KIM & CHANG

Newsletter

A Quarterly Update of Legal Developments in Korea

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ANTITRUST & COMPETITION

By Sung Eyup Park (separk@kimchang.com) and Jong-Guk Pak (jongguk.pak@kimchang.com)

KFTC Issues Amended Guidelines on the Review of Unfair Trade Practices

On December 31, 2015, the Amendment to the Guidelines on the Review of Unfair Trade Practices ("Amendment" and "Guidelines," respectively) came into effect. The Guidelines are intended to provide guidance to companies about when their unilateral conduct may be considered an "unfair trade practice."

Through the Amendment, the Korean Fair Trade Commission ("KFTC") is attempting to clarify: (1) the overall criteria for assessing anticompetitive effects; and (2) the detailed standards for assessing various unpermitted unfair trade practices (including tying arrangements, abuse of "superior bargaining position," and unfair appropriation or technology/solicitation of another's personnel).

1. Standards for assessing anticompetitive effects

The prior Guidelines merely provided a definition of the term "anticompetitiveness" when assessing whether a conduct constitutes an "unfair trade practice."

The Amendment adds details to the standards for assessing anticompetitiveness. Specifically, the Amendment clarifies that "anticompetitive effects" means "increase in market price" or "decrease in output". Hence, the Amendment clarifies that the objective of the anticompetitive effect review should be to protect competition (not competitors).

Further, the Amendment provides for a threshold question to be considered before reviewing for anticompetitiveness – whether a company has market power. And here, that company's market share is the key criteria.

For example: (1) those with 30% or higher market share are presumed to have market power; (2) for a company with market share ranging from 20% to 30%, multiple factors should be considered together (factors include degree of market concentration, competitive dynamics, and characteristics of relevant products/services); and (3) those with 10% to 20% market share may be deemed to hold market power only when multiple market participants engage in the same act, which produces certain cumulative effects.

Based on these standards, the Amendment further elaborates the criteria for determining whether an act constitutes certain unfair trade practices, such as undue refusals to deal, discrimination against transaction counterparties, and imposition of unduly restrictive terms.

2. Criteria for assessing a tying arrangement's anticompetitive effects

The Amendment seeks to make its review criteria for tying arrangements more closely aligned with the standards of competition authorities in other major jurisdictions.

For example, the prior Guidelines considered whether a tying arrangement amounts to an "unfair" means of competition. Under the Amendment, the unfairness language has been deleted, and it regards "anticompetitiveness" as the primary factor for determining whether or not such an arrangement is not permitted.

Accordingly, the criteria sets the following factors that should be considered: (1) whether there are two separate products or services; (2) whether the seller has market power in the relevant market for the tying product; (3) whether purchasers are forced to buy the two separate products or services together; (4) whether such a tying arrangement is improper in light of normal commercial practices in that relevant industry; and (5) whether such a tying arrangement may foreclose a competitor from the relevant market.

3. Criteria for assessing whether a company has a superior bargaining position

Korean law prohibits companies from abusing their "superior bargaining positions" as an unfair trade practice.

The prior Guidelines previously stated a rather ambiguous factor – when determining whether a company had a superior bargaining position, whether and how feasible the transaction counterparty may "find" a "replacement" should be considered.

The Amendment attempts to clarify this ambiguity by setting forth more detailed standards for determining whether a company can be said to possess a "superior bargaining position."

Under the newer standards, a transaction relationship must exist on a continuing basis, and the non-superior party's dependence on the superior party must be "considerable."

Further, the Amendment reflects a recent Supreme Court decision holding that "abuse of superior bargaining position" claims may be made only when the superior party's counterparty is a business entity, not a consumer.

However, an exception is made when "market order" may be affected, due to a concern that many consumers will be harmed or because the same pattern of abuse will likely continue or reoccur.

4. Criteria for assessing unfair appropriation or another's technology/solicitation of another's personnel

The prior Guidelines prohibited companies from unfairly interfering with another's business if it would make the rival's business "extraordinarily difficult."

Since the threshold for establishing a violation under the prior Guidelines was deemed too high, concerns had been raised that it encouraged businesses to unfairly utilize their competitors' technology or hire their employees (instead of making acquisitions by other means, such as a merger).

In light of this, the Amendment lowers the threshold by replacing the term "extraordinarily difficult" with "considerably difficult."

Potential Impact

The Amendment attempts to clarify certain terms and provide detailed standards. As a result, we expect the guidelines will help enhance consistency and predictability of the KFTC's enforcement of unfair trade practice prohibitions.

TAX

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Ministry of Strategy and Finance Issues Notice of a New Filing Requirement, and Those Companies Subject to the Comprehensive Report on International Transactions

Under the amendments to Article 11 of the International Tax Coordination Law ("ITCL") and Article 21-2 of the Presidential Decree of the ITCL, taxpayers are required to submit an Individual Company Report, and a Comprehensive Report on International Transactions ("Comprehensive Report") if their annual sales amount exceeds KRW 100 billion (approx. USD 83 million) and annual cross-border intercompany transactions exceeds KRW 50 billion (approx. USD 42 billion).

The new filing requirement is effective for fiscal years commencing on or after January 1, 2016.

On April 14, 2016, the MOSF issued a notice in relation to preparing and submitting a Comprehensive Report.

Key points of the MOSF notice are:

- Parties subject to be included in the Comprehensive Report:
  - Entities subject to the consolidated financial statements to which a taxpayer is included should be included in the Comprehensive Report.
  - Where a taxpayer is included in two or more consolidated financial statements, entities subject to the top-level consolidated financial statements should be included in the Comprehensive Report.
- If a multinational enterprise ("MNE")'s business consists of more than two business groups, the Comprehensive Report may be prepared and submitted by each business group.
- If a MNE group is controlled by a holding company, the Comprehensive Report may be submitted by each subsidiary.
- Representative submitting the Comprehensive Report:
  - Where two or more taxpayers are required to submit the same Comprehensive Report, the controlling entity or the entity closest to the ultimate controlling entity should submit the Comprehensive Report.
  - Where two or more taxpayers are equally close to the ultimate controlling entity based on the ownership structure, either may submit the Comprehensive Report.
- In case where subsidiaries of a holding company under the Monopoly Regulation and Fair Trade Act carry on different businesses, each subsidiary can submit the Comprehensive Report separately.
  - In this case, companies included in the consolidated financial statements of the subsidiary are subject to the Comprehensive Report.

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

Government to Strengthen Investigation of Environmental Crimes through a Newly Established Task Force

In an effort to strengthen its ability to better enforce major criminal violations of environmental regulations, the Ministry of Environment (the "MOE") newly established the "Central Environmental Crime Investigation Task Force" ("the Task Force").

Organization and Role of the Task Force

The Task Force consists of seven members, including a team leader (a prosecutor dispatched from the Ministry of Justice, dedicated to environmental crime investigation), and special judicial police officers with at least five years of investigation experience at the MOE.

- The seven members will collaborate to quickly gather evidence and initiate investigations. They will also work to expedite follow-up negotiations with the prosecutor, such as obtaining a warrant.
- In a February 17, 2016 press release, the MOE announced that with the launch of this Task Force, it expects to strengthen its on-site enforcement capability, with the Task Force serving as an overall supervisor and "control tower" for environmental crime investigations.
- Among the helpful functions that are expected to be performed by the Task Force are: investigation planning and establishing a negotiation channel with the local prosecutor's office.

Background / Challenge Addressed

Prior to the Task Force, all environmental crimes were investigated by the competent local environmental offices. This limited the investigations to regulatory violations or contaminations occurring in the district over which the relevant local environmental office has jurisdiction.

- The Task Force, through the high caliber and experience possessed by the special judicial officers, will further strengthen the MOE's investigative capabilities with advanced investigative techniques.
- Additionally, the implementation of a "control tower" will make it possible for planned investigations at a national level.

Related Effects

Further, to allow for the effective development of the Act on Registration, Evaluation, Etc., of Chemical Substances ("K-REACH") and the Chemicals Control Act ("CCA"), the authorities are expected to strengthen its enforcement of K-REACH and CCA. To this end, it is possible for the Task Force to oversee the investigation planning and enforcement of the relevant regulations.

For Your Consideration

- Given the above development, chemical companies are advised to conduct a comprehensive review of the current business operations to ensure that their local entities are compliant with Korean environmental laws and regulations.
- In particular, an in-depth compliance review may be necessary for local entities that manufacture, import, sell, use, or otherwise handle chemical substances to ensure compliance with K-REACH and the CCA.

ANTITRUST & COMPETITION

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KFTC's Amended Cartel Leniency Regime and Leniency Application Procedures

On April 15, 2016, the Korea Fair Trade Commission ("KFTC") began implementing its amended cartel leniency regime ("Amended Leniency Regime").

The amended leniency regime sets forth items, such as criteria for mitigating or exempting sanctions and leniency application procedures to encourage cartel participants to voluntarily come forward for more effective cartel enforcement.

Major aspects of the Amended Leniency Regime are:

1. **Requirement for the Officers or Employees of the Leniency Applicant to Attend and Cooperate at the KFTC Hearing:**

   To induce full cooperation from a leniency applicant, the Amended Regime expressly imposes the officers or employees of the leniency applicant a duty to attend the KFTC hearing, so that the KFTC Commissioners can make an accurate assessment on the applicant's qualification for leniency status, and directly confirm the facts about the cartel activities at issue.

   The KFTC's final decision on the leniency application considers whether the leniency applicant diligently cooperated with the KFTC's investigation, and such cooperation now includes whether the officers or employees of the leniency applicant attended the hearing.

2. **Strengthened Non-Disclosure Obligation on Leniency Applicants:**

   The Amended Leniency Regime requires leniency applicants not to disclose to third parties their cartel activities, and the fact that they applied for leniency. If this nondisclosure obligation is breached, then the applicant will not be eligible for leniency.

   This is a change from the previous leniency regime, where compliance with the nondisclosure obligation was only one of several criteria for determining the leniency applicant's cooperation status. Even if the leniency applicant did not comply with the nondisclosure obligation, it could still have obtained leniency status based on other criteria.

   The Amendment provides for two exceptions to the nondisclosure obligation: (1) if the disclosure is required under other laws or regulations; or (2) if the leniency applicant must inform a foreign government agency of its leniency application to the KFTC.

