising.

Manufacturer, etc. that is found to violate the foregoing provisions will be punished by either an imprisonment of 2 years or less, or by a criminal fine of KRW 20 million or less. Moreover, the violating company can also be punished under the vicarious liability theory.

To date, there has not been a clear guideline that indicates what types of labeling and advertising would be regarded as being unfair. This Guideline, which is scheduled to be legislated shortly, provides not only relevant examples, but also specific standards to determine unfairness in the following types of labeling and advertising:

- comprehensive environment-related matters;
- third-party authentication or self-authentication;
- non-containing;
- substance reduction;
- carbon emission reduction and carbon offset;
- recyclable elements;
- new and renewable energy and substance; and
- reduction of environmental pollution.

It is expected that the Guideline will greatly help companies make labels and advertisements with increased foreseeability as to what would constitute unfair labeling and advertising.

Additionally, we note that the Proposed Amendment also allows the MOE to impose administrative fines against unfair environment-related labeling and advertising. Thus, upon the enforcement of the Proposed Amendment, MOE may actively conduct investigations against unfair environmental labeling and advertising.

TECHNOLOGY, MEDIA & TELECOMMUNICATIONS

By Dong Shik Choi (dschoi@kimchang.com) and Young Joon Kim (youngjoon.kim@kimchang.com)

Amendments to the Broadcasting Act and IPTV Act Permit US Companies to Indirectly Invest in Korean Program Providers

In accordance with the Korea-U.S. Free Trade Agreement, amendments to the Broadcasting Act and the Internet Multimedia Broadcast Services Act ("IPTV Act") became effective as of March 15, 2015. These amendments now permit U.S. companies to make indirect investments in Korean program providers ("PP").

Under the previous version of the Broadcasting Act, "foreigners" (including Korean companies whose stock or capital is at least 50% owned by foreign companies or whose largest investor is a foreign company) could not hold more than 49% of the shares in domestic PPs. To enter the Korean PP market, a foreign company had to establish a joint venture company with a domestic Korean company. However, even then, the foreign company could not get managerial control of the joint venture company as it could not own more than 49% of the joint venture company's shares.

Today, with these amendments in place, U.S. companies may acquire 100% of the stock or capital of a domestic PP (excluding general service, news, and home shopping channels) through a wholly-owned Korean subsidiary. Moreover, as PPs in general also hold the status of "content providers" under the IPTV Act, the IPTV Act was similarly amended to permit indirect investment by U.S. companies.

For U.S. companies, these amendments not only eliminate the requirement to partner with a domestic company, but also provide opportunities to invest more freely in Korean broadcasting businesses by acquiring managerial control.

National Assembly Passes the Cloud Computing Act

On March 3, 2015, the Korean National Assembly passed the Act on Promotion of Cloud Computing and Protection of Users (the "Cloud Computing Act"), which will go into effect on September 28, 2015.

The Korean government, led by the Ministry of Science, ICT, and Future Planning ("MSIP"), promoted this statute based on its awareness that, despite cloud computing's potential as a rapid growth industry, the cloud computing infrastructure in Korea has been meager and the introduction of cloud computing services in Korea has been anemic.

The Cloud Computing Act is to provide grounds for governmental support in promoting cloud computing in Korea, and for modifying existing regulations to remove barriers to the development of the cloud computing industry, while creating a safe environment for users of cloud computing services.

The main provisions of the Cloud Computing Act are:

Promoting Introduction of Cloud Computing Services by Governmental Institutions

National and local agencies and public institutions must:

- make efforts to introduce cloud computing services;
- prioritize the introduction of cloud computing in making appropriations for the national information infrastructure policy; and
- make efforts for public institutions to utilize cloud computing services offered by cloud computing service providers in the course of their duty.

Fulfillment of Legal Requirements Regarding "IT facilities"

If another law requires "IT facilities" for issuance of a permit or license, use of cloud computing services may be considered an "IT facility" that meets the requirement.

Notification of Security Incidents

Cloud computing service providers must notify users of any security incident, user data breach, or service discontinuance.

