KIM & CHANG

Newsletter

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ANTITRUST & COMPETITON

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KFTC Announces Plan to Eliminate Technology Misappropriation

On September 8, 2017, to promote joint growth of enterprises of all sizes and their collaborative efforts, the Korean Fair Trade Commisson ("KFTC") and the ruling Democratic Party of Korea held a consultation conference to step up efforts to eliminate unfair demands of technical information and/or misappropriation of technology by large conglomerates against small and medium-sized enterprises.

Following the conference, the KFTC announced an enforcement plan to root out misappropriation of technology. This is part of the KFTC's policy to eliminate abusive practices by large conglomerates and promote joint growth of large conglomerates along with small and medium-sized enterprises. Key items from the consultation conference include the following:

- Preemptive ex officio investigations to be conducted over the machinery and automotive industries in 2018, the electronics and chemical industry in 2019, and the software industry in 2020.

- Expansion of the scope of technical information to cover information that has been kept confidential through "reasonable" efforts (from the prior standard of protecting information that has been kept confidential through "considerable" efforts).

- Establishment of a team dedicated to technology misappropriation cases and a committee comprised of experts in relevant technical fields ("Technology Inspection Advisory Committee").

- Imposition of stricter sanctions, including fixed amount fines, criminal referrals and punitive damages.

- Adoption of measures to prevent unfair trade practices involving disclosure of technical information by prohibiting the demand for disclosure of managerial information or joint patenting of source technology.

- Regulation of unfair demands for technical information or technology misappropriation prior to the execution of a contract as unfair interference with management of another under the FTL (since prior to the execution of a contract, such conduct would not be subject to the Fairness in Subcontracting Transactions Act).

Significance:

As the scope of technical information has been extended, it is highly likely that certain technical information provided to prime contractors could now raise concerns of technology misappropriation, even if such provision was not challenged in the past.

Also, the KFTC is expected to strengthen its enforcement efforts. In particular, given that the ex officio investigations scheduled to start in 2018, it is recommended for prime contractors to review the materials they have received from the subcontractors and their status of compliance relating to technology misappropriation (including whether their request for materials can be substantively and procedurally justified, whether they have engaged in sufficient discussions with the subcontractors to obtain the materials, and whether their requests were made on the bases of any documentation). Upon such extensive review, it is further recommended to remedy or develop follow-up plans for any gaps detected during the review.

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Amendments to the Patent and Design Protection Acts Now Effective, Key Changes That May Affect You

Several amendments to the Patent Act ("PA") and the Design Protection Act ("DPA"), which passed the National Assembly on March 2, 2017, went into effect on September 22, 2017. We highlight below the major changes:

Amended PA: patent-related marking rules specified in the PA

The PA was amended to update and incorporate existing regulations concerning patent marking into the statute itself. The amendment is intended to reduce consumer confusion, which may have been caused by misleadingly labeling products as "patented" (e.g., if a product is only covered by a pending patent application).

Generally, patent marking is not necessary in Korea to show that an infringer had notice of an issued patent for purposes of calculating infringement damages, unlike in other jurisdictions where patent marking is used to prove notice of the patent (and the full scope of damages). Patent marking may be helpful for proving damages for the period a patent application was published prior to registration (which are recoverable in Korea and require proof of notice). However, only patent owners and licensees (exclusive or non-exclusive) are permitted to mark their products with the relevant patent numbers or patent application numbers. Moreover, such patent markings are only available for patents and patent applications relating to products or product-making methods.

Thus, even though there is no requirement to have patent markings on your products, if you choose to mark your product, you are obliged to follow the rules defined in the PA.

First, the marking must conform to the following format under the PA:

- Registered Patent (product): Patent XXXXXX
- Patent Application (product): Patent Application (Examination Pending) XXXXXX
- Registered Patent (method): Method Patent XXXXXX
- Patent Application (method): Method Patent Application (Examination Pending) XXXXXX

If markings cannot be made on the product itself, the markings can be made on the container or the packaging instead. However, this is not merely a matter of convenience – if the product can be reasonably marked, then the patentee should not put the mark on the container or packaging.