   Compared to the prior regime, we expect the KFTC to implement the Amended Leniency Regime in a more strict, but reasonable manner.

KFTC's Amended IP Rights Guidelines Seek to Address "De Facto" SEP-related Criticisms

On December 16, 2015, the Korea Fair Trade Commission ("KFTC") announced the amendment to its Guidelines on the Unfair Exercise of Intellectual Property Rights ("Amendment" and "IPR Guidelines," respectively). The Amendment became effective as of March 23, 2016.

The IPR Guidelines govern how the KFTC will evaluate the exercise of intellectual property ("IP") rights, such as standard essential patents ("SEPs") under the Korean competition law.

The Amendment seeks to address criticisms that the pre-existing IPR Guidelines was problematic by purporting to govern so called "de facto" SEPs.

The IPR Guidelines defined "de facto SEPs" as patents similar in function to SEPs but not adopted to a standard by a standard setting organization ("SSO"). Also, the IPR Guidelines allowed the KFTC to evaluate the exercise of "de facto" SEPs under similar standards used to evaluate SEPs.

However, SEPs are technologies designated as necessary to a standard set by an SSO and therefore, they have the potential to exercise anti-competitive restraint in a manner of a fundamentally different kind from normal patent rights. Many commenters had noted that applying standards applicable to SEPs to so called "de facto" SEPs would excessively restrict the legitimate exercise of patent rights where it is unclear that such a threat to competition exists.

Through the Amendment, the KFTC sought to address this criticism by making it clear that the standards governing SEPs would be limited to SEPs, and not apply to "de facto" SEPs.

The Amendment's major items are:

1. Changes to the Definition of the Term "SEP"

   The Amendment limits the definition of "standard technologies" to technologies designated as standards by SSOs. Further, re-defined SEPs incorporate a commitment to license the patents on fair, reasonable, and non-discriminatory ("FRAND") terms. Thus, a SEP is now defined as a standard technology, requiring its patent holder to make a FRAND commitment to license the patent in the standard setting process.

2. Removal of References to the Term "De Facto SEPs"

   Also, a refusal to license de facto SEPs is not per se illegal, and instead, subject to a "rule of reason" test, under which all circumstances may be weighed (e.g., efficiency gains as opposed to anticompetitive effects or a restraint to competition).

3. Clarification of the Objective of the IPR Guidelines and Standards for Determining Unfair Refusal to License

   The Amendment clarifies that the objective of the IPR Guidelines is to promote free and fair competition. In light of this, when determining unfairness of a refusal to grant a license, the Amendment provides that various factors should be considered, such as intent of the refusal, anticompetitive effect, likelihood that the patent can be replaced, and whether the patent is essential to promote market competition.

Potential Impact

Due to the clarifications made in the Amendment, we expect that the IPR Guidelines will more greatly encourage proactive exercise of patent rights, enhance predictability of the KFTC's IPR regulation through clarified definitions and criteria, and eventually lead to an improved regulatory environment.

KFTC Adopts Investigation Procedure Rules

On February 4, 2016, the Korea Fair Trade Commission ("KFTC") implemented its "Rules on Investigation Procedure (the "Rules").

The Rules are designed to: (1) assure fairness and transparency of the KFTC investigation procedure; (2) strengthen supervision of the KFTC investigation procedure; (3) ensure that due process is being met during investigations; and (4) improve reliability of law enforcement.

The Rules set forth standards for investigatory due process, including on-site investigations and methods of digital data collection.

The major items within the Rules are as follows:

1. Investigation Plan and Subject Selection

Article 5 of the Rules requires a KFTC examiner to create an investigation plan for the investigation. The investigation plan must include items, such as a list of potential subjects, objective, and reasonable criteria for subject selection, grounds of the selection criteria, and an ultimate list of selected subjects.

2. Notice of Investigation

Article 6 of the Rules requires that the KFTC examiner provide a formal notice to the subject (including its employees and/or officers) before an onsite investigation commences. The formal notice must include items such as the investigation period, an investigation objective, the identity of the investigation subject, and how the investigation will proceed. In particular, the investigation objective must be filled in together with relevant legal provisions and alleged violations. Also, the subject's information, such as his/her name and address, should be specified. One exception is that for an investigation of unfair collaborative acts (i.e., cartels), the listing of alleged violations need not be listed.

3. Subject's Right to Counsel

Article 13 entitles a subject to be represented by an attorney throughout the entire process of the investigation if he/she requests so, subject to certain exceptions. The exceptions include where urgent investigation is necessary to uncover unfair collaborative acts, or where the attorney makes it "significantly difficult" to achieve the objective of the investigation.

Further monitoring will be required to determine how these exceptions will be implemented in practice.

4. Investigator's Obligations

Article 14 sets forth additional obligations of the examiner, such as filling in and delivering a confirmation statement regarding investigation procedure to the subject, as well as listing the materials collected and submitted after the investigation is complete.

5. Follow-up Scheme (Report and Supervision)

Article 16 obligates the chief examiner to solicit feedback from subjects, including their concerns during the investigation procedure. Upon completion of the investigation, the examiner must report the results of the investigation and next steps to take to the chief examiner, with the subject's materials that are collected and submitted attached (as provided under Article 17). The Rules also provide for obligations of the chief examiner to monitor the relevant procedures.

SECURITIES

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Korea's National Assembly Passes the Amended Banking Act, Establishing a Legislative Framework for Contingent Capital Instruments during Financial Stress

After experiencing the unprecedented financial market meltdowns in the aftermath of Lehman Brothers' bankruptcy, the financial regulators around the globe reexamined what could be deemed sufficient capital for banks.

Following this international trend, on March 3, 2016, Korea's National Assembly passed the Amended Banking Act, providing a legal framework for Korean banks to issue contingent capital instruments, which would provide a buffer for them during times of financial stress. This law will become effective on July 30, 2016.

Background

Contingent capital instruments are hybrid capital securities that absorb losses when the capital of the issuing bank falls below a certain level. The most common type of contingent capital instrument is contingent convertible bonds ("CoCo Bonds"). Under the contractual terms of the CoCo Bonds, if a "trigger event" occurs (i.e., issuing bank's capital falls below a certain level), the debt is reduced, and bank capital gets a boost owing to CoCo Bonds' capacity to absorb losses by either: (1) automatically converting into common equity; or (2) by suffering a principal write-down, which helps to satisfy regulatory capital requirements.

Until now, Korean banks were able to issue debt instruments that suffer principal and interest write-downs when a trigger event occurs.

Key Aspects of the Amended Banking Act

The Amended Banking Act permits the banks to issue not only such write-down type CoCo Bonds, but also those that are convertible into stock. Under the Amended Banking Act, the converted stock can be that of the bank itself, for that of its 100% parent bank holding company.

CoCo Bonds that meet the requirements under the Detailed Regulation on Supervision of Banking Business would be treated, under BASEL III, as "Additional Tier 1" and "Tier 2" equity capital, respectively.

Potential Impact

This and other factors (heightened regulatory focus on capital conservation buffer, market conditions, etc.) may lead Korean banks to consider issuing CoCo Bonds as an alternative to other more conventional capital instruments.

FSC Announces Plans to Boost the Investment Advisory Business

On March 25, 2016, the Financial Services Commission ("FSC") announced several plans to boost the investment advisory business to support investing by individual investors.

Below are the key points of the announcement:

1. **Introduction of New Type of Investment Advisory License and Independent Financial Advisors**

   The FSC announced a plan to introduce a new type of investment advisory license with a lower entry barrier. It will be geared more towards investment advisors looking to provide investment advice to general individual investors.

   - Holders of the new investment advisory license will be permitted to provide investment advice regarding investments in deposits, funds, and derivative-linked securities.
   - It has been proposed that the minimum capital requirement for the new investment advisory license will be KRW 100 million, which is significantly lower than the KRW 500 million currently required for a full-blown investment advisory license on financial investment products.
   - To do so, the FSC plans to announce the amendment of the Enforcement Decree of the Financial Investment Services and Capital Markets Act within this year.

   Also, the FSC has announced a plan to introduce Independent Financial Advisors ("IFAs").

   - IFAs can neither operate as investment product manufacturers or distributors nor be affiliated in any way with investment product manufacturers or distributors, and would be prohibited from receiving fees or compensation from anyone but the investors.
   - The FSC plans to announce the amendment of the Financial Investment Business Rules to introduce the IFA system within this year.

2. **Access to "Robo-Advisors" to Be Expanded to Front Office**

   A "Robo-Advisor" is an automated investment tool that provides algorithmic-based portfolio management functions.

   Currently, the use of "Robo-Advisors" has been limited to back office use by investment experts, because under current regulation, investment advisors have been prohibited from allowing investors to elicit investment advice directly from "Robo-Advisors."

   To expand the business scope of "Robo-Advisors" by allowing investors to interface directly with "Robo-Advisors," the FSC plans to allow investment advisors to test the use of "Robo-Advisors" in the front office, where they can be accessed directly by investors. Beginning in July 2016, investment advisors will be allowed to do so following the submission of a business plan to the FSC.

3. **Investors to Be Allowed to Contract Online to Receive Discretionary Investment Management Services**

   Today, investors must physically visit a financial institution to contract in a face-to-face environment for discretionary investment management services as no online contracting is permitted.

   Going forward, the FSC intends to allow investors to contract online to receive investment advisory and discretionary investment management services regarding Individual Savings Accounts ("ISA").

   investment management service for ISA, the FSC plans to allow online contracting for certain discretionary investment management services, if they meet specific criteria (e.g., investing in indirect financial investment products, excluding fixed income securities with sufficient diversification).

Detailed Rules on Disclosure and Reporting of Net Short Position Take Effect

The amendment to the Financial Investment Service and Capital Markets Act (the "Amendment"), was passed at the National Assembly on March 3, 2016, and the Amendment was promulgated later that month (on March 29, 2016).

In general, this Amendment:

- Codifies the short sale reporting obligation specified in the Enforcement Decree, and provides a clear legal basis to impose sanctions for violation.
- It also requires, among others, that investors with a large short sale position to make public disclosure of their identity and short sale position. The aim is to bolster transparency in the short sale market and discourage short selling for speculative purposes.