In the case of user data breach, service providers must also notify the MSIP, which may impose measures to mitigate the potential harm and recurrence of such breaches.

Disclosure of Information Regarding User Protection

Users may ask cloud computing service providers in which country the user's information is being stored.

Also, if deemed necessary by the MSIP for user protection, the MSIP may advise cloud computing service providers to publicly disclose that information.

The MSIP is currently collecting comments on its draft Enforcement Decree to the Cloud Computing Act. The draft is to be finalized before the Cloud Computing Act becomes effective on September 28, 2015.

SELECTED REPRESENTATIONS

Aramco Overseas Company acquires additional shares of S-Oil

On January 19, 2015, Aramco Overseas Company, B.V. ("Aramco Overseas Co."), a subsidiary of Saudi Arabia's state-controlled oil company, Aramco, acquired an additional 26.55% equity stake (31,983,586 shares) of S-Oil Co., Ltd. ("S-Oil") from Hanjin Energy Co., Ltd. for KRW 1,982.9 billion. Previously, Aramco Overseas Co. held a 34.97% equity stake of S-Oil. Following this transaction, Aramco Overseas Co. holds a 61.52% equity stake of S-Oil.

Kim & Chang represented Aramco Overseas Co. in this transaction, providing a comprehensive service that included negotiations of the definitive agreement and assistance with governmental filings and reports.

NH Financial Group completes sale of Equity Stake in Woori Aviva Life Insurance

On November 10, 2014, NH Financial Group ("NH Financial") sold its 98.89% equity stake (14,573,773 shares) in Woori Aviva Life Insurance Co., Ltd. ("Woori Aviva") to DGB Financial Group for KRW 70 billion.

This transaction raised several issues, including strong opposition by the labor union, as the sale occurred only a few months after NH Financial acquired such shares, Kim & Chang represented NH Financial in all aspects of the transaction to successfully resolve such labor opposition and consummate the transaction.

J-Trust acquires SC Savings Bank and SC Capital

As part of a business structuring effort to focus on its core strengths, Standard Chartered Korea Limited sold its 100% equity stake in Standard Chartered Savings Bank Korea Co., Ltd. ("SC Savings") and Standard Chartered Capital (Korea) Co., Ltd. ("SC Capital") to J-Trust Co., Ltd. ("J-Trust") on January 19, 2015 and March 30, 2015, respectively. Following such acquisitions, J-Trust established a solid foundation to provide comprehensive financial services in Korea.

As counsel to both the seller and the purchaser in these transactions, Kim & Chang advised on all aspects, including transaction structuring, due diligence, documentation and negotiations, refinancing, merger filing approval, and regulatory approval for a change of major shareholder of financial company.

Price Fixing - The Supreme Court clarifies standards for determining the "Completion Date" in collusion cases

The Supreme Court recently addressed the issue of determining the "completion date" of a collusion, in a case involving power cable manufacturers who supplied products pursuant to a pre-agreed internal allocation scheme for a substantial period of time following the collusion agreement. This decision is significant because it provides clarification on how to determine the completion date of price fixing in similar annual unit price contracts.

The Supreme Court found that power cable makers who participated in the annual tenders by the Korea Electric Power Corporation ("KEPCO"), for the supply of power cables from 1998 to 2012, had colluded on tender prices, the winning tenderer (i.e., the primary contracting party), and the allocation of awarded supplies with the other participants. The collusive act concerned the so-called "annual unit price contracts," where the winning tenderer would be expected to supply products to the purchaser (i.e., KEPCO) from time to time throughout the year, at the price and the expected total volume set forth in the contract signed with the winning tenderer. In the case at hand, the winning tenderer allocated the volume requested by KEPCO to the other participants throughout the year, in accordance with pre-agreed internal allocation ratios.

The collusive act took place around the time the maximum basic rate for administrative fines was raised from 5% to 10% through the amended provisions of the Enforcement Decree of the Monopoly Regulation and Fair Trade Act, and the Public Notification of the Criteria for Imposition of Administrative Fines. Thus, depending on the completion

date of the collusion, the applicable maximum basic rate for the administrative fines could be 5% or 10%.

