KIM & CHANG

Newsletter

A Quarterly Update of Legal Developments in Korea

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UPDATES

CORPORATE

By Jong Koo Park (jkpark@kimchang.com) and Sang Taek Park (sangtaek.park@kimchang.com)

Supreme Court Recognizes Beneficial Shareholders' Right to Claim for the Access to the Register of Beneficial Shareholders

On November 9, 2017, the Supreme Court ruled that beneficial shareholders may claim access to beneficial ownership information of their companies. The Court reasoned that under Article 396(2) of the Commercial Act, the register of beneficial shareholders prepared pursuant to the Financial Investment Services and Capital Markets Act ("FSCMA") has the same effect as the register of shareholders under the Commercial Act.

Background:

In this case, the Solidarity for Economic Reform claimed access to – and copy of – the register of shareholders of large construction companies which were administratively fined for collusion in the "Four major river project," for the purpose of taking derivative actions as the beneficial shareholders of such companies.

However, the companies rejected the Solidarity for Economic Reform's claim on the ground that disclosure of the register of beneficial shareholders may violate the Personal Information Protection Act ("PIPA"). In rejecting its request, the companies stated that the reason for denial is due to the registers containing shareholders' personal information, such as his/her name or address, and the FSCMA provides no supporting provision to grant access. For this reason, in July 2013, the Solidarity for Economic Reform filed a claim with the court for the rights to access and copy the register of shareholders.

Court's Reasoning:

In rendering its decision, the Court explained that it recognized shareholders' rights to access and copy the register of shareholders under the Commercial Act. The Court further clarified that through its decision, the goal is to protect the interest of shareholders and companies through the exercise of the shareholder rights, and to prevent controlling shareholders from abusing their rights of controlling shareholders.

In effect, the Court's ruling allowed beneficial shareholders to claim access to and to copy the register of beneficial shareholders of their companies. The Court further reasoned that this access and copy right is allowed under Article 396(2) of the Commercial Act, since the register of beneficial shareholders pertaining to listed shares deposited at the Korea Securities Depository in accordance with the FSCMA has the same effect as the register of shareholders under the Commercial Act. In addition, the Court stated that under Article 396(2) of the Commercial Act, the scope in which the claim for access or copy is allowed (according to the above provision) is not limited to "all of the matters indicated in the register of beneficial shareholders." Moreover, "the matters indicated in the register of shareholders" – such as shareholder's name and address, the type of shares by shareholder and the numbers thereof – access to, or copy of, the register of beneficial shareholders is also within this scope. Thus, the claim cannot be regarded as violating the PIPA, limiting the collection or provision of personal information to third parties.

Significance of the Decision:

The register of shareholders of listed companies prepared under the Commercial Act only indicates the Korea Securities Depository as the shareholder of

the entire deposited shares, but not the name of the beneficial shareholders. Hence, this is why the access to, and copy of, the register of beneficial shareholders under the FSCMA is important.

However, as opposed to the Commercial Act, the FSCMA does not include any supporting provision for the access to, and copy of, the register of beneficial shareholders, and the rights thereto, restricting the exercise of the rights of minority shareholders by beneficial shareholders.

Through this decision, the Supreme Court made it clear that Article 396(2) of the Commercial Act may also analogically apply to the register of beneficial shareholders, and thus, allowed the claim for the access to, and copy of, the register of beneficial shareholders.

Going forward, it is expected that the claim for the access to, and copy of, the register of beneficial shareholders will be widely recognized in exercising the rights of minority shareholders.

ANTITRUST & COMPETITON

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National Assembly Passes Amendments to Three Key Fair Trade Statutes

On December 29, 2017, the National Assembly passed the amendments to the Fair Agency Transactions Act ("Agency Act"), Fair Transactions in the Franchise Business Act ("Franchise Act"), and the Fair Transactions in Subcontracting Act ("Subcontracting Act").

The passage of these amendments reflects the current administration's strong desire to fix the practice of abuse of superior bargaining position. Tackling the abuse of dominant market position practice has been one of the key policy goals of the current administration. Sang-Jo Kim, chairman of the Korea Fair Trade Commission ("KFTC"), has expressed the KFTC's strong intention to speed up this process, emphasizing that prohibition of abuse of market dominant position is fundamental to "economic democratization."

Key Changes:

1. Key amendments to the Agency Act

Amendment	Description
Introduction of monetary reward for report of violation	▪ The amendment introduces monetary reward for reporting suspected violation of the Agency Act if supported by sufficient evidence.
Introduction of document investigation	▪ The amendment provides the legal basis for the KFTC's investigation of documents and the announcement of the result of such investigation. To ensure credibility of the investigation, an administrative fine is imposed for failure to submit documents or submission of false documents. The amendment prohibits retaliation for cooperation with the KFTC's document investigation.

2. Key amendments to the Franchise Act

Amendment	Description
Metropolitan governments now enabled to register/cancel disclosure of information	▪ In addition to the KFTC, the amendment enables metropolitan governments to handle the registration and cancellation of disclosure of information. - This will expedite the registration/cancellation process, and enable those who are contemplating a franchise to obtain the most recent information necessary for opening the business.
Prohibition of unilateral change of business area by franchiser	▪ The amendment prohibits unilateral change of franchisee store's business area by the franchiser without prior consultation with the franchisee store. - Violation is sanctioned by corrective order and/or administrative fine.

Amendment	Description
Prohibition of retaliation	▪ The amendment outlaws a franchiser's retaliatory measures (e.g., termination of agreement) for a franchisee's remedial measures against the franchiser (e.g., report of damages suffered due to the franchiser's violation of the law, filing for a mediation of dispute, and cooperation with a document investigation).
Addition of grounds for three-times compensation for retaliation	▪ The amendment obliges a franchiser to compensate for three times the damages suffered by a franchisee store due to retaliatory measures. - Currently, the three-times compensation rule is only applied to provision of false/exaggerated information and unjust refusal to trade.
Introduction of monetary reward for report of violation	▪ The amendment introduces monetary reward for report of franchiser's suspected violation of the Franchise Act if supported by sufficient evidence.

3. Key amendments to the Subcontracting Act

Amendment	Description
Expanded scope of protected technical materials	▪ The amendment protects a subcontractor's technical materials if the subcontractor exercised only a "reasonable effort" to protect such materials as secret. This amendment aims to provide greater protection for a subcontractor's technical materials. - The Subcontracting Act is used to only protect a subcontractor's technical material if the subcontractor exercised "significant effort" to protect such material as secret.
Expansion of grounds for requesting an adjustment or consultation of subcontracting prices	▪ The amendment enables a subcontractor to request increase of subcontracting price if there is a change to the supply prices, such as labor costs. - Prior to the amendment, the Subcontracting Act used to provide that the subcontractor can request for an adjustment or consultation of the subcontracting price only if there was a change to the price of ingredients.
Addition of prohibited grounds for retaliatory measures by the principal contractor	▪ In addition to the current list of prohibited grounds for retaliatory measures against subcontractors, the amendment provides that the principal contractor may not take retaliatory measures against the subcontractor for the subcontractor's cooperation with the KFTC's investigation of alleged violation of the Act by the principal contractor.
Addition of grounds for three-times compensation	▪ The amendment obliges the principal contractor to compensate for three times the damages suffered by the subcontractor due to retaliatory measures. - Currently, the three-times compensation rule is only applied for misuse of technology, unjust cut or determination of subcontracting price, and unjust return of goods.

Amendment	Description
List of the types of business interference	▪ The amendment stipulates the following acts as business interference: placing limits on the subcontractor's export of its technology; requesting business information from the subcontractor; and demanding the subcontractor to transact only with the principal contractor or entities designated by the principal contractor.
Change to procedures regarding mediation	▪ To ensure the effectiveness of mediation, the statute of limitations for the property rights subject to mediation will be suspended if a mediation action regarding a violation of the Subcontracting Act is filed. ▪ Also, if the mediation is successful, the mediation agreement will have the effect of a consent judgment. - Thus, if the principal contractor fails to perform his/her obligation under the mediation agreement, the subcontractor may, without filing a separate suit, ask the court to enforce the mediation agreement.

Significance:

We believe the introduction of monetary reward for reporting a violation and enhanced compensation in case of retaliation will incentivize the agents/franchisees/subcontractors to actively report violations of the above statutes. Moreover, principals/franchisors/principal contractors are now advised to take extra caution in their response to the KFTC's document investigation, as the amendment imposes fines for failing to submit documents or submitting false documents. Principal contractors must be especially mindful of the suspension of statute of limitations in the mediation process.

In light of these enhanced regulations, companies are advised to conduct a comprehensive review of their agency/franchise/subcontracting contracts and remedy any loopholes. Companies may also wish to consider creating and implementing a long-term compliance system (or updating their compliance system to reflect these changes).

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Key Amendments to 2018 Labor Laws

We highlight below key labor law changes that have become effective earlier this year, and those that will become effective in May of this year.

- **Strengthened guarantee of annual leave for employees who have worked for less than one year (Article 60 of the Labor Standards Act (the "LSA"): Effective May 29, 2018)**

  Currently, the LSA provides that employees who have worked at a company for less than one year accrue one day of paid leave per month within the first year of continuous employment. However, if an employee uses these paid leave days within the first year of employment, then the number of used paid leave days is offset against the number of paid annual leave days the employee is awarded in the second year of employment (15 days of paid leave is given to employees whose attendance rate is 80 percent or higher in the first year of employment (see Article 60 (3) of the LSA)). Therefore, in total, employees only receive a maximum of 15 days of paid annual leave for the first two years of employment.