1. Disclosure of Net Short Position

   The threshold for disclosure is 0.5% of the total issued shares.

   In case the net short position of an investor reaches the threshold, it must be publicly disclosed within 3 business days, and on each business day thereafter, so long as the net short position is equal to or greater than the threshold.

   The disclosure must include the specific securities concerned, along with the net short position, information regarding the investor and his/her/its agent's identity, and the date the threshold was reached.

   The disclosure is to be made through the Korea Exchange.

2. Reporting of Net Short Position

   In addition to the current rule requiring a reporting in case the net short position is 0.01% or more of the total issued shares, investor must file a report in case the market value of the net short position is KRW 1.0 billion or more. This requirement stands even if the net short position is less than 0.01%.

   On the other hand, if the market value of the net short position is KRW 100 million or less, even if the net short position is 0.01% or more of the total issued shares, the reporting obligation does not apply.

   To that end, the Korean regulators have completed the public announcement of the proposed amendments to the Enforcement Decree of the Financial Investment Service and Capital Markets Act and the Financial Investment Business Regulation.

CORPORATE

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National Assembly Passes a New Corporate Restructuring Promotion Act with Significant Impact to Corporate Restructuring Proceedings

A new Corporate Restructuring Promotion Act (the "New CRPA") was passed by the National Assembly on March 2, 2016, and on the same date, it became immediately effective.

The New CRPA succeeds the previous law of the same name that expired and was repealed as of December 31, 2015 (the "Old CRPA").

Expected Impact

The New CRPA includes many provisions that are expected to have significant impact on the framework and substance of corporate restructuring proceedings that existed under the Old CRPA. In particular, we would like to draw your attention to the following changes.

1. Expansion of Scope: Type of Creditors Subject to the CRPA Proceeding

The New CRPA expands the scope of creditors subject to the workout proceeding under the Corporate Restructuring Promotion Act (the "CRPA").

Under the Old CRPA, only Korean domestic financial institutions (including Korean branches of foreign financial institutions, and certain domestic non-financial institutions related to the financial sector) were subject to the workout proceeding.

However, under the New CRPA, any creditor with a financial claim against the debtor company (including foreign creditors holding financial claims, and non-financial institutions holding claims that may be classified as financial claims), will be subject to the workout proceeding.

Additionally, there is an addendum to the New CRPA, which provides that the workout proceeding under the new law does not apply to financial claims held by a "non-creditor financial institution" (as defined under the Old CRPA) if the financial claims arose prior to the effective date of the New CRPA. The New CRPA will apply in the case of financial claims that are renewed or rolled over after the effective date of the New CRPA.

Suggestion

Given the expansion of the scope of creditors subject to the workout proceeding under the CRPA, it would be advisable for any person or entity that owns bonds issued by Korean companies, or for any person or entity that intends to enter into a transaction to acquire bonds issued by Korean companies, to carefully review whether the relevant bonds will constitute financial claims under the New CRPA (which would result in such person or entity becoming a "creditor").

2. Expansion of Scope of Debtors Subject to the CRPA Proceeding

In addition, the New CRPA abolished the minimum credit threshold of KRW 50 billion, which was required in order to apply the workout proceeding under the Old CRPA.

Under the New CRPA, any company, irrespective of its total outstanding credit amount, may enjoy the benefits of workout proceeding.

As a result, the scope of CRPA-governed debtors has been substantially expanded, and now includes all companies except for certain companies that have been expressly excluded as CRPA-governed debtors under the New CRPA. These exceptions include governmental and public organizations, financial companies prescribed by the Presidential Decree, and companies incorporated under foreign laws.

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Korean Legislature Introduces New Rules to Apply to Kun-Guarantees under the Amended Korean Civil Code

Effective February 4, 2016, by way of the amended Korean Civil Code (the "KCC"), the Korean legislature introduced the new KCC requirements that would govern the substance and form of the Korean-law guarantees.

The new KCC requirements applies to any new guarantee contracts, or any existing guarantee contracts that are renewed after February 4, 2016.

Below, we have summarized some key aspects of the amended KCC that would have an impact on the guarantees widely used in the market, and the relevant legal issues associated with this change.

Authentication and Maximum Guarantee Amount

According to the amended KCC, as far as the authentication of a guarantee, including Kun-guarantee, is concerned, the guarantee is enforceable when it is authenticated by either a handwritten signature, or by name stamp and seal affixed to the guarantee.

Electronic signature or other forms of digital communication conveying one's intent to guarantee another person's financial obligation would not be enforceable.

If the parties are amending an existing guarantee, and such amendment would make it less favorable to the guarantor, the same authentication standard described above would apply (Article 428-2 of the amended KCC).

In addition, while the amended KCC does not challenge the basic tenet of a Kun-guarantee[1], the new KCC clause mandates more specificity in the guarantee form. Accordingly, the maximum guarantee amount should be spelled out in a written form to protect the guarantor from bearing an unexpectedly large amount of guarantee obligation (Article 428-3 of the amended KCC).

Practical Implications on Guarantees

In Korea, there have been certain restrictions on guarantees to prevent a guarantor from being liable for an amount substantially exceeding reasonable expectation. This was made possible by enforcing the Special Law on Guarantor Protection (the "SLGP").

The SLGP is only applicable to individual guarantors, not institutional ones, with respect to the guarantees that were provided without any consideration as a personal favor for one's friends or relatives. In other words, various restrictions under the SLGP were not applicable to the institutional guarantees that are quite common in the market (in particular, Korean parent company's guarantee of a loan extended by a foreign bank to its overseas subsidiary).

However, under the amended KCC, the requirements that are similar to the SLGP regarding the authentication and maximum guarantee amount may apply to corporate guarantors (regardless of domestic or foreign companies) to the extent they are using a Korean law governed Kun-guarantee.

[1] In other words, the guarantor can provide credit enhancement with respect to the currently undetermined financial obligations of the obligor, even if the underlying obligation is of an unknown quantity.

For example, if a corporate guarantor enters into a Kun-guarantee contract that is governed by Korean law, and does not specify the maximum guarantee amount in writing, or, if such a corporate guarantor fails to specify such amount in writing when renewing an existing Kun-guarantee contract after February 4, 2016, that Kun-guarantee contract may not be enforceable against the guarantor, even if the underlying, guaranteed obligations are clearly defined and easily discernable.

In addition to the issues surrounding authentication and maximum guarantee amount as described above, the new rules may have some implications for the indemnity clause that is commonly found in the guarantees.

Typically, this indemnity provision provides that the guarantor would indemnify the lender, not just for the guaranteed amount, but for anything extra that may arise from it. This is usually the case, even if such guaranteed debt (primary debt of the principal obligor) turns out to be unenforceable, cancelled, exempted, or reduced for any reason, including for certain legal restrictions.

However, there could be some differences of opinion as to whether the enforceability of this indemnity would be restricted or even denied if the court deems it as a contractual circumvention of the amended KCC. That interpretation may be conceivable if the court views the indemnity clause as a means to allow the banks to recover from a corporate guarantor an amount in excess of the explicitly stated maximum guarantee amount.

Suggestions

Therefore, it is advisable to fix the maximum guarantee amount at the initial stage of negotiating and drafting a Korean-law governed Kun-guarantee contract. It is also advisable to closely monitor any judgment rendered by the court with respect to the validity of indemnity provision in a Kun-guarantee.

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Real Estate Investment Trust Act Amended to Diversify Investment Targets and Profit Structures, Lower Barriers to Use of REITs

On January 19, 2016, certain amendments to the Real Estate Investment Trust Act (the "REIT Act"; and such amendments thereto, the "Amendments") were promulgated. The aim is to diversify investment targets and profit structures of real estate investment trust companies ("REITs"), and to lower certain barriers to the use of REITs in the acquisition and operation of real estate.

The Amendments will become effective on July 20, 2016. The Amendments include, among others, the following:

1. Lowering of Minimum Paid-In Capital of REITs

   The Amendments will lower the required minimum paid-in capital of a self-managed REIT at its establishment from KRW 1 billion to KRW 500 million.

   It will also lower the required minimum paid-in capital of a third-party managed REIT or corporate-restructuring purpose REIT ("CR-REIT") at its establishment from KRW 500 million to KRW 300 million.

2. Introduction of Requirement to Register with MLIT for third-party managed REITs and CR-REITs

   Under the Amendments: (1) for third-party managed REITs whose 30% or more shares are owned by the National Pension Plan ("NPS") or one of the other specifically enumerated pension plans; and (2) CR-REITs, the requirement will be simply to register with the Ministry of Land, Infrastructure, and Transport (the "MLIT").

   This is in lieu of obtaining business approval of the MLIT, as it is required under the current REIT Act. However, this only applies if 30% or less of the assets of such third-party managed REIT or CR-REIT, as the case may be, were invested in development assets.

3. Easing of Restriction on Acquisition of Securities

   Under the current REIT Act, a REIT may not acquire more than 10% of the total voting shares of any single company. In addition, no more than 5% of a REIT's assets may be composed of the shares of any single company, unless certain exceptions thereunder apply.

   The Amendments add more exceptions to such exceptions by allowing a REIT to acquire up to 100% of the shares of a company that: (1) leases and operates real property owned by such REIT and/or related facilities; or (2) is engaged in tourism accommodation business or other business enumerated in the Presidential Decrees of the REIT Act (such company, an "Operating Company").

   Similarly, under the Amendments, the asset composition requirement above is relaxed with respect to Operating Companies, such that no more than 25% of a REIT's assets may be composed of the shares of any single Operating Company.

Amendments to Enforcement Decrees of "Industrial Cluster Development and Factory Establishment Act" Aim to Ease Restrictions on Industrial Land and Plant Dispositions

On February 29, 2016, certain amendments to the enforcement decrees of the Industrial Cluster Development and Factory Establishment Act (the "Industrial Cluster Development Act"; and such amendments, the "Amended Enforcement Decrees") came into effect.

They are designed to ease restrictions on the disposition of industrial land and plants.

The Amended Enforcement Decrees include, among others, the following:

1. Expansion of Exceptions to Restrictions on Disposition of Industrial Land and Plans

   Prior to the Amended Enforcement Decrees, a legal entity which had purchased and owned industrial land was prohibited from disposing the land within 5 years from the date of purchase.