Prior to this case, the Supreme Court was of the view that the completion date of an unfair collusive act should be the end date of the performance of acts based on the collusive agreement, rather than the date on which the collusive agreement was made. However, there had been no clear precedent addressing the issue of completion dates where the supply of products continued for a period of time after the date of the collusion agreement.

The appeals courts and the Korea Fair Trade Commission (the "KFTC") were of the view that the allocation of products among participant manufacturers should also be considered a performance of an act based on the collusion agreement, and held that the completion date should be the final date on which the volumes ordered by KEPCO were allocated among the participants per the agreement.

On appeal to the Supreme Court, Kim & Chang focused on: (i) the distinctive nature of the tenders of this case and the nature of the annual unit price contracts; and (ii) the anti-competitive effects arising from the collusion, and argued that since the price, the parties to the transaction, and the volumes to be allocated were all effectively determined at the time the winning bidder signed the contract with KEPCO, that the subsequent allocation of volume was merely an internal division resulting from the collusion. On this basis, Kim & Chang argued that the nature of anti-competitive effects of the collusion in question should be evaluated differently.

The Supreme Court accepted such argument, and ruled that the completion date of the collusion should be the date on which the final contract was signed between KEPCO and the final winning bidder.

Supreme Court affirms appellate decision to overturn KFTC sanctions against S-Oil for alleged collusive market allocation

On January 29, 2015, the Supreme Court affirmed an appellate decision by the Seoul High Court overturning a judgment by the Korea Fair Trade Commission ("KFTC"), which had imposed administrative fines and corrective measures on S-Oil Corporation ("S-Oil").

The KFTC had charged four oil refining companies, including S-Oil, with engaging in an illegal agreement to refrain from soliciting each other's gas stations to join their own gas station network absent prior consent from the gas station's previous or current affiliated oil refining company. According to the KFTC, this agreement had a restrictive, anti-competitive effect on the Korean crude oil and petroleum products market. On this basis, the KFTC imposed corrective measures and blockbuster administrative fines on the four oil refining companies, including nearly KRW 438 billion on S-Oil alone.

After reviewing the record, the Seoul High Court overturned the KFTC's decision to fine S-Oil for illegal collusion, finding that the evidence cited by the KFTC was insufficient to conclude that S-Oil had engaged in illegal collusion. The Supreme Court, in affirming the Seoul High Court's decision, further elaborated that the KFTC had the burden of proving the alleged conspirators had a "meeting of the minds," and the KFTC had failed to meet this burden.

Kim & Chang represented S-Oil from the very beginning of this matter to the Supreme Court's final decision.

Supreme Court renders favorable decision for Shinsegae regarding KFTC allegations of an "Unjust" affiliate transaction

On January 29, 2015, the Supreme Court, in partially upholding the decision of the Korea Fair Trade Commission ("KFTC") to impose corrective measures and administrative fines on Shinsegae Co. Ltd., ("Shinsegae") for providing "unjust assistance" to an affiliate, reversed and remanded the appellate court's decision.

Article 23, Paragraph 1.7 of the Monopoly Regulation and Fair Trade Law ("FTL") prohibits companies from providing certain types of "unjust assistance" to affiliated companies. Shinsegae, which operates a variety of shopping malls (such as Shinsegae Department Store) and large discount retailers (such as E-Mart), charges a "sales commission

fee" to stores located inside these shopping malls and discount markets, which are calculated using certain formulas. The KFTC alleged that Shinsegae had provided "unjust assistance" to its affiliate. Shinsegae SVN, an operator of some of these stores, by allegedly charging such stores lower sales commission fees compared to non-Shinsegae SVN stores. As a result, the KFTC imposed corrective measures and approximately KRW 4 billion in administrative fines on Shinsegae.