  In the amended LSA, effective May 29, 2018, Article 60(3) of the LSA has been deleted. Hence, even if employees who have worked for less than one year use their paid leave days, there will be no offset against the paid annual leave days (i.e., 15 days) provided to the employees after one year of continuous service with the company. As a result, employees will be able to receive up to 26 days of paid annual leave during the first two years of employment (up to 11 days in the first year of employment, and 15 days in the second year of employment).

- **Strengthened guarantee of annual leave for employees reinstated after childcare leave (Article 60 of the LSA: Effective May 29, 2018)**

  Under the current version of the LSA, the childcare leave period does not count towards attendance at work that is used to calculate an employee's number of paid annual leave days.

  However, when this amendment to the LSA becomes effective in May, the childcare leave period will be considered as attendance at work used to calculate the number of paid annual leave days entitled to an employee. Further, the paid annual leave days for employees reinstated after childcare leave will also be fully guaranteed. Article 60(6)(iii) of the amended LSA will be applicable to employees who apply to take childcare leave after the effective date of the amended LSA, specifically, Article 60(6)(iii).

- **Strengthened obligation by employers to address sexual harassment in the workplace (Article 14 of the Gender Equal Employment Opportunity and Work-family Balance Assistance Act (the "GEEA"): Effective May 29, 2018)**

  Under the amended GEEA, anyone can report to an employer an occurrence of sexual harassment in the workplace. The employer then has the obligation to conduct an investigation and take necessary measures to protect the victim, such as changing the place of work or placing the victim on paid leave. An employer who violates these obligations may be subject to an administrative fine of up to KRW 5 million.

Additionally, the amended GEEA prohibits an employer from dismissing or taking any other disadvantageous measures against an employee who reported the occurrence of sexual harassment in the workplace and/or the victim. The amended law also increases the criminal fine (from KRW 20 million to KRW 30 million) against an employer in violation of this amendment.

Further, under the amended GEEA, even where the acts of sexual harassment are committed by, for example, a client or customer, the employer becomes obligated to take necessary measures to protect the victim, such as changing the place of work or placing the victim on paid leave. A violation of these obligations may subject the employer to an administrative fine of up to KRW 3 million.

Further, an employer is obligated to post the contents of the annual sexual harassment prevention training. An employer in violation of this obligation may be subject to an administrative fine of up to KRW 5 million.

- **Leave to be provided for fertility treatment ("Fertility Treatment Leave"): three days of leave per year (Article 18-3 of the GEEA: Effective May 29, 2018**)

  The amended GEEA now requires an employer to provide Fertility Treatment Leave (three days per year) to help employees receive medical fertility treatments, such as artificial insemination and IVF (in vitro fertilization). An employer is required to provide the first day of the three days of Fertility Treatment Leave as paid leave (the other two days are unpaid leave days).

  Also, the amended GEEA prohibits employers from taking disadvantageous measures (such as dismissal or disciplinary action) against an employee due to Fertility Treatment Leave. When an employer violates this obligation, the company may be subject to an administrative fine of up to KRW 5 million.

- **Scope of industrial accidents that may be deemed as an "occupational accident" during "usual" commuting expanded (Article 37, etc. of the Industrial Accident Compensation Insurance Act (the "IACIA"): Effective January 1, 2018)**

  In addition to accidents that occur while employees commute to or from work under the control and management of their employer, the IACIA has been amended so that an accident that occurs while an employee commutes to or from work using his/her own usual route and means (e.g., using his/her car, bicycle, public transportation, or walk) will be deemed, in principle, an occupational accident.

- **Employers required to conduct training to improve employees' awareness of and to eliminate bias towards disabled persons (Article 5-2 of the Act on Employment Promotion and Vocational Rehabilitation for Disabled Persons: Effective May 29, 2018)**

  An employer is required to conduct training to improve employees' awareness of disabled persons to eliminate bias in the workplace towards disabled persons. In doing so, government aims to create stable working conditions, and expand employment opportunities for disabled workers. An employer violating this obligation may become subject to an administrative fine of up to KRW 3 million.

  Additionally, the Ministry of Employment and Labor may recognize companies as good employers in the employment of disabled persons. One benefit these recognized companies would enjoy is gaining an advantage when entering into contracts with state and local governments and public institutions for construction work.

Significance/Impact:

Companies should carefully review company policies, procedures, and practices and make appropriate changes to reflect these labor law changes (e.g., amend their rules of employment).

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Recent Developments – Economic Sanctions Against Iran and What This Means

On January 12, 2018, US President Donald Trump announced that he would extend nuclear sanctions waivers on Iran in time for a Friday deadline, but warned European signatories of the landmark 2015 accord, that he would not extend it again unless they took a harder line against Tehran's weapons development, and no change is made to the 2015 Iran nuclear deal in the agreement with Iran as to its nuclear development within 120 days.

Background:

On July 14, 2015, US, UK, China, France, Russia, Germany, European Union, and Iran signed the Joint Comprehensive Plan of Action ("JCPOA"), and agreed to have the JCPOA implemented and made effective as of January 16, 2016.

The European Union has waived most of the sanctions on Iran under the JCPOA. As for the US, it has maintained primary sanctions that prohibit transactions between its economic entities and Iran, while temporarily waiving secondary sanctions that limit transactions between economic entities other than US nationals ("non-US nationals") and Iran.

Against this backdrop, Korean companies were able to resume most of their transactions with Iran.

However, such eased sanctions against Iran changed with the Trump administration. Even before he was elected, President Trump had stressed the shortcomings of the JCPOA, and had warned that as President, he would withdraw from the agreement. Further, on October 13, 2017, he told the US Congress that Iran was not complying with the JCPOA.

Although the US Congress decided to extend the nuclear sanctions waivers under the JCPOA in January 2018, President Trump stated that he would withdraw the eased sanctions if the JCPOA is not extended within 120 days from the extension of the sanctions waivers (the "Snapback").

Significance & Potential Impact to Businesses:

President Trump's extended sanctions waivers are only temporary, and for the extension to continue to be effective, the US President (or the authorized signatory, e.g., Secretary of State) must renew the waivers before the extended period expires. As President Trump reportedly delivered a de-certification in October 2017, whether the waivers of sanctions against Iran would continue to be renewed was made even harder to expect. According to experts, US' decision to extend the sanctions waivers in January 2018 was made based on the premise that the JCPOA would be revised to the satisfaction of the US government.

The sanctions against Iran and the waivers under the JCPOA are based on multiple legal grounds, and the Snapback may be applied selectively. The Snapback of the US government will be decided through complicated diplomatic and legal deliberations, considering Iran and other parties to the JCPOA.

At this time, it is too early to ascertain the scope and resulting impact of the Snapback. However, if your business is directly or indirectly trading with Iran or your company has any relevant plans, it will be important to continue to monitor whether the Snapback will apply to the sanctions on Iran.

ANTITRUST & COMPETITON

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Amendment to the Enforcement Decree of the Fair Trade Law Increases Thresholds for Triggering Merger Filing Requirement

On October 19, 2017, amendment to the enforcement decree of the Monopoly Regulation and Fair Trade Law ("FTL") (the "Amendment") that increases the threshold amounts of total assets or sales for merger filing went into effect.

The increase of threshold is expected to more or less alleviate the burden of the merger filing requirement for many companies.

Amended Thresholds:

Category	Pre-amendment threshold	Post-amendment threshold
Total assets or sales of the **filing company**	KRW 200 billion	KRW 300 billion
Total assets or sales of the **target**	KRW 20 billion	KRW 30 billion
Domestic sales of foreign companies if the parties are **foreign companies***	KRW 20 billion	KRW 30 billion

* Foreign company: If all parties of the merger are foreign companies, or if the target is a foreign company, all three categories above should be met to trigger a filing obligation.

Significance:

Companies considering a business combination must assess the filing requirements under the new thresholds. On a related note, a pre-merger notification is required for acquisition of shares, merger, business transfer, or incorporation of a new company, where one or more of the parties to the business combination has over KRW 2 trillion in total assets or sales. This KRW 2 trillion threshold remains the same.

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FSC Announces Financial Reform Initiative on Restoring Trust and "Human-Centered Sustainable Economic Growth"

On January 15, 2018, the Financial Services Commission (the "FSC") announced that it has established the "Initiative for Financial Reform" (the "Initiative"), which is designed to restore trust in the financial sector, and to actively facilitate a "human-centered sustainable economic growth."

Details – Key Aspects of the Initiative:

In announcing the Initiative, the FSC stated that this financial sector reform will be its top priority. The FSC further explained that it will focus on rectifying unreasonable practices in the financial industry, and on establishing a fair financial market. To this end, the FSC plans to take the following measures:

- Actively inspect hiring practices in the banking sector, and impose severe punishments on banking institutions for hiring irregularities.
- The FSC will strengthen its remuneration disclosure regulations for high performance incentives in financial institutions. Also, the FSC will work to improve governance structures at financial institutions by strengthening the roles of outside directors, and by expanding minority shareholders' involvement. These changes have been reflected in the amended Act on Corporate Governance of Financial Companies, which the FSC pre-announced for legislation on March 15, 2018.
- The sale of unfair financial instruments, including unfair terms and conditions for financial instruments, will be more strictly monitored.
- To monitor and supervise risks associated with financial group companies, the FSC will introduce integrated supervision systems for financial group companies.
- The FSC plans to recommend institutional investors to adopt the Stewardship Code, a model code established by the Corporate Governance Service for Institutional Investors. This Code sets forth principles designed to promote mid to long-term interests of their clients through mid to long-term value enhancement and sustainable growth of the companies in which they invest.