   - Such prohibition against the disposition extended to the transfer of shares in the company that owned the land, whereby a shareholder of the company cannot transfer 50% or more of its shares in the company to a third party within the 5-year period (as such transfer was deemed disposition of the industrial land by the company).
   - Violation of the transfer restriction would subject the company to transfer the industrial land and any facilities built thereon back to the relevant authority.

   However, under the Amended Enforcement Decrees, such transfer of shares is no longer deemed a disposition of the industrial land.

   Also, in the event an occupant of a non-legal entity industrial complex (an "Occupant") converts the complex into a legal entity, by way of in-kind contribution or comprehensive business transfer of its industrial land and plants located thereon, such in-kind contribution or comprehensive transfer is not deemed a disposition of the industrial land and plants under the Industrial Cluster Development Act.

2. Shortening of Period during which Disposition of Subdivided Industrial Land is Restricted

   Prior to the Amended Enforcement Decrees, in the event an Occupant intended to dispose of industrial land after any subdivision, such Occupant was prohibited from disposing of the subdivided land for 5 years after such subdivision.

   However, under the Amended Enforcement Decrees, regardless of any subsequent subdivision of the land, an Occupant can dispose of subdivided land after 5 years from the date of commencement of its business on such land.

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New and Revised Guidelines on the Protection of Non-Regular Workers Now In Effect

As a follow up to its recent policy announcement on plans to curb labor market duality to promote fair employment for both employers and employees, the Ministry of Employment and Labor ("MOEL") announced implementation measures to the policy by introducing "Guidelines on Fixed-Term Workers' Security of Employment." Simultaneously, the MOEL also amended "Guidelines on Protections for In-House Subcontracted Workers" (collectively, the "Guidelines").

The main provisions of the Guidelines are outlined below:

Guidelines	Main Provisions
Guidelines on Fixed-Term Workers' Security of Employment (new)	▪ Employers are advised to convert employees who engage in routine and continuous work from "fixed term" contracts to "indefinite term" contracts. ▪ Work types subject to conversion: Works continued year-round for the last two years or more, and expected to continue in the future. ▪ Employees subject to conversion: Fixed term employees whose contract has not expired (including those who have worked less than two years). ▪ Discrimination against fixed-term workers who engage in the same or similar work as regular workers is prohibited. ▪ Unreasonable discrimination in terms of benefits reasonably expected to apply to all workers is prohibited (such as holiday gifts and meal allowances).
Guidelines on Protections for In-House Subcontracted Workers (amended)	▪ The principal company must endeavor to guarantee fair amounts for the subcontract fee it pays to the contractor. This is to prevent unreasonable discrimination against subcontracted workers regarding wages and working terms (compared to employees of the principal company who engage in the same or similar work as the subcontracted workers).

The purpose of the Guidelines is to narrow the gap between regular and non-regular workers by prohibiting discrimination, and by encouraging conversion of fixed-term workers to indefinite term workers.

The Guidelines emphasize the importance of protecting non-regular workers through proactive participation of the industrial sector, and to encourage an atmosphere of fair employment.

Impact

Going forward, the MOEL stated that it will strengthen monitoring of employers' compliance with the Guidelines by establishing an expert advisory committee, which will focus on discrimination against non-regular workers during the MOEL's regular workplace audits.

The MOEL emphasized that it will take any necessary administrative measures if it finds any non-compliant practices.

Korea's Labor Ministry Announces Guidelines on Ordinary Dismissal and Procedures for Changing Working Terms and Conditions

On January 22, 2016, the Ministry of Employment and Labor ("MOEL") announced administrative guidelines regarding ordinary dismissal, and the correct procedures for changing employees' working terms and conditions (i.e., the "Rules of Employment").

Details

The guidelines regarding ordinary dismissal emphasize the importance of performance evaluations to change the current seniority-based system to a performance-based system. Regarding performance evaluations, these guidelines call for fair and objective criteria.

Specifically, the guidelines state that underperformers, as determined by fair and objective evaluations, can be subject to ordinary dismissal without having additional justifiable reasons that might warrant disciplinary dismissal.

However, for such dismissals to be valid, the evaluation standards must be truly fair and objective, and employees must have opportunities to improve their performance (e.g., training and/or internal transfer).

Regarding changes to the Rules of Employment, MOEL announced that an adverse change may be valid and effective, even if the employer does not obtain consent of the majority of employees or the labor union, as long as the change is "reasonable within social norms."

The guidelines set forth the following six factors that should be considered when determining whether the change to working terms and conditions is "reasonable within social norms":

- The level of disadvantage that will result to the employees upon a change to working terms and conditions;
- The type of change that is required, and the extent to which such a change to working terms and conditions is necessary for the employer and the workplace;
- Whether the change in working terms and conditions is reasonable;
- Whether other working terms and conditions will be improved;
- Whether the employer used its best efforts to consult with the employees or the labor union; and
- Market and industry practices.

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Act on Integrated Management of Environmental Pollution Facilities to Take Effect on January 1, 2017

The Act on Integrated Management of Environmental Pollution Facilities (the "Integrated Management Act") passed the National Assembly and was promulgated on December 22, 2015. Subsequently, the Integrated Management Act will enter into force on January 1, 2017.

The Integrated Management Act makes significant changes to the existing environmental permit regime, including by integrating over ten permits that were previously disbursed under individual statutes, such as under the Air Environment Conservation Act ("AECA"), and the Water Quality and Ecosystem Conservation Act ("WQECA").

Details

The Integrated Management Act applies to large workplaces (i.e., Class 1 and Class 2 workplaces dealing with water and air pollutants) in approximately 20 industries with large-scale emissions.

However, initially, in 2017, the Integrated Management Act will apply to only three industries ((1) electricity, (2) steam, hot/cold water and air conditioning supply and (3) waste disposal).

- The scope of application will gradually be increased so that it will apply to all relevant industries starting in 2021.
- Existing workplaces that fall within the requirement under the Integrated Management Act will be granted a four-year grace period (i.e., until December 31, 2020) under which to obtain an integrated license.

Under the Integrated Management Act, 10 licenses that are currently governed under the existing regime by the 6 statutes below will be integrated into a single license. This will remove the need to seek separate approvals for each relevant license.

- License/declaration regarding air pollutant emissions facility under AECA
- Declaration regarding dust-generating business under AECA
- Declaration regarding dust-emitting facility under AECA
- Declaration regarding installation of VOC-emitting facility under AECA
- License/declaration regarding installation of noise and vibration producing facility under Noise and Vibration Control Act
- License/declaration regarding installation of wastewater discharging facility under WQECA
- Declaration regarding installation of non-point pollution source under WQECA
- Declaration regarding malodor producing facility under Malodor Prevention Act
- Declaration regarding installation of facility subject to management for certain soil contamination under Soil Environment Conservation Act
- Declaration regarding installation of waste disposal facility under Wastes Control Act

Other Important Features

In addition, to encourage businesses to apply quality and cost effective environmental technology, the best available techniques economically achievable ("BAT") will be selected for each industry. Emission standards will now be customized for each worksite taking into account BAT and relevant industry and worksite characteristics.

The Integrated Management Act contains a number of features[2] that will streamline the permit process and make it easier to comply with applicable regulations.

[2] Examples include integrated permit, customized emissions standards, etc.

Considerations

At the same time, it may take a significant amount of time for businesses to obtain the single integrated license, and implementing BAT may impose a financial burden on companies.

As mentioned, BAT, as well as the maximum emission standard, will be taken into account in setting the emission standard for each workplace. Thus, we believe further developments at the MOE will need to be closely monitored in this regard.

Also, details of the Enforcement Decree, and the Enforcement Rules to the Integrated Management Act, neither of which have been promulgated, may have significant impact on businesses, as follows:

- The Integrated Management Act requires the government to disclose certain information, including a catch-all category of "information ... that is prescribed by decree of the Ministry of Environment [i.e., the Enforcement Rules]"; and
- The scope and method of disclosure could have important business ramifications.

TAX

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Ministry of Strategy and Finance Announces the 2016 Amendments to the Ministerial Decree of Corporate Income Tax Law

On March 7, 2016, the Ministry of Strategy and Finance ("MOSF") announced the amendments to the Ministerial Decree of the Corporate Income Tax Law.

Summarized below are the key items:

1. **Example of company automobile use for work**

   New rules for deducting company's automobile expenses have been adopted, and will take effect for fiscal years commencing on or after January 1, 2016.

   - If an employee of a company complies with certain requirements (e.g., completion of usage log), the automobile expenses related to work usage is deductible.
   - The ratio of the deductible expenses for work usage is calculated based on mileage for work usage over the total mileage of the automobile.

   The amended Article 27-2 of the Ministerial Decree to the Corporate Income Tax Law lists examples of eligible company automobile use (such as a visit to a company's business location including manufacturing and sales facilities, visit to a customer or agent, attendance at conference and promotional activities, and commuting to and from home).

2. **Reduction of arm's length interest rate**

   The statutory arm's length interest rate on a loan between domestic related parties has been reduced from 6.9% p.a. to 4.6% p.a.

   - The reduced arm's length interest rate takes effect for intercompany loans made on or after March 7, 2016.
   - However, the previous arm's length interest rate of 6.9% p.a. will continue to apply on loans made prior to this date (until expiration of the loans).

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Amendment to the E-Commerce Act Addresses Several Debated Issues

On March 3, 2016, the Korean National Assembly passed amendments to the E-Commerce Act (the "Act"), which were promulgated on March 29, 2016.

The amendments, scheduled to go into effect on September 30, 2016, cover several important issues that have been subject to debate.

Limitation on the Right to Rescind Contracts for Services and Digital Contents

- Before the amendment, the Act provided no firm basis for business entities to limit consumers' rights to rescind contracts for services and digital contents.
- Acknowledging the need, the amended Act now permits a business entity's limitation of customers' rights to rescind contracts for services and digital contents as long as: (1) consumers receive prior notification (indication) of such restriction; and (2) trial products are provided to consumers beforehand.
- This amendment, however, does not apply to unperformed portions of contracts for severable services or digital contents.