At issue on appeal were how the "normal" sales commission rates were calculated for four different types of businesses. The Seoul High Court had held that of the four types, the KFTC had used a faulty method for calculating the "normal" sales commission rates for three, and overturned the KFTC's imposition of sanctions regarding them. However, the Seoul High Court upheld the KFTC's calculation of the "normal" sales commission rate regarding "Day and Day," E-mart's in-store bakery. With regard to Day and Day, the KFTC had calculated the "normal" sales commission rate by referring to sample sales commission rates from donuts and dumplings stores in E-Mart.

The Supreme Court reversed the Seoul High Court's decision to uphold the KFTC's calculation for the "normal" sales commission rate regarding Day and Day and found that the KFTC had incorrectly calculated the rate. Specifically, the Supreme Court held that in order to reasonably estimate what the "normal" sales commission rate is, the KFTC should have:

- Selected appropriate samples of either (i) independent transactions involving businesses opening in large discount stores and operating stores identical or similar to Day and Day, or (ii) independent transactions involving businesses that open in E-Mart and operate a business similar to Day and Day; and

- Based on the selection, make reasonable adjustments to account for differences between those transactions and the transaction involving Day and Day.

However, in the Supreme Court's view, the KFTC had failed to take such measures, rendering their conclusions about what constituted a "normal" sales commission rate for Day and Day suspect.

Further, the Supreme Court noted that if one compares Day and Day to the donut and dumpling stores (whose sales commission rates were examined) to determine the "normal" commission rate, there are many differences, including item treatment, store size, number of employees, investment costs, sales amount, brand recognition, and attractiveness to customers. Due to these differences, the Supreme Court found that the sales commission rates for donut and dumpling stores were not the most appropriate samples for comparison. Even if they were appropriate comparison samples, the Supreme Court stated that the sales commission rates were not reasonably adjusted for these differences to enable a fair comparison.

By concluding that the KFTC's methods did not result in a fair calculation of the "normal" sales commission rate, the Supreme Court vacated the Seoul High Court's decision and remanded the case back to the Seoul High Court.

Kim & Chang represented Shinsegae in the appeal of this matter.

Woori Bank issues Tier 1 Subordinated Notes

On June 11, 2015, Woori Bank issued Tier 1 Subordinated Notes amounting to USD 500 million in the offshore market through private placement. This was the first global issuance of Tier 1 Subordinated Notes by a Korean financial institution since the adoption of Basel III.

In advising Woori Bank on the legal issues in connection with this issuance of Tier I Subordinated Notes, Kim & Chang' scope of work included review of transaction documents, and regulatory issues arising from applicable laws (such as FSCMA and Banking Act) as well as specific conditions regarding payment of interest, dividends and prepayment. We engaged in active discussions with the FSC to resolve the legal issues to enable the successful issuance of the Tier 1 Subordinated Notes by Woori Bank. In May 2014, Kim & Chang had advised Woori Bank on its issuance of global Tier II Subordinated Notes.

Fila Korea issues Shogun Bonds

On March 31, 2015, Fila Korea successfully issued shogun bonds for the first time among Korean companies which are not members of a large Korean conglomerate group, which amounted to USD 65 million, and was guaranteed by Sumitomo Mitsui Banking Corporation.

Kim & Chang advised Fila Korea on the relevant legal issues, including review of transaction documents, and advising on regulatory issues arising from applicable laws such as FSCMA.

Anbang Life Insurance executes acquisition of TONGYANG Life Insurance

On February 17, 2015, Anbang Life Insurance Co., Ltd. ("ALI"), a Chinese life insurance company, entered into a share purchase agreement to acquire a total of 67,779,432 common shares (a controlling stake of about 63%) in TONGYANG Life Insurance Co., Ltd ("TY Life") from VOGO fund entities, Yuanta Securities Korea and Min-joo Lee. On June 10, 2015, the Financial Services Commission (the "FSC") approved ALI's request for a change in large shareholder status from TY Life to ALI.

Kim & Chang successfully represented ALI in this landmark transaction. Our legal services included conducting legal due diligence on TY Life, reviewing and negotiating the share purchase agreement, the filing of a business combination report with the Korea Fair Trade Commission, as well as filing an application for a change in large shareholder status with the FSC.