Further, the financial system will be reorganized so that financing for productive areas, such as start-ups and venture businesses, will take priority over household and real estate loans. Accordingly, if exposure to household debt continues to increase, the FSC plans to take appropriate measures (such as requiring further reserves as a buffer).

Also, the FSC will address the issue of financial burden on the low-income class and financing difficulties. It will also strongly promote social responsibility of financial institutions, such as reinforcing protective measures for financial consumers and promoting social financing. Specifically, in terms of consumer protection, the FSC plans to push forward with the enactment of the Financial Consumer Protection Act to strengthen the obligation for financial institutions to provide information on financial instruments prior to purchase, and to prevent misselling of financial instruments. Also, the FSC will continue to proceed with "consumer-centered financial reform" by inspecting the adequacy and enhancement of banks' fee imposition system centered – among others – on ATM and foreign currency exchange fees.

Lastly, to promote competition, the FSC is reviewing measures to induce establishment of various types of banks by subdividing units of license by business type. For innovative financial services companies, in March, the FSC established a "FinTech Roadmap" to introduce insurance products for self-driving technology and to more widely distribute blockchain technology. In particular, the FSC plans to take measures to secure consumers' rights to control their personal information and how companies can utilize consumer information for big data.

In addition, the FSC plans to continuously activate a test bed for financial regulation, and establish a legal basis to grant provisional approval and exempt services that pursue innovation and provide significant benefits to consumers under certain regulations.

Significance:

The FSC stated that for initiatives that do not require an amendment to any existing laws, the FSC intends to promptly establish and implement detailed plans. For initiatives that require amendments to laws, the FSC will work with the National Assembly to pass the necessary amendments to implement the initiatives as soon as possible.

SECURITIES

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FSC Strengthens Anti-Money Laundering Regulations

On November 23, 2017, the FSC issued both the amendment to the Enforcement Decrees of the Act on Reporting and Use of Certain Financial Transaction Information (the "Amendment"), and the enactment of the Regulation on Examination and Sanctions regarding Reporting, etc. of Certain Financial Transactions Information (the "Regulation"). The Amendment has become effective on February 27, 2018, and the Regulation is expected to become effective on July 2018.

Background:

In 2019 the "Financial Action Task Force on Money Laundering" expects to publish the results of their mutual evaluations. In light of this, the Korean bank's branches and subsidiaries operating in the US are increasingly becoming subject to greater scrutiny by the US authorities on their compliance with the Anti-Money Laundering ("AML") regulations.

The Korean authorities are also calling for strengthened AML compliance. On September 20, 2017, the FSC proposed amendments to the Regulations on Supervision of Corporate Governance of Financial Companies to organize key AML obligations into its Internal Control Standards, aiming to impose AML compliance duties and liabilities on the financial institutions' management. These amendments have come into effect on April 1, 2018.

Key Aspects of the Amendment and the Regulation:

The Amendment and the Regulation are part of the government's effort to strengthen AML regulations. Below we highlight key aspects of these two legislative efforts.

- Financial institutions (e.g., financial holding companies, Korea Securities Finance Corp. (KSFC), collective investment companies, trust companies, and Korean Federation of Community Credit Cooperatives (KFCC)) were previously exempted from the AML internal control obligations we name below. Now, these AML internal control obligations will apply to all financial institutions without exception: (i) designating a reporting officer and establishing a reporting system for both the Suspicious Transaction Report (STR) and the Cash Transaction Report (CTR); (ii) preparing business guidelines on AML; and (iii) providing regular AML education and training to employees.

- Financial institutions will be subject to strengthened duties to check the "real name" of the representative of corporate clients, which will entail matching the name and resident registration number with the representative's ID, as opposed to simply identifying the name of the representative, as it had been previously done.

- Specific standards for imposing administrative fines will be established based on the type of violation.

- Sanctions regarding AML violations – heavier than or equivalent to suspension of business (for financial companies), or suspension of duty (for its officers) – must be imposed by resolution of the Korea Financial Intelligence Unit's ("KOFIU") Sanctions Committee, which is comprised of four KOFIU officials and two external experts.

Significance & Implications:

These recent AML legislative movements show that financial institutions should prepare for a stricter regulatory environment. Financial institutions should regularly check whether their internal control system is properly being updated to reflect the changing regulatory requirements. Customers should also routinely review whether there are any changes to the procedures of financial transactions.

INSURANCE

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FSS to Strengthen Regulation of Telemarketing Channel

Consumers often buy insurance products from insurance companies and agencies' telemarketers ("TMR") based only on the explanations provided to them over the phone. The telemarketing ("TM") channel involves a higher risk of misselling due to information asymmetry between sellers and consumers about the insurance products.

In response, in a January 15, 2018 press release, the Financial Supervisory Service ("FSS") announced that it will establish detailed guidelines for preparing scripts (used by TMRs) that will be used to explain the insurance products, and also, for strengthening TMR training.

Key Aspects of the FSS' Plan:

1. More "consumer-centric" sales practices

- Provide explanatory materials to the consumers before soliciting subscription to a complex insurance product, or before soliciting sale to a consumer aged 65 or older.
- Use individualized (rather than uniform) questionnaire to more accurately check the consumer's understanding of the products.
- Increase the frequency of notification/reminder on voice recording, and diversify the methods of notification by using, for instance, text messages.
- Prepare industry guidelines on drafting scripts per TM product type.

2. Increased protection for elderly consumers

- For consumers aged 65 or older, extend time period during which the offers for insurance product subscription may be withdrawn.
- Prepare and distribute explanatory materials specifically designed for the elderly with larger fonts and easy-to-understand illustrations/ diagrams.
- Improve monitoring of call quality with respect to elderly consumers.

Potential Impact:

Meanwhile, from a labor law perspective, preparing a standard script for explaining insurance products and offering stronger TMR training may increase the risk of the TMRs being classified as employees. Some lower courts have ruled that standard scripts, Q&A criteria for each product, training materials, and quality assurance manuals may evidence the existence of an employment relationship, explaining that these items are more than just guidelines for compliance with relevant laws, and that they may be viewed as guidelines on the contents and methods for the work to be performed on behalf of the insurance company.

In consideration of these developments, companies using TMRs should perform in-depth reviews of their TMR-related internal rules and systems to assess and reduce their risks of potential contractor misclassification. Additionally, insurers should continuously monitor further developments of plans announced by the FSS, and review to identify any potential issues to be addressed following the announcements.

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National Assembly Enacts Final Tax Law Changes for 2018

On December 1, 2, and 5, 2017, the Korean National Assembly enacted various amendments to tax laws, which were largely based on the amendments proposed by the Ministry of Strategy and Finance ("MOSF") in August 2017. However, parts of the revised tax law drafts were enacted after they were amended.

Details on the Key Changes:

Below, we provide the major amendments to these tax laws.

1. Corporate Income Tax

- **New top bracket added for corporate income tax (Article 55(1) of the Corporate Income Tax Law ("CITL"))**

  The tax law change will add a new top bracket to increase tax revenues needed to finance new and/or expanded government initiatives.

  In the proposed tax law change, 27.5% tax rate (local income tax included) was applied to taxable income over KRW 200 billion. However, in the final tax law change, the same tax rate will now be applied to taxable income over KRW 300 billion.

  Considering the local income tax, the tax payer's burden will be increased by 3.3% compared to the former tax rate of 24.2%.

Income Bracket	Amended Tax Rate
KRW 0 – 200 million	11%
KRW 200 million – KRW 20 billion	22%
KRW 20 billion – KRW 300 billion	24.2%
Over KRW 300 billion	27.5%

  The final tax law change will be applied to taxable years beginning on or after January 1, 2018.

- **Deductible limit on loss carryforward reduced (Article 13 of the CITL)**

  The aim of the proposed tax law change was to reduce the amount of taxable income that a NOL carryforward can offset each year to promote equity in taxation and to conform to international trends. Under the proposed change the 80% deductible limit was to be reduced to 60% for taxable years beginning on or after January 1, 2018, and for taxable years beginning on or after January 1, 2019, reduced to 50%.

  However, according to the final tax law change, the deductible limit will be reduced to 70% in 2018, and 60% in 2019, respectively, to mitigate the burden on the taxpayers.

- **Restrictions on employee transfer added to qualified merger/split requirements (Articles 44(2), 44-3(3), 46(2), 46-3(3) and 47(3) of the CITL)**

  With the proposed tax law change, the government's goal was to ensure employees' job security at companies undergoing restructuring by restricting employee layoffs as a condition to qualify for tax incentives in a merger or split. To qualify for and retain tax incentives given in qualified mergers and qualified splits, 80% or more of the employees – as of the date one month prior to the court registration date of the merger or split – must be transferred and/or retained. This proposed change focused on the job security of each individual employee.

However, the final tax law change focuses on the number of employees, not individual employees, to lighten the burden of the company. Specifically, to qualify for tax incentives, the final tax change includes the following additional conditions for mergers and splits occurring on or after January 1, 2018:

- Qualified Merger: If the number of employees of the merged company falls below 80% of the total number of employees of the acquiring and acquired company one month before the date of merger registration.
- Qualified Split: If the number of employees of the (newly-formed) split-off company is less than 80% of the split-off business unit one month before the date of split-off registration.