Strengthening Online Retail Brokers' Obligations

- Before the amendment, online retail brokers (those who only provide a platform for online sales) were exempt from liability to consumers if they notified consumers of their limited role as a broker and entered into indemnification agreements with relevant online retailers.
- Regardless of the above, under the amended Act, online retail brokers may now be held directly liable to consumers if they perform certain important functions, such as receiving orders or payments.

Modified Sanctions Provisions

- Under the amended Act, the Korea Fair Trade Commission (the "KFTC") may issue an order to temporarily suspend a website, partially or in its entirety, if: (1) it is clear that false or misleading information was posted or deceptive means were used via websites to solicit consumers, or to hinder their rights to rescind contracts; (2) consumers incurred property damage as a result of a relevant transaction; and (3) there is an urgent need to prevent further damage to multiple consumers.
- The amended Act relaxes the requirements for issuing a business suspension order and provides criminal sanctions for any physical interference with a government investigation (e.g., blocking entrance to the investigation site).
- Further, the amended Act provides heavier sanctions for failure to comply with a business suspension order.

Prohibition of Retention of Resident Registration Numbers

- Previously, online retailers could retain consumers' resident registration numbers.
- However, the amended Act excludes such information from the list of personal information that online retailers may retain.
- In keeping with the amendment, the KTC has announced that all resident registration numbers retained by online retailers must be destroyed within three months from the effective date of the amendment.

In addition

- The amendments strengthen obligations of electronic bulletin board service providers in connection with e-commerce via electronic bulletin boards (e.g., internet café and blog services).
- Service providers are now obligated to file dispute relief requests to consumer dispute resolution organizations on consumers' behalf, and to implement measures to prevent consumer damage.

Supreme Court Overturns Seoul High Court's Decision Regarding Personal Data Turnover to Investigative Authorities under the Telecommunications Business Act

In overturning a Seoul High Court's decision, the Supreme Court recently held that a telecommunications service provider ("TSP") may provide its customers' personal data to investigative authorities without obtaining consent of its customers, unless there is clear and objective evidence of abuse by the investigative authority[3].

Background

In this case, the investigative authority requested the TSP to provide the personal data of its customers without a court-issued warrant.

Although the Telecommunications Business Act ("TBA") permits TSPs to provide telecommunications data, including personal data, to investigative authorities without a court- issued warrant, the Seoul High Court found the TSP liable for damages, since it failed to obtain the consent of customers before providing such data.

- The Seoul High Court reasoned that the TBA only imposes a general obligation on TSPs to cooperate with investigative authorities, and did not specifically require TSPs to provide personal data pursuant to requests.
- Further, the Seoul High Court held that TSPs have a duty to: (1) evaluate each request on a case-by-case basis to determine whether data should be provided; and (2) implement adequate procedures to protect the personal data of their customers.

Supreme Court's Decision

The Supreme Court reversed the Seoul High Court's decision, finding that TSPs do not have a duty to examine the totality of circumstances of each request when providing personal data to investigative authorities. Rather, TSPs may provide such data without comprehensively considering factors, such as the legitimacy and urgency of the request, and possible violations of the customers' fundamental rights.

- In other words, so long as the personal data was provided in response to a request that followed applicable procedures and formalities, the Supreme Court held that the TSP did not violate its customers' rights over their personal data.
- However, recognizing potential abuse by investigative authorities, the Supreme Court did impose an obligation on TSPs to refrain from providing personal data under exigent circumstances where there is clear and objective evidence of abuse.

[3] 2012Da105482, Supreme Court, decided March 10, 2016, reversing 2011Na19012, Seoul High Court, decided on October 18, 2012.

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New Amendments to the Korean Arbitration Act Expected to Allow for More Efficient Arbitration in Korea

On May 29, 2016, the amended Arbitration Act (the "Amended Act") was promulgated into law.

The Amended Act, which is due to go into effect by the end of 2016, introduces some important changes that are designed to make the Arbitration Act more consistent with the 2006 amendments to the UNCITRAL Model Law on International Commercial Arbitration (the "UNCITRAL Model Law"). South Korea is the 19th member to adopt the UNCITRAL Model Law, and is now one of the most arbitration-friendly countries in the world.

Some noteworthy changes to the Amended Act include:

1. Ease of the requirement for written arbitration agreement

   Under the current Arbitration Act, an arbitration agreement is valid only if an arbitration agreement is contained in a document, signed in writing by the parties, and exchanged by means of letters, telex, telegrams, fax, or other means of communication.

   However, the Amended Act allows the writing requirement to be met if it is "recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or other means." The statute also expressly recognizes an arbitration agreement evidenced by electronic communication.

   Accordingly, arbitration agreements made through an oral exchange or by any other means that can be supported by evidence such as transcripts or meeting minutes will now be considered a valid arbitration agreement.

2. Expansion of the scope of interim measures

   The current Arbitration Act allows the arbitral tribunal to order a party to take interim measures if requested by a party and only in relation to the subject matter of the dispute (unless otherwise agreed to by the parties). The current Arbitration Act does not enumerate any method of enforcement.

   However, the Amended Act allows the arbitral tribunal to order a party to take interim measures for protection that may be considered necessary to: (1) maintain or restore the status quo, pending determination of the dispute; (2) take action that would prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process itself; (3) provide a means of preserving assets out of which a subsequent award may be satisfied; or (4) preserve evidence that may be relevant and material to the resolution of the dispute.

   The Amended Act provides that the arbitral tribunal's decision on interim measures is enforceable upon court approval.

   In the context of contractual disputes between a subcontractor and a project owner, where the subcontractor wishes to resist an unreasonable bond call by the project owner, the amendments mean that now, such a subcontractor can ask the arbitral tribunal to order an interim measure in accordance with the Amended Act (rather than seeking a preliminary injunction in the Korean courts).

3. **Broader concepts of arbitrability, extension of arbitral tribunal's authority to investigate evidence, and ease of requirements for enforcement of arbitral awards**

   The Amended Act expands the scope of arbitrable disputes to cover certain disputes involving public law issues, including disputes arising from property rights as well as non-monetary property rights. This expansion of scope is opening up a new means of resolution of disputes in public laws through arbitration proceedings.

   Also, the Amended Act allows the tribunal to take on a more effective role. The tribunal can now collect evidence by ordering the appearance of witnesses, and submission of necessary documents in pending arbitration proceedings.

   Previously, the Arbitration Act mandated procedural requirements, such as in-court hearings regarding applications for the enforcement of arbitration awards. However, the Amended Act allows the court to recognize enforcement without necessarily conducting a hearing.

Further, the Amended Act allows for a more effective and speedier conduct in all aspects of the arbitration proceeding, including in the application for arbitration, enforcement of interim decisions, the hearing, and enforcement of arbitration awards.

Such efficiency improvements to arbitration procedures are expected to provide substantial benefits to all parties conducting arbitration in Korea.

Korean Supreme Court Approves Recent Revisions to the KCAB International Arbitration Rules

The Supreme Court approved the recent revisions to the International Arbitration Rules of the Korean Commercial Arbitration Board (KCAB). The revisions are slated to take effect on June 1, 2016.

Following recent trends in international arbitration, the revised International Arbitration Rules provide several mechanisms for a faster and more efficient arbitration process.

Notable Revisions

Emergency arbitration procedure: Most notable of the revisions is the introduction of the emergency arbitration procedure. This procedure provides for immediate relief, analogous to preliminary injunction or preliminary attachment in court litigation.

- This affords parties the opportunity to obtain interim relief through an emergency arbitrator selected by the arbitration institution even prior to the constitution of the arbitral tribunal.
- First introduced in 2006 by the International Center for Dispute Resolution (ICDR) of the American Arbitration Association (AAA), the emergency arbitration procedure was quickly adopted by the Singapore International Arbitration Center (SIAC), the International Chamber of Commerce (ICC), the Hong Kong International Arbitration Center (HKIAC), and the London Court of International Arbitration (LCIA)[4].

Under the revised rules, an emergency arbitrator is required to decide on the procedural timetable within two working days from the date of his/her appointment, and issue a decision on the interim relief application within 15 days.

[4] Emergency arbitration procedures was adopted by the SIAC, the ICC, the HKIAC, and the LCIA in 2010, 2012, 2013, and 2014, respectively.

Such fast-track process is expected to allow for speedier relief when there is an urgent need for preservation of rights, and heighten the effectiveness of international arbitration.

Other Considerations

In addition to revising its International Arbitration Rules, the KCAB has been introducing procedures in the arbitrator selection process that aim to enhance the independence and impartiality of arbitrators, as well as procedures dealing with disputes involving several parties simultaneously.

These changes are expected to result in a more widespread usage of KCAB's services for the resolution of disputes in international transactions.

INTELLECTUAL PROPERTY

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Patent Infringement and Damages Become Easier to Prove under the Amended Patent Act

On March 3, 2016, an amendment to the Patent Act (the "Amendment") was approved by the National Assembly.

This Amendment, which became effective on June 30, 2016, is expected to greatly facilitate proving patent infringement and damages, which used to be difficult to establish in Korean patent cases. Overall, we believe the Amendment is likely to substantially encourage patentees to enforce their patent rights in Korea.

Key features of the Amendment include:

1. Expanded Scope of Document Production Orders

   Under the current Patent Act, document production orders are generally limited to requiring submission of documents necessary for the calculation of damages, and can only require the production of actual documents.

   Under the Amendment, the scope of document production orders has been expanded. Evidence of patent infringement (as well as damages) is subject to production under such orders, and materials other than documents in the scope of such orders are now included.

   Thus, patentees will be able to obtain information stored in electronic form as well as paper documents from defendants. Patentees may also request production of evidence of patent infringement in addition to damages.

   Impact

   This will be especially helpful in cases involving infringement of method patents, which have sometimes been difficult to prove in Korea due to lack of access to the defendant's facilities.

2. Confidential or Trade Secret Status No Longer Sufficient Basis to Withhold Documents

Accused infringers have often refused to submit documents despite the issuance of a court's production order. They have done so on the basis that the documents contain trade secrets, and courts have typically been reluctant to challenge such refusals.

Under the Amendment, an accused infringer may no longer refuse to respond to a document production order simply because the requested materials contain trade secrets, if the materials are essential to proving patent infringement or calculating damages.