Kim & Chang helps a former representative director obtain a favorable outcome in a disciplinary warning revocation case

On April 15, 2015, the Seoul High Court rendered a final decision in favor of Mr. Mark R. Schamp, the former Representative Director (the "Plaintiff") of ERGO Daum Direct General Insurance Co., Ltd.* (the "Company"), who filed a lawsuit against the Governor of the Financial Supervisory Service (the "Defendant") and sought a revocation of a disciplinary warning issued by the Defendant (the "Lawsuit").

On April 19, 2013, the Defendant determined that the Plaintiff illegally and improperly gave instructions to lower insurance premium rates. This act, the Defendant, argued, warranted and justified the Defendant in issuing a disciplinary warning to the Plaintiff (the "Measures").

However, on May 16, 2014, the Seoul Administration Court ruled that the Plaintiff did not know the fact that there was a mistake in the calculation of the premium rates, and that the Plaintiff did not instruct others to lower insurance premium rate.

On April 15, 2015, the Seoul High Court rendered a final decision affirming the lower court's May 2014 decision in favor of the Plaintiff.

In particular, the Seoul High Court held that one may not be deemed as an offender who "instructed to illegally and improperly handle a business in practice" simply because he/she is a final decision maker, and that whether the person has violated the law should be determined based on the form and degree of the person's involvement in the business concerned.

Kim & Chang successfully represented the Plaintiff in the Lawsuit, and obtained a favorable ruling.

JR 17th REIT acquires D-Cube Department Store and signs master lease with Hyundai Department Store

On March 12, 2015, the JR 17th REIT ("JR REIT"), a corporate restructuring real estate investment trust company, whose primary investors are a foreign sovereign wealth fund and a foreign pension fund, executed a sale and purchase agreement to acquire a large retail mall known as the D-Cube Department Store (the "Property") from Daesung Industrial Co., Ltd. With the closing of the acquisition on May 15, 2015, the Property was

* In 2014, BNP Paribas Cardif General Insurance acquired ERGO Daum Direct General Insurance Co., Ltd.

simultaneously leased to Hyundai Department Store Co., Ltd. for a 20-year term.

Kim & Chang provided comprehensive legal services throughout the entire transaction from the structuring stage to the closing, including advising on the establishment and licensing of the JR-REIT, due diligence, as well as negotiation and implementation of the sale and purchase agreement, the master lease agreement and the loan agreement. In particular, we contributed to the successful closing of the transaction by anticipating, identifying, and proposing creative solutions to address issues unique to the context of acquiring a department store.

NPS acquires a shopping center in Sweden

In February 2015, the National Pension Service of Korea ("NPS") acquired a large shopping center located in Stockholm, Sweden ("Transaction"). This Transaction was made through a partnership with Varma Mutual Pension Insurance Company ("Varma"), a Finnish mutual pension insurance company, and Grosvenor Fund Management Europe ("Grosvenor"), an English asset management company. As part of the Transaction, NPS, Varma and Grosvenor invested SEK 1,141.5 million (approximately KRW 154 billion), SEK 570.75 million (approximately KRW 77 billion) and SEK 190.255 million (approximately KRW 25.6 billion), respectively.

This is a noteworthy transaction, because it is the first significant real estate investment by a Korean investor in Northern Europe, and it involved a joint investment between NPS and another foreign national pension fund.

Kim & Chang advised NPS throughout the entire Transaction, including transaction structuring, due diligence, negotiation of the transaction documentation, and implementation of the closing. In particular, we contributed to the successful closing by playing a leading role in the negotiation of the partnership agreement, investment advisory services agreement, and the asset services agreement.

Supreme court affirms High Court's decision rejecting the characterization of consideration on share transfer as loan

The Plaintiff, a Korean company, transferred shares in its subsidiary to a related party, and received 5% of the total consideration on the share transfer on the date of the share purchase agreement (the "SPA"). One month later, the Plaintiff received another 5%, and then received the remaining balance after two years from the date of the SPA with interest at the rate of 5% p.a. In the SPA, the parties had agreed to the three separate payment dates, while title to the shares would transfer when the second payment is due.