- **Scope of foreign tax refund of an indirect investment vehicle reduced (Article 57-2 of the CITL)**

The proposed tax law change contemplated reducing the rate of refund from 14% to 10%. However, the final tax law change retains the 14% refund rate.

2. Individual Tax

- **Capital gains tax rate increased on share transfers by majority shareholders (Articles 104(1) and 107(2) of the Individual Income Tax Law ("IITL"))**

In order to improve fairness in taxation, the proposed tax law change tried to increase Capital Gains Tax Rate ("CGT Rate") to 27.5% (local income tax included) on capital gain arising from transfers of shares issued by a small and medium-sized businesses and owned by small and medium-sized business' majority shareholders taking place on or after January 1, 2018.

However, the final tax law change applies to transfers of shares issued by a small and medium-sized business and owned by its majority shareholders taking place on or after January 1, 2019.

3. Value Added Tax

- **Additional circumstances named under which amended import VAT invoices can be issued (Article 35 of the Value Added Tax Law("VATL"))**

The purpose of the proposed tax law change was to permit the issuance of an amended import VAT invoice by default, unless there is a willful violation/infringement or gross negligence on the part of the importer. Also, the proposed tax law tried to establish a provision that would have imposed a penalty on issuance of an amended import VAT invoice.

However, such provision relating to penalty was eliminated during the National Assembly deliberation, and the final tax law change allows the importer to issue an amended import VAT invoice when it is clearly proven that the importer is liable for a minor fault for the incorrect import VAT invoice.

This change applies to amended customs returns filed, or Customs Offices assessments, rendered on or after January 1, 2018.

Draft Bill to Capital Gains Tax Exemption Under Korean Domestic Law ("25% Rule") Updated

On January 8, 2018, the Korean government announced a draft bill to amend the presidential decrees of tax laws in 2018. Included in the draft bill was a proposal, announced on August 2, 2017, to reduce the scope of domestic tax exemption on capital gains from sale of shares of listed Korean companies by non-residents of Korea through the Korea Exchange.

Details:

Currently, a non-resident and a foreign company is not subject to Korean income tax on capital gains realized on the sale of shares in a listed Korean company through the Korea Exchange, if the non-resident: (i) has not owned (together with any shares owned by any person with a certain special relationship with such non-resident) 25% or more of the total issued and outstanding shares of such company at any time during the calendar year in which the sale occurs, and during the preceding five calendar years; and (ii) has no permanent establishment in Korea.

The draft bill proposed that the ownership threshold for the tax exemption be reduced from the current less than 25% threshold to less than 5% (inclusive of any position(s) held by a non-resident (or a foreign company)'s specially related parties). If the domestic tax exemption is not available, a tax exemption may be available under a treaty. Otherwise, any capital gains by a non-resident will be subject to Korean tax at either 11% of the sale proceeds or 22% of the capital gain, whichever is less.

Implication / Significance:

Based on the draft bill, the proposed amendment would have applied to a sale of shares beginning July 1, 2018 without any transitional period upon promulgation of the draft bill, expected to occur in early February 2018.

Previously, the proposed amendment was designed to apply to sale of shares beginning January 1, 2018. However, as a transitional measure, the Korean government announced that shares acquired on or before the enactment of the proposed amendment will be subject to the current threshold of 25% for a sale of shares on or before December 31, 2018.

However, taxpayers continued to voice their strong opinion to the Ministry of Strategy and Finance that the expansion of the scope of taxation was excessive. Accordingly, the proposed amendment was deleted on February 1, 2018 at the Cabinet meeting.

REAL ESTATE

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Korean Government Attempts to Make Private Rented Sector More Stable

On January 16, 2018, the government announced amendments to the Special Act on Private Rental Housing (the "Private Rental Housing Act") (the "Amendments"). The Amendments are designed to make private rental housings more public-friendly by introducing certain stability measures (such as imposing limits on rents during an initial lease term) and improving the system by deregulating certain requirements. The Amendments will take effect as of July 17, 2018.

Key Aspects:

1. **Introduction of "publicly subsidized private rental housing"**

   - The Amendments will introduce a concept of "publicly subsidized private rental housing," which refers to a private rental housing constructed or purchased with certain forms of public subsidies (such as contribution of funds from the Housing and Urban Development Fund).

   - The Amendments will also provide special benefits, such as granting a no-bid contract for public housing lots and imposing more lenient requirements on building sizes (e.g., applying the maximum building coverage ratio and floor area ratio).

2. **Relaxed qualifications and procedures for Promotion Districts**

   In order to facilitate development of small-sized promotion district business in areas with high demands for rental housings (e.g., subway station areas), the Amendments will allow the minimum area requirement for designation as a promotion district to be reduced from 5,000m^2 to 2,000m^2, and allow a joint filing for both designation as a promotion area and as a district unit plan, once the filing has been reviewed by the Review Committee for the Publicly Subsidized Private Rental Housings. The reasoning for the latter is to streamline the process so that such designation or plan can be approved without having to go through the review processes of urban planning committees of the relevant city and/or province.

Significance:

Since details[1] will be specified by decrees and rules set by the Minister of the Ministry of Land, Infrastructure and Transport, companies are recommended to monitor and review subsequent decrees and rules to the Amendments.

[1] We refer to details such as qualifications and selection procedures of the tenants, and standards for determining the rents of the publicly subsidized private rental housings.

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National Assembly Passes Amendment to Reduce Working Hours

On February 27, 2018, the Environment and Labor Committee of the National Assembly approved an amendment to the Labor Standards Act (the "Amendment").

Under the Amendment, maximum working hours per week, including Saturdays and Sundays, will be reduced from 68 hours to 52 hours. The Amendment was reviewed by the Legislation and Judiciary Committee, and on February 28, 2018, it was approved by a vote at a National Assembly plenary session.

A related case is currently pending at the Supreme Court with public hearings to come.

Key Aspects of the Amendment:

- Clarifies that "one week" consists of seven days, including public holidays, so that the current maximum working hours of 68 hours per week will be reduced to 52 hours per week. The schedule for compliance will be based on the size of a business, as follows:
  - Businesses with 300 or more employees and public agencies: July 1, 2018;
  - Businesses with 50 or more employees, but fewer than 300 employees: January 1, 2020; and
  - Businesses with five to 50 employees: July 1, 2021.

- For businesses with 30 or fewer employees, for a limited time period (until December 31, 2022), special extensions to working hours (up to eight hours) may be permitted upon written agreement with the employees' representative.

- In general, double premiums (i.e., overtime or nighttime, and holiday) for working holidays will not apply. However, the Amendment provides for a 50% overtime pay premium for up to eight hours of work on holidays, and a 100% overtime pay premium for over eight hours worked on holidays.

- Widens the scope of application of public holiday regulations – from only public agencies to now include private companies. This change is being made to ensure public holidays are treated as paid holidays. The schedule for compliance will be based on the size of the business and as follows:
  - Businesses with 300 or more employees and public agencies: January 1, 2020;
  - Businesses with 30 or more employees, but fewer than 300 employees: January 1, 2021; and
  - Businesses with five to 30 employees: January 1, 2022.

- Reduces the scope of businesses falling under the special categories regarding working hours – from 26 types to five types. The only types remaining in the special categories are land transportation (excluding passenger vehicle transportation with service routes), water transportation, air transportation, other transportation services businesses, and health services. With respect to these five special business categories, at least 11 continuous hours of rest are to be ensured. With respect to the 21 types of businesses that will be excluded, for businesses with 300 or more employees, compliance with the 52 working hours per week requirement will be required.

- In order to minimize confusion regarding practical application of the Amendment, the Ministry of Employment and Labor will launch measures concurrent with the effective dates of the Amendment (e.g., denouncing the current administrative interpretations regarding working hours).

Significance / Potential Impact:

The Amendment is expected to have a substantial impact on businesses regarding management of their existing human resources. Specifically, the impact concerns the potential need to hire additional workers resulting from the reduced potential working hours of existing workers and reduced productivity.

Along with the government's policy to strengthen supervision over labor matters, labor authorities may also implement stricter supervisions (e.g., through labor audits) to prevent long working hours.

INTELLECTUAL PROPERTY

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Korean Courts to Establish New "International Chambers" Where IP Cases Can Be Heard in Foreign Languages

Under the amendment to the Court Organization Act (the "Amendment"), which is scheduled to take effect on June 13, 2018, Korean courts will establish "International Chambers" to hear patent, trademark, and other IP cases in English and other foreign languages.

1. **The first "International Chamber" for litigation in Asia**

   The Patent Court announced its plan to establish an International Chamber by summer 2018, along with the effectuation of the Amendment. In June 2017, the Patent Court already held a pilot trial on a refusal-to-register case in English, with the consent of the parties, and has taken steps to prepare for the opening of the International Chamber.

   The Patent Court further announced its plan to prepare regulations and manuals regarding the operation of the International Chamber.

2. **Arguments and evidence will be accepted in foreign languages**

   Under the current law, Korean courts may hear arguments in Korean only. The Amendment allows the Patent Court and five district courts (Seoul Central, Busan, Daegu, Daejeon and Gwangju) to hear IP cases in English and foreign languages, with the consent of the parties.