Instead, to protect confidentiality, the court may choose to restrict the scope of access to the accused infringer's information (such as by limiting access only to certain portion(s) of the produced materials, or limiting who may have access to the materials once produced).

Impact

Unlike the current provisions governing protective orders in Korea, it will now be possible to limit access to produced materials specifically to the counsel of the requesting party and not the requesting party itself, similar to "attorneys' eyes only" designations under US protective orders.

3. Heavier Sanctions for Non-compliance with Production Orders

Under the Amendment, if the producing party unjustifiably refuses to submit materials that have been ordered to be produced, the court may presume as true the requesting party's arguments as to what the material should describe.

In addition, the court also has discretion to presume that "the facts that the requesting party intended to prove based on the requested materials" are true if: (1) it would be clearly difficult for the requesting party to know the detailed contents of the requested materials without access to the materials; and (2) it would be clearly difficult for the requesting party to establish through other evidence what it is seeking to prove using the requested materials.

Impact

In other words, accused infringers who refuse to comply with document production orders under the new law will run the risk of infringement and damages being presumed against them, if there is no other way for the patentees to obtain the relevant evidence.

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Amendments to the Standard Automobile Insurance Policy Form

In light of the recent issues concerning the increase in car insurance premiums[5], the Financial Services Commission ("FSC"), the Financial Supervisory Service ("FSS"), the Ministry of Land, Infrastructure and Transport ("MOLIT"), and other government authorities recently announced a joint "Plan for Adjustment of Automobile Insurance for High-Priced Cars"[6].

As a result, the FSS confirmed the revised draft of the "Standard Automobile Insurance Policy Form." Upon completion of the public notice period, and deliberation by the Regulatory Reform Committee at the National Assembly, on April 1, 2016, the Standard Automobile Insurance Policy (as amended) was implemented and became immediately effective.

Main changes to the Standard Automobile Insurance Policy Form are:

1. Improved Standards and Reduction in Rental Fees under Automobiles

   To prevent leakage in the insurance claim payment due to excessive rental fees[7], the automobile standard policy form was amended to provide for: (1) rental fees only if a driver uses a rental car company that is officially registered with a local autonomous entity; and (2) only the minimum for car rental fees that is of similar displacement volume and model year of the insured's damaged automobile[8].

2. Requirement of Actual Maintenance and Repair Costs to Prevent Leakage in Insurance Claim Payments

   Until recently, if consumers sought prompt payment of automobile insurance claims for maintenance and repairs, insurers customarily paid such claims in cash.

   The relevant rule was amended so that, in principle, collateral for damages to a policyholder's automobile is used to repair costs only where the automobile was actually repaired.

[5] These concerns were mainly due to excessive car maintenance and fees for high-priced car rentals. Also, there have been concerns about the unequal calculation of fees for high-priced automobiles compared to low-priced automobiles (in relation to temporary loaner cars during the repair of an insured's car).
[6] The agencies had issued a collective announcement on November 19, 2015.
[7] When seeking temporary use of rental cars as a "loaner car" when an insured's car is being repaired
[8] This is in contrast to payment or reimbursement of rental fees based on the insured's damaged car's make and model (regardless of its model year).

SELECTED REPRESENTATIONS

CORPORATE

Apro Service Group Acquires Citi Capital Korea Assets

On January 21, 2016, Citibank Korea sold all of its shares in Citigroup Capital Korea to Apro Service Group for KRW 16 billion.

Simultaneously, Citigroup Capital Korea sold most of its assets except its installment financing and lease financing units to OK Savings Bank, a subsidiary of Apro Service Group, for KRW 225.2 billion.

Kim & Chang represented Citibank Korea in its sale of Citigroup Capital Korea shares to Apro Service Group. We also represented Citigroup Capital Korea in its sale of assets to OK Savings Bank.

In both representations, Kim & Chang provided comprehensive legal advice and services to our clients, including: negotiation and finalization of the definitive purchase agreements, transition services agreement, license agreement relating to the intellectual properties of Citigroup, and transitional IP license agreement, making requisite regulatory and other filings, and handling other closing-related matters. Our professionals were able to successfully close the transactions by engaging in close discussions with the financial regulatory authority, and obtaining the regulatory approval in a timely and efficient manner.

H-Line Shipping, A Portfolio Company of Korea's Leading PEF, Acquires Bulk Shipping Business from Hyundai Merchant

On March 25, 2016, H-Line Shipping, a portfolio company of Hahn & Company, Korea's leading private equity firm, acquired the bulk shipping business from Hyundai Merchant Marine Co. ("Hyundai Merchant"), for USD 100 million.

The transaction required special legal knowledge and expertise, as it involved the transfer of 15 ships from Hyundai Merchant to H-Line Shipping. Hyundai Merchant had entered into long-term chartering agreements with third-party shipowners, such as POSCO, KEPCO, and Glovis. There were separate shipping finance agreements for each ship, and thus required the approval and cooperation from the shipowners, lenders and regulatory agencies in a tight timeframe.

As counsel for H-Line Shipping, Kim & Chang advised on all aspects of the transaction, including transaction structuring, due diligence and preparation, negotiation and finalization of the transaction documents, leading the charge on regulatory approvals and other closing-related matters. We were able to successfully consummate the transaction in a timely and efficient manner.

CJ Korea Express Acquires China's Largest Cold Food Chain Logistic Company with Support from STIC Investments

On January 27, 2016, CJ Korea Express acquired 71.4% stake in Rokin Logistics, China's largest cold food chain logistics company, for the purchase price of USD 387 million, with co-investment from STIC Investments.

This transaction required careful and detailed legal analysis, given that the transaction had to be structured in such a way that would enable a private equity fund that is participating as a co-investor to close the transaction in a timely manner. In addition, after thorough review and analysis of all legal risks applicable to cold food chain logistics company under Chinese laws, our lawyers worked to ensure all the various protective legal measures were incorporated into all relevant documentation.

Kim & Chang represented CJ Korea Express to provide comprehensive legal services in connection with the transaction by working together with the Chinese local counsel, including without limitation, on: legal due diligence; preparation, negotiation and execution of the definitive documentation; expedited approval of the concentration of the business operator from China's Ministry of Finance and Commerce via a fast-track process; and closing-related matters.

Korea's Largest Entertainment Company Sells Newly-Issued Shares to Alibaba Group

On March 23, 2016, S.M. Entertainment, Korea's largest entertainment company, sold newly-issued shares to Alibaba Group for approximately KRW 35.5 billion. The sale represents 4% of the total outstanding shares.

As counsel for S.M. Entertainment, Kim & Chang advised on all aspects of the transaction, including transaction structuring and preparation, negotiation and finalization of the transaction documents, as well as closing-related matters for the issuance of new shares by a public company.

SECURITIES

Kim & Chang Advises on USD 100 Million Offshore Issuance of Privately Placed Bonds by Lotte Shopping

On January 29, 2016, Lotte Shopping Co., Ltd. ("Lotte Shopping") undertook its offshore issuance of privately placed bonds with 3-year maturity in the amount of USD 100 million.

As we did in 2014 and 2015, Kim & Chang again acted as legal advisor to the underwriter, The Bank of Tokyo-Mitsubishi UFJ.

We performed a key role in successfully closing this issuance by advising on its legality and other issues under the Korean laws, which can arise when a Korean company issues foreign law-governed privately placed bonds offshore.

REAL ESTATE

Ponte Gadea Group, Owned by the Spanish Billionaire and Owner of Zara, Amancio Ortega, Acquires M-Plaza Building in the Heart of Seoul

On February 1, 2016, Ponte Gadea Group acquired 504,644 shares of Urban Lounge M Inc. (now known as Pontegadea Korea Inc., the "Target Company"). This represented the total issued and outstanding shares of the Target Company, which now owns a building known as "M-Plaza."

M-Plaza is located in Seoul's Myeong-dong area (the "Properties"), where its affiliate, the owner of a luxury retail brand, Zara, opened its first flagship store in Korea (the "Transaction").

Kim & Chang contributed to the successful closing of the Transaction by:

- Providing comprehensive legal advice during all stages of the Transaction, including legal due diligence for the Properties, negotiation and execution of a share purchase agreement for the Transaction (the "SPA");
- Optimal structuring of the payment of the purchase price under the SPA, and funding for the repayment of the project financing loan of the Target Company (in the amount of approximately KRW 190 billion) immediately after the closing of the Transaction, taking into account the applicable foreign exchange laws and regulations; and
- Proposing optimal transaction terms designed to minimize any risks associated with the lease of the Properties used for operating large-scale stores and tourism accommodation facilities.

ANTITRUST & COMPETITION

KFTC Clears Oracle of All Anticompetitive and Unfair Business Practice Allegations

On April 12, 2016, the Korea Fair Trade Commission ("KFTC"), found that Oracle Korea ("Oracle") did not violate Korea's main competition statute, the Monopoly Regulation and Fair Trade Law ("FTL").

Kim & Chang represented Oracle throughout the entire course of the investigation, and during the two oral hearing sessions held by the KFTC.

The KFTC investigated Oracle for allegedly abusing its market dominance and committed "unfair trade practices" with respect to its Data Base Management System ("DBMS") services and software licenses by allegedly committing the following acts:

Tying

Oracle was alleged to have unlawfully tied its DBMS maintenance services with DBMS upgrades. To demonstrate an illegal tying arrangement, the KFTC must first show that the products were "separate."

The KFTC attempted to do this by asserting that DBMS maintenance services are not in the same relevant product market where DBMS upgrades belong.

However, at the KFTC hearing, Kim & Chang established that: (1) there were no separate products, because the relevant market should be defined as the "DBMS system" market (which includes DBMS software, maintenance services and upgrades); and (2) Oracle's sales policy did not restrain competition, since it did not lead to increased prices or shutting out Oracle's competitors from the market.

Coerced Purchases

Oracle was alleged to have unlawfully coerced DBMS customers to purchase unnecessary maintenance services for all DBMS software licenses.

At the KFTC hearing, Kim & Chang successfully established that there was no illegal coercion, because: (1) Oracle's service requirement policy had a legitimate and valid purpose to protect its intellectual property rights and prevent unauthorized use; (2) customers were made aware of the policy since it was included in the license agreement into which they entered; (3) they were free to choose an alternative maintenance services other than that of Oracle; and (4) there was no competitive harm attributable to the policy.