The tax authorities argued that the remaining balance of the consideration on the share transfer is in substance a loan. Therefore, the tax authorities imposed corporate income tax to the Plaintiff by adding the difference between the deemed interest income on the loan (computed at the statutory rate) and the actual interest income recognized to taxable income. In addition, certain portions of the Plaintiff's interest expense was denied as cost associated with making a "non-business related" loan to its affiliate.

The High Court ruled that the divesture of the subsidiary through the share transfer was indeed related to Plaintiff's business, as it was part of an effort to focus on its core business. The High Court also ruled that the remaining balance was agreed to be paid two years after entering into the SPA. Thus, the court found it difficult to accept the argument that the remaining balance of the consideration on the share transfer should be viewed as a loan from the second payment date (for the reason that title to the shares passed at the time of the second payment). The Supreme Court affirmed the High Court's decision.

The outcome of the case is significant, because the courts respected the intent of the parties as stipulated in the SPA despite longer than usual payment period for the share transfer and the transfer of title to the shares before the full payment.

Kim & Chang successfully represented the Plaintiff in this case by presenting legal arguments to overcome the

Defendant's claim of denial of unfair transaction (domestic transfer pricing rule) and non-business related loan.

Supreme Court renders judgment in data breach lawsuit against online shopping site

In early 2008, Auction, an online shopping site owned by eBay, suffered a hacking incident by a hacker. This incident resulted in the leakage of user IDs and personal information. In April 2008, over 140,000 plaintiffs filed a collective action lawsuit in Korea against eBay for damages from the incident. This lawsuit was not only Korea's first ever case filed against an online service provider by alleged victims of personal information leak after a hacking incident, but also the largest collective action ever filed in Korea.

After vigorous arguments by both sides on Auction's alleged liability, and thorough investigations by the courts, both the trial and intermediate appellate courts ruled in favor of the defendants. On February 12, 2015, on appeal, the Supreme Court rendered its judgment, affirming the lower courts' rulings, and found that Auction was not liable.

Specifically, both the Seoul Central District Court and the Seoul High Courts found that "In consideration of Auction's security measures, the state of hacking prevention technology development, and means of hacking at the time of the incident, etc., Auction had exhausted all technical protection measures, making it difficult to find negligence." The Supreme Court affirmed, stating that "Auction did not violate the requirement to institute certain measures as required by the prior Network Act or measures necessary to secure safety as required by online service contracts."

The Supreme Court's ruling is significant as it shows that companies whose customers' personal information becomes leaked may nonetheless be protected from liability if companies are found to have taken sufficient security measures before the incident.

Kim & Chang advised eBay from the outset of the incident, assisting in the reporting of the incident to the relevant agencies and providing notice to the users, as well as advising on how to effectively manage the fallout from the incident. Furthermore, by persuasively arguing against the availability of civil damages under the Network Act and clearly explaining Auction's technical security measures, we were able to successfully defend Auction in this "bet-the-company" case.

iHQ acquires CU Media

iHQ, a leading domestic entertainment company, and CU Media, a Korean program provider, reached an agreement to merge CU Media into iHQ.

According to public reports, the transaction was intended to create synergy from the combination of each party's content production capability and distribution channels. The transaction was completed on March 17, 2015, and on March 31, 2015, 98,715,945 shares of iHQ were newly issued as consideration of the merger, and were successfully backdoor listed on the Korean stock market.

This M&A transaction was the largest ever in Korea involving an entertainment company, which focuses on talent management and content production, and a program provider focused on broadcasting content distribution.

The transaction faced significant regulatory challenges, since the program provider ceased to exist, and the surviving entity succeeded to its program provider business status. Additionally, the deal was also noteworthy, as it was the first merger since the relevant stock market entry guidelines were strengthened to attempt a backdoor listing on the market.