   Such cases would be classified as "international" cases to be heard by the International Chambers of these courts. In theory, the International Chambers

should be staffed with judges and personnel who are capable of conducting cases entirely in foreign languages. Thus, evidence and briefs submitted in foreign languages would be accepted without requiring any translation. Additionally, if it is difficult to find appropriate experts in Korea, testimony by technology experts or inventors who reside overseas could be presented in the Korean courts without interpreters.

Further details regarding the specific procedures, operation, permitted foreign languages, and other aspects of the International Chambers will be included in the regulations that the Supreme Court will publish.

Significance:

Foreign parties account for over 40% of the cases adjudicated by the Patent Court. Establishing International Chambers in the Patent Court and in the five identified district courts is expected to facilitate participation by foreign parties in Korean litigation proceedings, and enhance the credibility of Korean litigation procedures and results.

Through this change, Korea hopes to be seen as a more attractive jurisdiction for resolving international IP disputes.

ENVIRONMENT

By Yoon Jeong Lee (yjlee@kimchang.com), and In Hwan Jun (inhwan.jun@kimchang.com)

MOE Launches Leniency Program for Violation of Chemical Regulations and Assumes New Role in Managing the Greenhouse Gas Emission Trading System

The Ministry of Environment ("MOE") has partnered with the Ministry of Justice to launch a voluntary disclosure leniency program ("VDLP") for certain violations under the (former Toxic) Chemicals Control Act. The VDLP became effective as of November 22, 2017 and continues through May 21, 2018.

In addition, as of December 29, 2017, the MOE took over the responsibilities of overseeing and managing the Greenhouse Gas Emission Trading System ("ETS") from the Ministry of Strategy and Finance ("MOSF").

Key Aspects and Significance of the VDLP and MOE's New Role:

1. **Leniency program for violations of the (former Toxic) Chemical Control Act**

   The MOE, in cooperation with the Ministry of Justice, is currently running a leniency program for certain violations under the former Toxic Chemicals Control Act ("TCCA") and the Chemicals Control Act ("CCA"). The program is in effect for six months (from

November 22, 2017 to May 21, 2018). According to the MOE's announcement, the program is designed to ensure the business owners' compliance with the chemical regulations and to enhance the effectiveness of the current chemical registration system.

The following violations under the TCCA and the CCA are eligible for leniency: (i) failure to submit a written confirmation; (ii) failure to report importation of a potentially risky or toxic substance, or report its amendment; (iii) failure to obtain approval to import a restricted substance, or obtain approval for its amendment; (iv) failure to obtain approval to manufacture, import, or sell a prohibited substance, or obtain approval for its amendment; and (v) failure to obtain a hazardous substance business permit, or obtain its amendment.

The program is not clear on when the violations should have occurred for them to be eligible for the program. If a company submits a voluntary disclosure of violations during the program, the company will be exempt from criminal or administrative penalties for those violations.

Because the MOE has expressed its plan to pursue strict enforcement through guidance and inspection when the leniency program expires, it is recommended that you consider eliminating the risks associated with past violations by utilizing the leniency program and to review your current business operations to prevent non-compliance issues in the future.

2. **MOE as the new agency to manage the Greenhouse Gas ETS**

As of December 29, 2017, under the amendment to the Enforcement Decree of the Act on the Allocation and Trading of Greenhouse Gas Emission Permits, the MOE has taken over the responsibilities to oversee and manage the Greenhouse Gas ETS from the MOSF.

Accordingly, the key changes include: (i) the Ministers of the MOE and the MOSF are now collaborating to establish the basic plan of the ETS, which was done solely by the Minister of the MOSF; (ii) the Minister of the MOE replaces the Minister of the MOSF as the principal policy maker for the allocation plan for emission trading permits; (iii) the influence of the MOE on the management of the emission trading permit allocation committee has increased; and (iv) the MOE is now involved in the allocation, adjustment and cancellation of the emission trading permits, evaluation/approval of emission levels, and selection of business entities subject to the emission trading permit allocation, all of which were previously managed by the MOSF.

In naming "the establishment of a sound implementation structure for the new climate system" as one of its top 100 projects, the current administration has referred to "stabilization of the ETS" and "enhancement of the ability to adapt to climate change" as the key features of the new climate system.

Considering that the allocation of emission trading permits is expected to occur mainly in the second half of 2018, it would be important to monitor the role MOE will play in the process as the main agency in charge.

Overall, it is likely that the current administration will continue to broaden the MOE's authority and strengthen its enforcement efforts. Thus, going forward, it would be important to closely monitor how the MOE implements its policies on chemical regulations and Greenhouse Gas ETS.

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KFTC Announces Standard Terms and Conditions for Mobile Games

On October 27, 2017, the KFTC announced the Standard Terms and Conditions for Mobile Games (Standard Terms and Conditions No. 10078). It has been five years since the KFTC announced the Standard Terms and Conditions for Online Games.[2]

According to the KFTC's press release, the Standard Terms and Conditions for Mobile Games are intended to establish transaction standards which reflect the realities of mobile game transactions that the 2013 Standard Terms and Conditions for Online Games do not capture.

Key Provisions:

Below we highlight key provisions in the Standard Terms and Conditions for Mobile Games, which differ from the Standard Terms and Conditions for Online Games.

1. **Strengthened requirement for the provision of company information (Article 3)**

   A mobile game operator must display within the game the name of the company, name of the representative, address, telephone number, e-mail address, business registration number, mail order business registration number, privacy policy, and terms of use (privacy policy and terms of use may be hyperlinked).

   While it is possible to display such information on the initial screen or the game website for online games, the obligation has been strengthened for the mobile game operator to show such information within the game.

2. **Allowing order cancellation for separable contents (Article 22)**

   A user who purchased paid contents can cancel his or her order within seven days, either from the date when the purchase contract was made or the date when the use of content became possible, whichever is later. If the order is cancelled, the mobile game operator must take back the paid content of the user and refund the money within three business days. If a user cancels an order, the mobile game operator is required to check the user's purchase history with the platform operator or the open market operator and contact the user. However, the Standard Terms and Conditions for Mobile Games do not specify the refund method.

   As for the restrictions on order cancellation, in view of Article 17(2) of the Act on the Consumer Protection in Electronic Commerce, Etc. (the "E-commerce Act"), the user cannot cancel an order in the below circumstances. However, it should be noted that in the case of separable contents, orders may be cancelled for the unused portion.

   1. Paid contents used or applied immediately after purchase.
   2. When an additional benefit, attached to the purchase of contents, has been used.
   3. When contents have been opened for which the act of "opening" is considered used or whose usage is determined at the time of "opening."

[2] Announced in 2013.

Further, reflecting Article 17(6) of the E-commerce Act, where contents for which order cancellation is unavailable, the unavailability of order cancellation must be clearly indicated so that the user can easily recognize the unavailability, and test samples (for temporary use or testing purpose) must be provided. Thus, the mobile game operator must pay attention to this regulation when selling in-game goods and items for which order cancellation is unavailable.

3. **Greater responsibility on the mobile game operator relating to advertisements (Article 15)**

A mobile game operator may link advertisements or services provided by third parties using in-game banners or links. As advertisements by third parties do not fall within the mobile game operator's scope of service, the mobile game operator is not responsible for the advertisements by third parties as a matter of principle. However, if the mobile game operator, by gross negligence or willful misconduct, facilitates the occurrence of damage or fails to take measures to prevent damage, the mobile game operator is liable for such damage.

4. **Refund of overpaid/erroneously paid amounts (Article 23)**

A mobile game operator must reimburse the user for overpaid/erroneously paid amount in the event of overpayment/erroneous payment. In-app payments must be made according to the payment method prescribed by the open market operators, and refunds must be made based on the refund policy of each open market operator or the mobile game operator in accordance with the operating system of the mobile device. However, if an overpayment or erroneous payment was made due to the user's negligence and without negligence or willful misconduct on the part of the mobile game operator, the user must bear the reasonable cost of the refund. Phone service charges (e.g., data charges) that are incurred in the course of downloading an app or using network services may not be subject to refund.

5. **Payment of purchase prices for contents (Article 21)**

In principle, charging and paying purchase prices for contents are subject to the policies and methods prescribed by the mobile carriers or open market operators. In addition, the purchase limit for each payment method may be granted or adjusted in accordance with the policies of the mobile game operator, open market operator, or the government.

Significance:

Since the Standard Terms and Conditions for Mobile Games reflecting the characteristics of mobile games have been enacted, the KFTC is expected to operate its regulatory activities on the basis of these standards. Thus, going forward, the mobile game operator should pay attention to the contents of the Standard Terms and Conditions for Mobile Games when providing mobile game services.

KFTC Uses the Temporary Suspension Order System for the First Time to Stop All Online Transactions of an E-commerce Company

On October 20, 2017, the KFTC temporarily suspended all online transactions of an online clothing retailer, citing inadequacies with its handling of order cancellations and refund requests.

This is the first case where the KFTC utilized the temporary suspension order system under the "E-commerce Act", which came into effect on September 30, 2016.

Background:

The temporary suspension order system allows the KFTC to suspend e-commerce transactions and prevent further consumer harm before a formal corrective order is issued when (Article 32-2 of the E-commerce Act):

- the website solicits customers, concludes transactions with consumers, or interferes with the customers' attempts to terminate orders or transactions by providing false or exaggerated information or through other deceptive means; and when
- consumers suffer property damages, and when it is necessary to prevent further harm to many other consumers on an urgent basis.