As a total clearing of all allegations in a market dominance case is unusual, Kim & Chang's ability to secure a clearance for Oracle of all allegations from the KFTC was a notable achievement, and demonstrates excellence in terms of legal, economic, and technical expertise.

INSURANCE

Pacific Life Re Limited Receives Reinsurer License in Korea

On March 31, 2016, the Korean Branch of Pacific Life Re Limited ("Pacific Life Re") secured its license and authorization from the Financial Services Commission ("FSC") to conduct reinsurance business in Korea.

Pacific Life Re is a foreign reinsurer based in the United Kingdom ("U.K."). It underwrites reinsurance for life insurance risks in the U.K., Ireland, and across Asia, and North America.

In relation to establishing the Korean Branch of Pacific Life Re, Kim & Chang successfully acted as its legal and regulatory counsel, including obtaining the approvals necessary to establish the domestic branch of a foreign reinsurer.

LITIGATION

Supreme Court Overturns a KFTC Decision against Ramen Manufacturers for Price Fixing

In a recent decision, the Supreme Court of Korea overturned Korea Fair Trade Commission's ("KFTC") decision imposing corrective orders and fines on ramen manufacturers. This case involved the alleged price fixing ramen noodles, in violation of the Monopoly Regulation and Fair Trade Law (the "FTL").

The Supreme Court rendered a decision in favor of our client, ruling that there was insufficient evidence to support the existence of a price fixing agreement, in violation of Article 19, Paragraph (1) of the FTL's prohibition against improper concerted acts.

Details

Although the KFTC had relied on statements by the leniency applicant to allege that the first price increase was the result of price fixing, the Supreme Court found that the statements were not sufficient to support the existence of an agreement, because: (1) they were merely hearsay[9]; and (2) they were not sufficiently specific or accurate as they only indicated discussions on the need to raise prices or "follow-the-leader" pricing.

As for the subsequent price increases, the KFTC relied on the information exchange of the leading manufacturer with other manufacturers regarding the timing and amount of ramen price increases.

Although the Supreme Court acknowledged that such information exchange did occur, the Court ruled that the information exchange was insufficient to support the existence of an agreement to increase the ramen prices, in light of the following factors:

- In the Korean domestic ramen market, there has been a long tradition of manufacturers following the market leader's price increases.
  - The market leader's ramen prices are subject to de facto government control. Since it would be reasonable for the market leader's competitors to follow the prices to which the market leader agreed with the government, it would be difficult to view the prices to be a result of an agreement to fix prices.
- The wide variety of ramen products makes it difficult to fix or otherwise agree upon the price of each product. The large variance in price increases across the various ramen types makes it unclear as to whether there even was an "appearance of concerted act."
- In addition, there were other circumstances that were inconsistent with price fixing, such as certain manufacturers who delayed price increases or provided various types of subsidies and support to those in the distribution chain.

Thus, the Supreme Court found that the statements of employees of the leniency applicants were not credible and concluded that the supporting evidence was mere information exchange, and not enough to support allegations of an agreement that would constitute an improper concerted act.

As a result, the Supreme Court reaffirmed the KFTC's burden of proof in cartel cases by requiring the KFTC to base its case on more concrete evidence that proves a mutual "meeting of the minds" to fix prices (e.g., appearance of a concerted act, history and background of information exchange).

This case posed considerable challenges for us in defending the case, in particular, because the KFTC was supported by the proactive and aggressive cooperation of the leniency applicant. However, Kim & Chang was able to achieve a successful outcome for our client by submitting specific rebuttal evidence, and making aggressive challenges to the KFTC's allegations, and to the credibility of the leniency applicant's statements.

[9] Not based on the direct experience of the person giving the statement.

Busan High Court Reverses Lower Court's Judgment in Ordinary Wage Case in Favor of the Employer

In a recent case brought by employees involving "ordinary wages," the Busan High Court issued a judgment in favor of the employer company.

Reversing the lower court's position, and accepting the employer's argument that the good faith principle precluded the inclusion of alleged bonuses in calculating the employees' "ordinary wages," the Busan High Court considered the financial difficulties the company might face, as well as previous wage agreements between the company and its employees.

Lower Court's Decision

The lower court had ruled against the company, holding that the bonuses the employees had received constituted "ordinary wage," which is the basis for calculating statutory allowances.

In finding for the employees, the lower court had denied the company's argument that the employee's claim was in violation of good faith principles, and held that paying the additional statutory allowances would neither cause "serious business difficulties" nor "threaten the very existence" of the company. In particular, the lower court found that: (1) the additional amount the company would incur by including the bonus in ordinary wage would not be high (compared to total personnel costs); (2) the company could afford the additional payment (considering the size of its business and its earnings); (3) the company had been providing the employees with incentives and/or performance bonuses during the years when business was good; and (4) it was difficult to conclude that the company suffered a substantial deficit in 2014, because the company had achieved high net profits for in the recent years (until 2012).

Details of the Busan High Court's Decision

However, in its decision recognizing that the employees' claims were in violation of the good faith principle, the Busan High Court ruled that the plaintiffs' claimed amount far exceeded the level of wages previously agreed to between the company and the employees.

Specifically, the Busan High Court found that: (1) the amount of ordinary wage including the bonus would increase by 60% (compared to the amount of previously agreed-upon wages); and (2) the additional statutory allowances the company would have to pay, if the bonus was included in ordinary wage, would far exceed the previously agreed-upon wage increase.

The Busan High Court paid close attention to the fact that: (1) the operating losses of the company had been continuously increasing since 2014; (2) the additional costs the company would have to bear would be substantially higher than yearly net profit; (3) the company was struggling with an increased debt ratio and net debt-to-capital ratio, due to the worldwide decline in the shipbuilding industry; and (4) the credit rating of the company had been downgraded several times.

Accordingly, the Busan High Court found that the company would face serious business difficulties arising from the unexpected financial burden of including bonuses in the ordinary wage calculation.

Our Representation

During the appellate process, Kim & Chang, representing the employer, examined the company's business conditions from various perspectives, such as the state of the industry, the company's profitability, and its financial structure.

Based on this in-depth analysis, we successfully argued that the business difficulties the company faced from the employees' back-pay claims were serious enough such that it should be excluded on the good faith principle. We also provided a comprehensive setof evidence, such as the rate of increasing net pay,the increasing debt ratio, the loss of other businessopportunities, and lost new hire opportunities.

Potential Impact

The decision by the Busan High Court is noteworthyin that it not only reaffirmed the Supreme Court'sprevious ruling concerning the applicability of thegood faith principle in ordinary wage cases, but alsoapplied more concrete standards to arrive at thisconclusion.The decision is expected to have a significant impacton other pending ordinary wage cases dealing withthe same or similar issues.

INTERNATIONAL ARBITRATION &
CROSS-BORDER LITIGATION

Kim & Chang Successfully Represents a Foreign Ship Components Supplier in a KCAB International Arbitration

In a hearing that took place in Seoul before a sole arbitrator (a U.S. national), our International Arbitration & Cross-Border Litigation Practice Group successfully represented a foreign ship components supplier in a KCAB international arbitration.

Background

The arbitration was filed by a ship engine builder for damages incurred from alleged defects in supplied components that were incorporated into its engine system and a number of vessels. The underlying contract was governed by Korean law. The foreign supplier designed, manufactured, and supplied components based on the specifications provided by the engine builder. However, at the commissioning stage of one of the vessels, it was discovered that the vessel and the engine were built to different specifications, and that the relevant class limits could not be met.

The engine builder sought damages based on a general product warranty clause in the supply contract, which provided that the component had to be fit for purpose.

The engine builder argued that the component supplier had the obligation to check whether the specifications provided by the client were appropriate and should have designed its components accordingly, or, at least should have designed the components so that it could cover a substantial margin of error in the specifications.

Details

Along with our client and industry experts, Kim & Chang's International Arbitration & Cross-Border Litigation Practice Group attorneys conducted intensive analysis to identify the distinctive technical features of the components in question, and the current practice of the shipbuilding industry.

After a four-day-hearing at the Seoul International Dispute Resolution Center, the arbitrator rejected all claims of our opponent (the engine builder), and recognized our client's (the supplier's) counterclaim for unpaid portions of the contract.

Our client was awarded arbitration costs and most of the legal fees.

This case involved specialized and complicated technical issues regarding alleged defects in made-to-order products and the interaction of various system components.

Kim & Chang was able to achieve a successful outcome for the client through an accurate understanding of the technical details and related industry practices.

Successful Dismissal of an Application for Interim Relief under the Emergency Arbitration Procedures of the ICC

A team from our International Arbitration & Cross-border Litigation Practice Group successfully defended a domestic corporation against an application for interim relief under the emergency arbitration procedures of the International Arbitration Rules of the International Chamber of Commerce (ICC).

The proceedings were presided by a French national who was appointed to serve as the emergency arbitrator. This dispute was governed by the laws of Switzerland, and was seated in Geneva, Switzerland.

Background

In this case, the domestic corporation faced an application by its European counterpart, which sought immediate prohibition against the usage of certain technology information.

Because the technology in question was central to the client's business operations, an approval of the other side's interim application would have had devastating consequences to the client's business. In an apparent move to make the domestic corporation's defense more difficult, the applicant submitted its application on a holiday, in a lengthy Application that totaled almost 1,000 pages (including exhibits).

Details

Our International Arbitration & Cross-Border Litigation Practice Group immediately mobilized a team of dedicated professionals who proceeded to work around the clock for several days and within one week.

They successfully put together an Answer, which was similar in volume to the other side's Application. Four days later, our attorneys attended the hearing in Paris, examining witnesses and making oral pleadings. The Emergency Arbitrator rendered a decision within just two days thereafter, dismissing the other side's Application for prohibition against the use of technology.

This allowed our client to avert the potentially devastating consequences to its business.

Considerations

These types of emergency arbitrations may be filed more frequently in the future, especially against corporations that rely on the technical cooperation of another company as a key part of its day-to-day business.

However, to date, there are only a few firms, including well-known international firms, which have had first-hand experience in this type of procedure.

Going forward, the recent successful experience by Kim & Chang's International Arbitration & Cross-Border Litigation Practice Group in the emergency arbitration proceeding is expected to lend valuable insight in such proceedings.