Kim & Chang represented and advised both parties to the transaction. Our successful handling of this transaction was in part attributable to the coordination among our Mergers & Acquisitions, Capital Market, and Technology, Media and Telecommunications Practice Groups, with each group's professionals providing expert insights and creative solutions to the various legal challenges that arose in the transaction, many of which were first of its kind in Korea. In particular, with regard to the succession of the program provider business status, Kim & Chang was able to secure

the required governmental approval despite the vagueness of the relevant laws through timely discussions with the relevant authorities.

As we expect further strategic collaborative efforts between content production companies and content distributors, this deal will serve as an important case study.

Supreme Court revokes Korean Customs' assessment involving importers' advertising & promotional expenses

Recently, the Supreme Court revoked Korean Customs' assessment involving Korean importers' advertising and promotional ("A&P") expenses.

Specifically, Korean Customs challenged importers' exclusion of their A&P expenses from their royalty calculations on the ground that the A&P expenses should be deemed as "indirect" payments. The Supreme Court, on the other hand, held that Korean Customs' assessment should be revoked in its entirety, since the A&P expenses were undertaken by a buyer (i.e., importer) on the buyer's own account, and thus, they need not be included as part of the customs base amount of the imported merchandise.

Kim & Chang successfully represented the importers throughout the appeals process (including the one before the Supreme Court) by raising the following arguments:

- the A&P activities at issue were performed in connection with the importers' marketing and promotional activities, and concerned the imported merchandise after importation; and

- the importers have independently implemented and performed the A&P activities in accordance with the principle prescribed under the WTO Valuation Agreement, notwithstanding the fact that some benefits may have been accorded to foreign sellers of the imported merchandise.

FIRM NEWS

AWARDS & RANKINGS

Best Asian Law Firm 2015: Gold Award - International Legal Alliance Summit & Awards 2015

Kim & Chang has been named as the 'Best Asian Law Firm 2015: Gold Award' by the *International Legal Alliance Summit & Awards 2015* for two consecutive years.

This award was made by the Leaders League, an international publication specializing in finance and law, in recognition of the best law firms in each domestic market in terms of performance, as well as rising stars in Latin America, Asia, Europe, Canada and USA since 2008.

South Korea National Law Firm of the Year - Chambers Asia-Pacific Awards 2015

Kim & Chang has been awarded 'South Korea National Law Firm of the Year' at *Chambers Asia-Pacific Awards 2015*, organized by Chambers and Partners, an internationally renowned legal publication publishing a directory of the world's leading law firms.

Chambers Asia-Pacific Awards 2015 recognizes the work of national and international law firms across the region based on its own research for the Chambers and Partners guide, and also reflects notable achievements over the past 12 months including outstanding work, impressive strategic growth and excellence in client service.

Korea Law Firm of the Year - Who's Who Legal Awards 2015

Kim & Chang has been awarded 'Korea Law Firm of the Year 2015' at *Who's Who Legal Awards 2015* held by Who's Who Legal, an international legal media affiliated with Law Business Research. This is the tenth consecutive year that our firm has been honored for this recognition.

The Who's Who Legal annually selects individuals and firms in 60 jurisdictions that have performed exceptionally well based on their research, recognizing firm of the year awards for each respective jurisdiction and practice area awards. The ceremony was held in Washington, D.C. on April 27, 2015.

Employer of Choice 2015 - Asian Legal Business 2015

Kim & Chang was recognized as 'Employer of Choice 2015' in The ALB Employer of Choice Rankings, a feature article in the April issue of *ALB Magazine*.

Mr. Jong Hyun Park, senior attorney at Kim & Chang, said the firm tries to make the work place more attractive to its attorneys by giving them new development opportunities and offering various training programs. In addition, the belief that the lawyers are working with the top industry experts and partners instills pride and drives employee performance. He also shared his belief that the best way to attract and retain the best talent lies in maintaining Kim & Chang's status as the top law firm, which is made possible by providing the best possible service to the clients.

The ALB Employer of Choice Rankings were compiled taking into account responses from thousands of law firm employees across Asia. Law firms were ranked on the basis of job satisfaction, remuneration, work-life balance, career prospects, mentorship, job security and other aspects, with respondents being asked to submit their inputs/responses anonymously.