In this case, the KFTC explained that the following acts by the retailer satisfied the requirements for a temporary suspension order:

- The retailer only notified the consumers of their right to exchange defective merchandise but failed to inform them that a refund was available as well.
- The retailer did not specify that the consumers could obtain refunds, no questions asked, within a certain period of time, or for defects within a certain period of time. Rather, the retailer notified the consumers that a refund was only available in limited circumstances when the relevant merchandise was out of stock.
- The retailer, while engaging in cash transactions only, refused requests for refunds and ceased contact with the consumers. This response harmed the consumers and resulted in a significant number of refund-related consumer complaints.

Significance:

This temporary suspension order against the retailer indicates the KFTC's willingness to quickly impose provisional orders before completing a full investigation and making a formal finding of a violation. In addition, we expect to see the business practices of online retailers to continue to be scrutinized, as the KFTC announced its plans to monitor and correct any violations in this sector.

SELECTED REPRESENTATIONS

CORPORATE

Lotte Group Launches Holding Company to Resolve Pending Issues and Enhance Transparency

On October 12, 2017, Lotte Confectionery Co., Ltd., Lotte Shopping Co., Ltd., Lotte Chilsung Beverage Co., Ltd., and Lotte Foods Co., Ltd. – which are all publicly-listed companies – undertook a spin-off merger of their respective investment operations, and converted into a holding company under the "Fair Trade Act". This was done to resolve circular contribution issues, and to enhance transparency of corporate governance within Lotte Group.

This was significant, since it was the first restructuring transaction in Korea that involved integrating only investment divisions of four listed companies within a large corporate group and converting them into a holding company.

Details:

On April 26, 2017, the board of directors of Lotte Confectionery resolved to horizontally spin-off its business division (including confectionary manufacturing), establish a new Lotte Confectionary to hold the business, remain as a surviving company holding only the investment division, and be renamed as Lotte Corporation. On the same day, each director from Lotte Shopping, Lotte Chilsung, and Lotte Foods resolved to horizontally spin-off its investment division, including shares of affiliates and investee companies, and merge them into Lotte Corporation.

On August 29, 2017, Lotte Corporation became a holding company under the Fair Trade Act, following the approval of the spin-off and the spin-off merger at the extraordinary general meetings of shareholders of the respective companies, and on October 12, 2017, the registration of the spin-off and spin-off merger was completed.

Our Representation:

Kim & Chang provided comprehensive legal advisory services throughout all stages of the transaction – from negotiation of contracts, legal due diligence, all necessary filings and disclosures, assistance with extraordinary general meetings of shareholders to the closing of the transaction for Lotte Confectionery, Lotte Shopping, Lotte Chilsung, and Lotte Foods. Simultaneously, our team successfully defended against the injunction, and was able to close the case quickly to ensure a successful completion of the transaction.

As the spin-off and the spin-off merger occurred at the same time, we faced and successfully overcame challenges in this complex transaction. This included review and in-depth analysis of the many options and measures to accomplish the purpose of the transaction, such as resolving circular contribution issues, and other challenging issues that arose during the process. Also, as dissenting shareholders of the companies raised objections, arguing that the spin-off merger ratio was unfair, we provided prompt and efficient responses that were made necessary, and successfully filed a preliminary injunction, including a petition to prohibit resolutions at the general meeting of shareholders.

Kim & Chang Successfully Represents Korea Gas Corporation in the Complex Transaction to Sell and Securitize Its Beneficial Rights Held on the Natural Gas from Myanmar Gas Fields

The Korea Gas Corporation ("KOGAS") sold its beneficial rights held on the natural gas produced in Myanmar's offshore gas fields (Block A-1 and A-3) to a special purpose company ("SPC"), which was jointly established by Korea's Stonebridge Capital, FG Partners and NH-Amundi Asset Management, and securitized the beneficial rights.

Details:

This transaction was a sale of beneficial rights on the natural gas produced in overseas gas fields to a SPC jointly established in Korea by financial investors. Thus, it was necessary to provide an in-depth consultation on the legal and tax issues arising in Myanmar, the legal jurisdiction of the beneficiary rights. Also, it was necessary to provide an extensive consulting and analysis on which country the SPC – the other party in this transaction – should be established to make the transaction more beneficial. In addition, it was also critical to closely review the agreements on the transfer of the beneficial rights to ensure the success of the transaction based on the shared opinions of the multiple parties involved in the transaction.

Our Representation:

In this transaction, Kim & Chang provided KOGAS with comprehensive legal advisory services covering most parts of the transaction: from establishing transaction structures and a SPC to preparing and negotiating various documents relating to the transaction (including agreements and closing the transaction), our team ensured a successful completion of the deal.

Kim & Chang Successfully Represents a Consortium of Bain Capital Asia and Goldman Sachs, and Founder/Individual Shareholder in Their Sale and Transfer of Interest Held in Carver Korea to Unilever for Over EUR 2 Billion

On November 1, 2017, a consortium comprised of Bain Capital and Goldman Sachs (the "Consortium"), and the founder of Carver Korea, who is also an individual shareholder, sold 95.39% of shares held in Carver Korea to Unilever, a global consumables manufacturer, for approximately EUR 2.27 billion (approx. KRW 3 trillion).

This transaction has been evaluated as one of the most successful merger and acquisition transactions in the history of private equity fund investment in Korea.

Details:

On August 8, 2016, the Consortium purchased the shares of Carver Korea from the founder and minority shareholders, for approximately KRW 400 billion, and within only 15 months, posted a record-high annual internal return rate ("IRR") of approximately 300% among buyout transactions (purchase of management rights), in the KRW trillion range.

Our Representation:

Overall, Kim & Chang ensured the success of the transaction by providing consultation on the overall transaction process, including due diligence, review and negotiation of all necessary documents, preparation and submission of regulatory reports, critical support in the closing process, and tax return preparations to minimize legal risks and regulatory risks.

The transaction was conducted over a short period of time – it was closed even before 15 months had passed from the initial investment of the Consortium. Therefore, our team had to effectively respond to the wide-ranging and in-depth due diligence conducted by Unilever, a strategic investor, covering not only legal, finance and tax issues, but also industry-specific issues, including the process of manufacturing and supplying cosmetics.

The transaction also required professional advisory services, considering the complicated payment structure and tax risks involved in the joint sales of equity by the Consortium and the founder/individual shareholder.

In August 2016, we had already provided consulting services to the Consortium on its overall investment in the transaction to acquire Carver Korea equity. Based on the experiences and understanding we accumulated through such consulting and advisory services, our firm, on behalf of the Consortium and individual shareholder, was able to respond in an efficient and timely manner to Unilever's requests regarding the transaction.

Following Toshiba Corporation's Separation of Its Memory Business, Toshiba Electronics Korea Transfers Its Memory Sales Business to a New Entity, Toshiba Memory Korea

On October 1, 2017, Toshiba Electronics Korea, a Korean subsidiary of Toshiba Corporation ("Toshiba"), transferred its entire memory sales business to Toshiba Memory Korea, a new separate corporation.

Details:

The transaction was conducted as part of an overall business reorganization of Toshiba. In selling its memory business to the Korea-US-Japan allied consortium led by Bain Capital, SK Hynix, and Innovation Network Corporation of Japan (INCJ), the corporation also decided to include its global memory sales organization in the sales.

Our Representation:

To ensure smooth sales of Toshiba's memory business, the transaction had to be promptly implemented before the head office completed the sales of the memory business. Accordingly, it required a prompt and effective response to guarantee that the general procedures relating to the business transfer are compliant with the applicable Korean laws without any delay to the fixed schedule set by headquarters.

Kim & Chang provided prompt and efficient consultation to Toshiba Electronics Korea in establishing Toshiba Memory Korea, and for the new entity to take over Toshiba's memory business in Korea. Our work led to the successful completion of the transaction by providing comprehensive services, including preparing the transfer agreement of the memory business, performing all necessary work required under the relevant Korean laws and regulations (e.g., filling reports), and working to ensure a smooth business transfer process (e.g., transfer agreement relations and assets required in the business transfer process).

LITIGATION

Seoul High Court Recognizes Trade Secret Infringement on Software Source Codes and Grants Injunction on Use Without Time Limits

On January 11, 2018, in an appeal of a lower court decision denying injunctive relief and damages regarding alleged trade secret infringement by former officers and employees of a software development company, the Seoul High Court reversed the district court's judgment, ruling in favor of our client, the software development company.

The Court ordered the defendants – four former officers and employees of the software development company who had used the trade secrets taken from their former employer to establish a competing business, and a new company formed by them – to stop selling their products and to destroy their existing products, as well as pay damages caused by their trade secret infringement to their former employer.[3]

Case Details:

The plaintiff was a software company that had been developing business software solutions for more than 20 years. From 2009 to 2010, key technical personnel, including the former chief of the company's technology research institute, resigned and established a new company. Only a few months later, the new company released a competing product based on the plaintiff's source codes and began selling the competing product to customers of the plaintiff.

In response, the plaintiff instituted civil actions and filed a criminal complaint, alleging trade secret infringement against its former employees, officers, and the new company established by them. However, in the civil action, the district court dismissed all of the plaintiff's claims on grounds that the company had failed to meet its burden regarding the "infringement" of trade secrets, and had failed to establish "substantial efforts to

[3] See Seoul High Court Decision 2014Na2011824, January 11, 2018.

maintain secrecy," which is one of the required elements for information to be considered a "trade secret" under the Korean Unfair Competition Prevention and Trade Secret Protection Act (the "Trade Secrets Protection Act"). In the criminal case, the district court found all defendants not guilty on grounds that the evidence introduced by the prosecution was inadmissible, because it was collected through unlawful search and seizure, and that the prosecution had failed to prove the element of substantial efforts to maintain secrecy.