Tax

Supreme Court Delineates Factors to Determine the "Place of Effective Management" under the Corporate Income Tax Law

Recently, the Supreme Court opined that under the Corporate Income Tax Law ("CITL"), the "place of effective management" means the place where important management and commercial decisions are actually made to carry on a company's business. The Court also noted that important management and commercial decisions, in this context, mean, among other, making decisions and managing the company's long-term strategy regarding policy, finance, investment, management and disposal of main assets and core activities for generating income.

Kim & Chang successfully served as legal counsel for the appellant in this case.

Background

Article 1 of the CITL defines the term "domestic company" as a company having its headquarters, main office or a place of effective management in Korea. Therefore, even if a company is established in a foreign country, it can be regarded as a domestic company under the CITL, as long as its place of effective management is located in Korea.

The Korean tax authorities imposed tax on the appellant, arguing that since its place of effective management is located in Korea, the appellant should be viewed as a domestic company.

On appeal, the Supreme Court ruled that the tax imposition against the appellant should be cancelled on the grounds that its place of effective management was not located in Korea.

In rendering its decision, the Supreme Court offered its own interpretation on the definition and criteria for finding a place of effective management, which goes beyond those mentioned in the CITL.

Specifically

The Supreme Court delineated the following criteria as factors for determining the place of effective management. Further, the Court suggested that a comprehensive consideration of the factors should be made based on the overall circumstance.

- Place at which the board of directors or similar decision-making meetings are usually held;
- Place at which the chief executive and other senior executives normally work;
- Place from which high-level managers perform daily management tasks; and
- Place at which accounting system is accessed daily and is maintained.

AWARDS & RANKINGS

Kim & Chang Breaks into Top 5 Ranking - Financial Times Asia-Pacific Innovative Lawyers Report 2016

Recently, the Financial Times ("FT") issued its FT Asia-Pacific Innovative Lawyers Report 2016. For the first time, Kim & Chang has broken into the top 5 ranking in the "FT Law 25 - Asia-Pacific Headquartered Firms" category, ranking 5th among the top 25.

For the FT Asia-Pacific Innovative Lawyers Report 2016, FT received more than 460 submissions, and nominations from 72 law firms and 82 in-house legal teams.

Of the South Korean law firms, Kim & Chang received the highest rankings in the "Corporate" and "Finance" categories. Our firm is especially honored to have earned the highest score in the "Finance - Asia-Pacific Headquartered Firms."

Specifically, our firm was recognized for the following three transactions, with two of them receiving the highest honors ("Standout" ranking) :

- "Preliminary approval for Korea's first internet-only bank" ("Standout");
- "First ever issuance of covered bonds under Korea Covered Bond Act of 2014" ("Standout"); and
- "Offshore RMB (Panda) Bond offering by South Korea" ("Commended").

In addition, two of the transactions were ranked in the "Corporate & Commercial–Asia-Pacific Headquartered Firms":

- "Acquisition of SBI Mortgage by The Carlyle Group ("Commended"); and
- "Cheil Industries and Samsung C&T Merger" ("Commended").

Law firms and in-house legal teams were invited to submit their innovations. FT, together with RSG Consulting, researched the submissions through client, lawyer, and expert interviews. Market experts were also consulted on selected submissions. For the 2016 Report, 326 clients, senior lawyers, and executives were interviewed to arrive at the final rankings.

South Korea National Law Firm of the Year - Chambers Asia-Pacific Awards 2016

Kim & Chang has been awarded "South Korea National Law Firm of the Year" by Chambers Asia-Pacific Awards 2016, organized by Chambers and Partners, an internationally renowned legal publication publishing a directory of the world's leading law firms.

Chambers Asia-Pacific Awards 2016 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. The awards were held at Fullerton Hotel in Singapore on April 8, 2016.

Korea Law Firm of the Year - IFLR Asia Awards 2016

Kim & Chang has won the "Korea Law Firm of the Year" award at the IFLR Asia Awards 2016. Our firm has been named the top law firm in Korea for the fourteenth consecutive years by IFLR (International Financial Law Review), which is published by Euromoney, one of the world's leading media groups. In addition, Restructuring of PT Berlian Laju Tanker in which our firm acted as legal advisor, was selected as the "Restructuring Deal of the Year." Mr. Sookyung Lee of our firm was also recognized as one of "Rising Stars of the Year" in M&A.

The IFLR Asia Awards 2016 are based on firm performance in 2015, and the ceremony was held at the Island Shangri-La in Hong Kong on March 3, 2016.

Top rankings for all 7 practice areas and recognition of 27 leading individuals - Chambers Global 2016

Kim & Chang ranked "Band 1" in all 7 practice areas surveyed in the 2016 edition of Chambers Global, a leading law firm directory published by Chambers & Partners. The firm had the highest ranking among law firms in South Korea. The firm also ranked "Band 4" in International Arbitration in Asia-Pacific region.

Separately, 27 professionals were selected as "Leading Individuals" in their respective practice areas; additional 4 professionals of the firm were recognized as "Other Noted Practitioners" in their fields.

Our winning details are as below:

Practice Area

South Korea
- Banking & Finance: Band 1
- Capital Markets: Band 1
- Corporate/M&A: Band 1
- Dispute Resolution: Arbitration: Band 1
- Dispute Resolution: Litigation: Band 1
- Intellectual Property: Band 1
- International Trade: Band 1

Asia Pacific
- Arbitration (International): Band 4

Leading Individuals

South Korea
- Banking & Finance: Soo Man Park, Ick Ryol Huh, Young Kyun Cho, Hi Sun Yoon, Young Min Kim, Jina Myung
- Capital Markets: Chang Hyeon Ko, Young Man Huh, Myoung Jae Chung
- Corporate/M&A: Kyung Taek Jung, Young Jay Ro, Jong Koo Park, Young Man Huh, Young Hoon Byun (Expertise Based Abroad - Japan), Jong Hyun Park**, Sun Yul Lee**
- Dispute Resolution - Arbitration: Byung Chol Yoon*, Eun Young Park, Liz Kyo-Hwa Chung, Kay-Jannes Wegner, Richard Menard, Joel E. Richardson**
- Dispute Resolution - Litigation: Jin Yeong Chung, Jung Keol Suh
- Intellectual Property: Young June Yang, Duck Soon Chang, Chun Y. Yang, Young Kim, Sang-Wook Han, Martin Kagerbauer (Expertise Based Abroad - Germany)
- International Trade: Ju-Hong Kim **

Korea Law Firm of the Year - Who's Who Legal Awards 2016

Kim & Chang has been awarded "Korea Law Firm of the Year" by Who's Who Legal Awards 2016 held by Who's Who Legal, an international legal media affiliated with Law Business Research. This is the eleventh 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 at the University Club in New York on April 11, 2016.

* Star Individual: A lawyer with exceptional recommendations in his field.
** Other Noted Practitioner: An individual who handles notable matters and / or has received some recommendation during the course of our research. However, he has not received a sufficiently high level of sustained recommendation to be included in the printed version of the Chambers guide. Instead, the 'Other Noted Practitioner' category shows that the individual is on Chambers' research radar.

SEMINARS

Korea Pharmaceutical Manufacturers Association's Compliance & Ethical Management Workshop

Ms. Ha-Yoon Cho and Mr. Han-Cheol Kang of Kim & Chang participated as speakers in Compliance & Ethical Management Workshop.

This workshop, hosted by Korea Pharmaceutical Manufacturers Association on April 21st through 22nd, was held to discuss on RTM and share practical cases of internal Compliance Program (CP) management for CP managers at pharmaceutical companies.

In the workshop, Ms. Cho gave a presentation on requirements for having legality of speech and counsel and Mr. Kang gave a speech on introduction plan for CP rating.

Seminar on Law and Policy of Korea Fair Trade Commission's Investigation

Mr. In Sung Yoon of Kim & Chang participated as a debater at a seminar on law and policy of Korea Fair Trade Commission (KFTC)'s investigation.

The seminar, hosted by Seoul National University Center for Competition Law, was held at Korea Fair Trade Mediation Agency on April 11th. The seminar was held to discuss issues on improvement plan for KFTC's investigation procedure and concerted action of information exchange. Mr. Yoon participated as a panel at the seminar titled "Main Issues on Companies' Guarantee of Right in Investigation."

Auto Parts Industry Development Strategies Spring Seminar 2016

Messrs. Chiyong Rim and Jong Kwang Lee of Kim & Chang participated as presenters in Auto Parts Industry Development Strategies Spring Seminar 2016.

This seminar hosted by KAP was held on April 14th at the K Seoul hotel. Mr. Rim and Mr. Lee gave presentations on an outlook on corporate restructuring and improvement for governance structure and succession of management rights, respectively.

PRO BONO

Former Constitutional Court Justice and Former Chief Prosecutor Among the Many Who Donate Their Voice and Time to Become "Storybook Readers" for Multicultural Children

Kim & Chang Committee for Social Contribution ("CSC") held a "Voice Donation Project" for children of multicultural families.

Since 2014, the Legal Academy for Multicultural Families (which is part of the Kim & Chang CSC) has given immigrant mothers of multicultural families a chance to discuss their difficulties in raising their multicultural children in Korea, including their inability to read storybooks to their children.

Having heard this, the Kim & Chang CSC members participated in the "Voice Donation Project," reading aloud children's storybooks that were simultaneously recorded. These recordings will be distributed to each multicultural family through the Multicultural Family Support Center.

Kim & Chang Committee for Social Contribution and Jongno-gu District Office Sign MOU to Collaborate on Outreach and Welfare Promotion for Underprivileged Youth

Kim & Chang Committee for Social Contribution ("CSC") and Jongno-gu Office (the central Seoul district office) signed a MOU, showing their joint commitment to work together in various outreach and welfare promotion efforts geared towards underprivileged children in the neighborhood. Jongno-gu is the district in which Kim & Chang's offices are located.

Through this joint effort, Kim & Chang CSC, together with "K&C Friends" (a volunteer group comprised of Kim & Chang employees), will strive to create a children-friendly city. They will do this by supporting the running of an English study facility for low-income families, legal awareness and education-based programs to develop future lawyers, and other voluntary activities with "K&C Friends".

Newsletter

Newsletter

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