Ranked 10th Largest Law Firm in Asia-Pacific - The Lawyer Asia Pacific 150

Kim & Chang has been ranked as the tenth largest law firm in the Asia Pacific region in 'Asia Pacific 150,' a special feature of *The Lawyer*.

The Lawyer, an UK-based magazine specializing in law, regularly announces the top 100 local firms and top 50 international firms as a result of surveys of Asia-Pacific and global law firms.

SEMINARS

2015 Good Company Conference

Mr. Kyung Taek Jung of Kim & Chang participated as lecturer at the 2015 Good Company Conference.

Mr. Jung gave a lecture on 'compliance,' and he emphasized the importance of management of compliance risks by companies in his lecture.

The seminar, hosted by Sisa-Journal, was held at the Grand Hyatt Hotel, Seoul, on May 27. Korean and international professionals participated and share their questions and answers on 'compliance, reputation, and performance.'

Academy on Ethical Management in Pharmaceutical Industry

Mr. Myungsuk Sean Choi, Mr. Ji Soo Jang, Dr. Sung-Hun Cho, Mr. Han-Cheol Kang, Mr. Hwan Beom Lee, Mr. Jong-Guk Pak, Mr. Jong-Won Jeon, Ms. Eun Hee Kim, Mr. Seunghyo Kim, and Ms. Eun-joo Han of Kim & Chang participated in the Academy on Ethical Management in Pharmaceutical Industry. They conducted a mock trial on enforcement of the KRPIA Code, and re-enacted the resolution process of the Anti-Corruption & Civil Rights Commission regarding corruption cases.

The Academy was hosted by the Korea Pharmaceutical Manufacturers Association (KPMA) and Korea Research-based Pharmaceutical Industry Association (KRPIA) on May 22, and was aimed at sharing the current situation and points of improvement regarding enforcement of the KRPIA Code.

Information Session on International Transportation Claim for Companies

Mr. Byung Suk Chung and Mr. Chul Won Lee of Kim & Chang participated as lecturers in an information session on international transportation claim for companies.

At the session, which was co-hosted by Kim & Chang, Korea International Trade Association and Korean Commercial Arbitration Board on June 22, Mr. Chung gave a presentation on the legal relationship governing international trade and resolutions of international disputes in relation to the topic of 'legal question on international trade.' Also, Mr. Lee introduced precedents of disputes relating to 'business insolvency in field of international transportation.'

PRO BONO

Kim & Chang's Committee for Social Contribution launches "Dream Project for Future Lawyers of Seongbuk"

Kim & Chang's Committee for Social Contribution ("CSC") recently entered into a MOU with Seongbuk-gu Government (a ward within the city of Seoul), formalizing a collaborative relationship that allows both Kim & Chang and the Seongbuk-gu Government to support the development of the education sector.

The first initiative under the MOU is the "Dream Project for Future Lawyers of Seongbuk." This project is designed to help children and youth of Seongbuk-gu achieve their educational and career dreams.

On June 3, 2015, as part of the project, Kim & Chang attorneys gave a lecture to students of Jong-am Middle School, entitled "Youth Work Experience Program." Going forward, Kim & Chang's CSC also plans to host other programs through which the youth of Seongbuk-gu will not only be inspired, but also gain practical developmental skills. These planned programs include a "Moot Court Camp" and "Learn English by Stories with Kim & Chang."

Kim & Chang establishes a printing office for people with disabilities, and helps it obtain disabled-friendly business certification

Kim & Chang has recently established the "K&C Garam Printing Office for People with Disabilities." Kim & Chang acquired a 70% stake through its investment.

In March 2015, Kim & Chang helped the printing office obtain the disabled-friendly business certification.

Currently, 10 employees of the printing office have slight to severe levels of disability. his is the latest effort in our firm's continuing commitment to work to expand the job market for people with disabilities.

KIM & CHANG
39, Sajik-ro 8-gil, Jongno-gu, Seoul 03170, Korea
Tel: +82-2-3703-1114 Fax: +82-2-737-9091/9092 E-mail: lawkim@kimchang.com www.kimchang.com