Our Representation:

Kim & Chang took on the civil case from the appeals stage, and obtained a successful reversal of the district court's decision. The criminal case is still pending.

Among other things, the defendants on appeal took the position that the source code files which were in their possession were files that had been kept for "testing purposes only," and not for the purpose of "using" them for product development. However, the Seoul High Court rejected such an argument and concluded that the defendants had used the plaintiff's source codes based on the fact that: (i) the findings of the Korea Copyright Commission's review, which concluded that the defendants' source codes came from the plaintiff's source codes; (ii) the source code files were found on the premises of the defendant company (rather than in possession by the single defendant who had allegedly kept the file); (iii) the new file names and constants were mere variations of the original names used on the plaintiff's products; (iv) defendants' source codes contain typos, which are identical to the typos found in the plaintiff's source codes; and (v) the overall circumstances, including the very short time frame in which the defendants were able to launch their own products.

Also, the defendants argued that the plaintiff's claim for injunctive relief should be dismissed, because more than seven to eight years had passed since resigning and leaving their former employer. The Seoul High Court rejected such argument.

Although the Seoul High Court acknowledged a previous Supreme Court decision holding that the duration of prohibition in trade secret infringement cases must be "limited to the time needed by legitimate competitors (or the infringing party) to acquire such protected information through lawful means, such as original development or reverse engineering," the Seoul High Court ruled that "since the court determines whether the party seeking injunctive relief has the right to such protection at the time arguments are concluded during a trial, the High Court need not limit the duration of the prohibition in its order, especially if it is difficult to determine with certainty at which point in the future the protected information would no longer be considered 'trade secret' within the meaning of the Trade Secrets Protection Act."

The High Court went on to explain that no specified time limit for the injunction does not mean that the prohibition is permanent, and that the relevant party may seek reprieve from enforcement of the injunction, if the information no longer qualifies as trade secret. On such basis, the High Court granted the injunction against the use of the plaintiff's trade secrets and the sales of the defendants' product made using such trade secrets, without specifying any time limit.

Significance:

The Seoul High Court's decision is notable in that it recognized trade secret infringement of source codes, which is generally difficult to prove, because it is quite easy for an infringing party to make extensive superficial variations to the original source codes without substantive efforts in a relatively short period of time. Rather than structuring the case as copyright infringement, more typically done in cases involving copying of source codes, Kim & Chang's team successfully focused on trade secret infringement to obtain favorable results for the source code owner company.

This case is also significant in that, contrary to other decisions granting relatively short periods of prohibition on use in trade secret infringement cases, the Seoul High Court accepted the plaintiff's argument and ordered injunction without specifying any time limit.

ANTITRUST & COMPETITION

KFTC Finds No Violation of Fair Trade Law for Three Vehicle Importers Alleged of Vehicle Repair Price Fixing

On December 1, 2017, the KFTC declared no violation of the FTL in the case involving alleged improper and concerted acts of three major vehicle importers (the "Respondents").

Background:

Initially, the KFTC claimed that the Respondents engaged in price-fixing based on their exchange of information on prices to be charged for hourly labor of vehicle repair services, coupled with price increases.

Despite the finding of price information exchange among the Respondents, the KFTC eventually decided they did not violate the FTL, because such exchange – in and of itself – would not be sufficient to support an anti-competitive agreement prohibited under the FTL (i.e., an agreement to decide, maintain or amend prices in a manner that improperly restrains competition).

Significance:

This decision makes it clear that information exchange alone is not enough to prove the existence of an improper agreement unless there is evidence showing reciprocity among the Respondents and anti-competitiveness of the agreement. Going forward, the decision is expected to serve as the guidance on discussions and exchange of information on common issues among industry players, including the permissible scope thereof.

Our Representation:

Over the last five years, Kim & Chang represented the Respondents from the commencement of the KFTC's investigation to assisting them in a number of dawn raids, interviews of summoned officers/employees, preparation and production of extensive documents, and submission of opinion briefs on multiple issues.

Eventually, our team persuaded the KFTC to rule in favor of the Respondents through our technical expertise in price fixing cases involving information exchange (including in-depth legal analysis and extensive research into precedents) and top-notch advocacy with a business savvy approach.

SECURITIES

TissueGene Becomes the First US Biopharma Company to List Successfully on the KOSPI

On November 6, 2017, Kolon TissueGene, Inc. ("TissueGene"), previously known as TissueGene, Inc., a US Delaware incorporated bio-pharmaceutical company, undertook its initial public offering (the "IPO") by listing 7.5 million of its Korean depository receipts (KDRs) on the KOSDAQ market. Through this IPO, TissueGene raised a total of KRW 202.5 billion.

Significance:

This IPO was the first successful case of a US bio-pharmaceutical company listing on the Korean securities markets, and one of the largest IPOs in the latter half of 2017. TissueGene plans to reinvest the influx of funds brought in by the IPO into the US phase III clinical trials for Invossa in April 2018.

Our Representation:

Kim & Chang advised TissueGene on all aspects of this transaction. In addition to providing general listing-related services, our firm also reviewed: (i) both the US and Korean laws for cross-border issues concerning conflicts that arise from a US corporation listing in Korea; (ii) the alignment of the US company's Articles of Incorporation, the Korean Commercial Code, and the market regulations of the Korea Exchange; and (iii) KOSDAQ-listing requirements for US companies.

Korean Low-cost Carrier Jin Air Files for KRW 318 Billion IPO on the KOSPI

On December 8, 2017, Jin Air Co., Ltd. ("Jin Air") filed for an IPO on the KOSPI market. Through this IPO, Jin Air made a public offering for 12 million common shares and raised a total of KRW 318 billion.

Significance:

This IPO is the second case of a low-cost carrier's listing on the securities markets, and one of the largest IPOs in the latter half of 2017. With the influx of funds brought in by the IPO, Jin Air plans to expand business areas, such as adding new fleets and routes in Eastern Europe.

Our Representation:

In addition to providing general listing-related services, the Kim & Chang team also reviewed and advised on legal issues stemming from Jin Air's corporate governance structure: (i) listing of the subsidiary when the holding company (and the parent company), Hanjin KAL Co., was already listed, and the resulting restrictions imposed on the holding company; and (ii) listing of the subsidiary when Korean Airlines Co., Ltd., another competing subsidiary was already listed, which led to competition law-related issues.

INSURANCE

AIA International Limited's Korea Branch Converted from Branch to a New Subsidiary

Effective January 1, 2018, AIA International Limited's Korea Branch ("Korea Branch") has been converted to a new subsidiary of AIA International Ltd. – AIA Life Insurance Co., Ltd. ("AIA Life").

Details:

Current Korean laws and regulations do not provide any streamlined or clear-cut procedure for converting a foreign insurance company's Korea branch into a local corporation. Thus, for such a conversion, a series of complex corporate and regulatory procedures need to be taken, including establishing a new local entity, approval of insurance business license for the new local entity, transfer of insurance policies and other business assets from the local branch to the new entity, as well as liquidation of the branch after the completion of the business transfer.

Our Representation:

Kim & Chang advised on every step of the conversion process including: (i) the establishment of AIA Life; (ii) preparation of and negotiations with the regulator on the applications for AIA Life's preliminary and final license for the insurance business; (iii) transfer of all insurance policies from Korea Branch to AIA Life; (iv) transfer of substantially all business assets from Korea Branch to AIA Life; and (v) procurement of regulatory approval for the transfer of policyholders' credit information.

As of November 13, 2017, our firm had successfully advised the client in obtaining the Financial Services Commission's approval of the transfer of insurance policies and other business assets, as well as the regulator's final approval on the insurance business license for AIA Life and its acquisition of all business assets from the Korea Branch.

Significance of the Representation:

AIA Life was the third foreign insurance company in Korea that Kim & Chang was able to successfully counsel and help complete conversion of its branch into a local subsidiary. Other such successful subsidiarization cases in Korea that we adviced on include the subsidiarization of LINA Life Insurance Company in 2004, and the subsidiarization of AIG Insurance Co., Ltd. in 2012.

REAL ESTATE

Vestas Investment Management Sells Prime Office Building in Seoul for KRW 240 Billion

In December 2017, Vestas Private Real Estate No. 5, Ltd. (the "Seller") – operated by the Korean asset management firm, Vestas Investment Management Co., Ltd. – sold "Metro Tower," an office building located in the heart of Seoul, to ANDA Station Private Qualified Investor Fund Real Estate Trust No. 1, a private real estate fund established by the Korean boutique investment firm, ANDA Asset Management, Ltd. The purchase price for Metro Tower was KRW 240 billion (approx. USD 220 million).

Metro Tower is a prime office building comprised of two underground floors and 21 floors above ground.[4]

Our Representation:

Kim & Chang's Real Estate team, in representing the Seller, contributed to the successful completion of this transaction. We provided a comprehensive one-stop legal service in all aspects of the transaction, including review, and negotiation and execution of various transaction documents. Moreover, our firm continues to provide comprehensive and efficient legal advisory services to the Seller on post-transaction matters, helping the Seller proceed with dividend payments and the liquidation process.

INTERNATIONAL ARBITRATION & CROSS-BORDER LITIGATION

Kim & Chang's Arbitration Team Obtains over USD 45 Million for French Industrial Gas Supplier in an ICC Arbitration

Kim & Chang's International Arbitration and Cross-Border Litigation Practice successfully represented a French industrial gas provider in an international arbitration conducted in Seoul under the rules of the International Chamber of Commerce ("ICC"). The tribunal awarded more than USD 45 million in damages to the claimant French company, which represents approximately 92% of the damages for loss of future profits claimed by the claimant, and also ordered the respondent to bear approximately 85% of the claimant's legal fees.

This is a notable case, because: (i) the international tribunal comprised of two non-Korean arbitrators accepted the claimant's arguments on a controversial area of Korean law, where there was no precedent set by the Korean Courts; and (ii) the tribunal found that the "voluntary workout agreement" – which are widely used by Korean companies facing severe financial difficulties to avoid bankruptcy – between the respondent Korean company and its financial institution creditors does not excuse the respondent company from unfavorable effects to third parties resulting from such an agreement.

Details:

The dispute arose from a long-term supply contract under which our client, the claimant French company, would supply the respondent Korean company with gas needed to operate the respondent's power plant for 15 years. During the sixth year, however, the respondent, who was suffering excess debt at the time, suddenly terminated the contract following a voluntary workout agreement entered into with its financial creditors. One of the conditions the creditors required was to shut down the plant for which the claimant was supplying gas, since the plant was operating at a loss.

[4] Metro Tower's gross floor area is 39,908㎡, which includes the office area (32,488㎡) and the parking area (7,420㎡).

In the arbitration, the respondent argued that the termination of the supply contract was to prevent bankruptcy of the company. The respondent also argued that because the termination was made to comply with the requirements imposed by its creditors, it was outside the respondent's control, and thus, the respondent was not liable for the termination. The respondent further claimed that even if it were liable for the termination, the supply contract had a limitation of liability clause, which operated to limit the extent of the damages recoverable by the claimant.

However, our client had invested more than KRW 50 billion to construct the facilities needed to extract the gas to be supplied under the contract, and the respondent's termination resulted in massive current and future losses. On behalf of our client, we claimed damages for loss of profits for the remaining ten years under the contract, arguing that: (i) the respondent's termination was an intentional breach of the parties' supply contract; and (ii) under Korean law, a limitation of liability provision in a contract cannot apply where the breach was intentional.

Our Representation:

Kim & Chang's team of international arbitration practitioners reviewed voluminous documents obtained through the document production procedure in the arbitration proceeding to analyze the facts and circumstances regarding the voluntary workout agreement between the respondent and its creditors.

In addition, our team engaged in extensive research and review of public information, including news articles and reports, regarding the respondent's voluntary workout agreement. Building on the results of such in-depth analysis, together with testimony from a distinguished Korean legal expert, we were able to successfully establish that entering into the workout arrangement (and its terms) was the respondent's voluntary decision, and accordingly, the respondent's termination of the supply contract with our client was an intentional breach.

AWARDS & RANKINGS

Kim & Chang Wins "South Korea National Law Firm of the Year" for the 5th Time - Chambers Asia-Pacific Awards 2018

Kim & Chang has been named "South Korea National Law Firm of the Year" at the Chambers Asia-Pacific Awards 2018.

Our firm has won the award five times since 2010 – the most number of wins in Korea – with three of the recognitions awarded in the past five years. This fifth win is a great honor and testament to the well-established reputation of our firm, to the achievements of our professionals, and to the continuing opportunities our clients provide us to help solve some of their most complex business and legal issues.

The awards, organized by the internationally renowned legal publication Chambers and Partners, were held at the Eaton House on February 1 in Hong Kong. Each year, Chambers recognizes national and international law firms across the Asia-Pacific region for their "outstanding work, impressive strategic growth[,] and excellence in client service" over the past year.

In presenting this esteemed award, Chambers describes Kim & Chang as "maintain[ing] a stellar reputation across all practice areas, with no fewer than 19 Band 1 rankings . . . especially well equipped to advise clients on complex cross-border mandates[,] and routinely assists major multinationals and Korean conglomerates with high-profile transactions."

Celebrating its 45th year this year, Kim & Chang continues to advise on many of the most complex and groundbreaking transactions in the region.

For the 16th Consecutive Year, Kim & Chang Named Best Law Firm in Korea - IFLR Asia Awards 2018

Kim & Chang won two awards at the prestigious 2018 IFLR Asia Awards, which were held in Hong Kong on March 1.

For the 16th time, our firm was recognized as Korea's top law firm. We received the newly renamed "Most Innovative National Law Firm of the Year" (South Korea) award, which recognizes one law firm per country for leading the way in innovation. Kim & Chang was also recognized for advising on Trafigura's non-recourse commodity inventory funding program, which was named "Structured Finance and Securitisation Deals of the Year."

About IFLR Asia Awards: IFLR (International Financial Law Review), a finance law publication associated with Euromoney, annually hosts the IFLR Asia Awards. Based on submissions from law firms, interviews, and independent research, the awards recognize innovative law firms and cross-border deals in the Asia-Pacific region. This year, the awards ceremony took place at the Island Shangri-La Hotel in Hong Kong.

Additionally, two of our attorneys, SongHo Lee and Han-Cheol Kang, were chosen as "2017 Best Lawyers," which recognizes law firm attorneys for their outstanding capabilities. Mr. Lee was selected for his achievements in construction and engineering disputes as well as in trusts and estates and family law-related litigation. Mr. Han was recognized for his expertise in anti-corruption, corporate compliance and corporate investigations.

Our firm placed first in the following practice areas:

- Finance and Capital Markets
- Tax
- Antitrust and Competition
- Arbitration and Cross-Border Dispute
- Employment
- Patent, Trademark and Intellectual Property
- Litigation
- Criminal Defense
- Corporate (M&A)
- Corporate (Energy)
- Corporate (Shipping)
- Corporate (Telecommunication and Media)
- Labor

Recognized as "Korea's Best Law Firm" for Eight Consecutive Years - Hankyung Business 2017 Korea's Best Law Firm

Once again, Kim & Chang ranked first overall in the "2017 Korea's Best Law Firm" survey by Hankyung Business, a major Korean business publication. Since the magazine began conducting the survey in 2010, our firm has been recognized as Korea's best each year.

Hankyung Business gathered responses from legal practitioners in "Korea's Top 200 Companies" to determine the "law firm with the most competitive edge" in 17 practice areas. Our firm ranked first in 14 of the 17 practice areas.

"Legal Advisor of the Year" - The 15th Korea IB Awards

On January 26, 2018, Kim & Chang was named "Legal Advisor of the Year" by Money Today, one of Korea's leading economic daily newspapers.

In recognizing our firm for our "unrivaled" legal counsel on a full range of M&A transactions, it was noted that in 2017, Kim & Chang advised on 92 M&A deals (worth a total of KRW 17.9 trillion), including landmark deals such as Samsung's acquisition of Harman and Unilever's acquisition of Carver Korea.

About the Korea IB Awards: The 15th Korea IB Awards was hosted by Money Today, and was co-sponsored by the Financial Services Commission, the Financial Supervisory Service, the Korea Exchange, and the Korea Financial Investment Association.

Top Tier Tax Firm in Korea for the 15th Consecutive Year - World Tax 2018 and World Transfer Pricing 2018

Kim & Chang received a "Tier 1" (top) ranking in the International Tax Review's World Tax 2018 and World Transfer Pricing 2018. As the only law firm ranked "Tier 1" in Korea, since 2004, we have maintained our position as a Tier 1 firm for the past 14 years.

About World Tax and World Transfer Pricing: Published by Euromoney-affiliated International Tax Review, World Tax and World Transfer Pricing are global guides to leading tax advisory firms. The rankings are based on feedback given by tax executives and advisers, as well as evaluations on the experience and specialties of tax advisory service providers.

About Kim & Chang's Tax Practice: For the past 40 years, as the market leader in Korea, our Tax Practice has continued to achieve the highest practice standards in providing tax and legal services to our clients.

No. 1 M&A Advisor in Korea - Bloomberg Asia Pacific Legal Advisory M&A Rankings 2017

According to the Asia Pacific Legal Advisory M&A Rankings 2017 announced by the global media group Bloomberg, Kim & Chang ranked as Korea's top M&A advisor. With 132 deals worth USD 42.4 billion, our firm ranked first in both deal volume and deal count.

No. 1 M&A Advisor in Korea - Mergermarket 2017 Full Year Global M&A Trend Report: Legal Advisors

Mergermarket recently released its full year 2017 global M&A trend report with legal advisor league tables, and in South Korea, Kim & Chang led the legal advisor rankings, having advised on 72 deals worth USD 21.8 billion. Our firm ranked first in both deal count and deal value.

PRO BONO

Mentoring Youth Through Legal Education

January 2 through 5, 2018, the Kim & Chang Committe for Social Contribution led an educational program for middle school students from Seoul's Daeshin Middle School and Paiwha Girls' Middle School.

The program focused on the basics of law, including an introduction to criminal law and civil law, a lecture on how to think like a lawyer, a lawyer game, and team presentations by students. Through these lectures and activities, students were able to more easily understand basic legal concepts and have a chance to ask questions about lawyers' daily work. Students also learned about the ethical values of obeying the law, and familiarized themselves with basic legal concepts.

In addition to this program, Kim & Chang Committee for Social Contribution plans to host an eight-week course on basic Korean laws for youth of multicultural families and marginalized families.

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