False marking is considered a crime and an infringer can be subject to imprisonment of up to three years or a fine of up to KRW 30 million (approx. USD 27,000). False marking is defined as using a patent number on an unpatented product, using the words "patent application pending" on a product for which no patent application is pending, or otherwise marking a product in a way that may cause others to incorrectly believe there is a patent or application covering a product.

Amended DPA: grace period for design applications extended to one year

Under the previous DPA, a grace period was provided in which a design could be filed up to six months after the publication or public use of the applicant's identical or similar design without losing novelty, as long as the grace period was properly claimed. An applicant had

to claim a novelty grace period at one of four points: (i) when filing the application (documentation of the previous disclosure could be submitted up to 30 days after the application date); (ii) during prosecution, in response to an office action issued by the Korean Intellectual Property Office ("KIPO"); (iii) in response to an opposition filed by a third party regarding the registration of a partially-examined design; or (iv) in response to an invalidation action filed by a third party.

The amended DPA extends the six-month grace period to a full year and also expands the opportunity to claim the grace period during prosecution from responses to office actions only to any time before issuance (i.e., the applicant may now claim the grace period at any time while the application is still pending).

Significance:

These changes are expected to give design applicants more time to decide whether filing a design application is warranted considering the market response to a design, and to make it easier for applicants to claim the grace period during prosecution.

ENVIRONMENT

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Potential Regulatory Compliance Systems to Enhance the Safe Control of Chemical Substances

Continuing its policy to enhance the safe control of chemical substances, the Ministry of Environment ("MOE") has been making legislative efforts to further heighten regulations of chemical substances.

MOE's Regulatory Enhancement Efforts & What Companies Would Need to Do:

On August 16, 2017, the MOE finalized an amendment to the Act on the Registration and Evaluation, Etc. of Chemical Substances ("K-REACH"), and a new Act on the Safe Control of Common Household Chemical Products & Biocides ("K-BPR"), and submitted them to the National Assembly for its approval. If passed, the K-BPR is expected to become effective on January 1, 2019.

Few days later, on August 22, the MOE also published a Notice of an Amendment to the Designated Potentially Risky Products & Safety/Labeling Standards ("Potentially Risky Products Notice").

1. **Changes to the registration of chemical substances**

   If the amendment to the K-REACH becomes law, the current 510 "phase-in substances subject to registration" would not need to be registered. Rather, all phase-in substances manufactured/imported one ton or more per year would need to be registered (expected to be approximately 7,000 chemical substances).

   Also, the grace period may vary depending on the amount of chemical substances manufactured/imported. Thus, it is necessary to prepare a long-term plan to register chemical substances given the anticipated usage amount per substance.

Under the proposed amendment, companies would need to file a declaration (not a registration) if non-phase-in substances are manufactured/imported less than 100kg per year.

In addition to criminal sanctions, the proposed amendment will allow the MOE to impose an administrative fine of up to 5% of the relevant revenue for failure to register or update registration. Therefore, particular attention should be paid to ensure that the registration of chemical substances is properly done.

2. **Heightened regulations on household chemical products & introduction of regulations on biocides**

The K-BPR, which is currently under the National Assembly's review, mainly consists of two parts: (i) regulations on the household chemical products and (ii) regulations on biocides (i.e., active substances, biocidal products, and related articles).

Household Chemical Products – the current category of "Potentially Risky Products" under the K-REACH will be replaced with "Household Chemical Product Subject to Conformity Confirmation" under the K-BPR, to which new safety/labeling requirements will be applied.

Biocides – the proposed legislation mainly includes the approval system for active substances and biocidal products, and labeling requirements for biocidal products and treated articles.

Since the proposed K-BPR is expected to become effective on January 1, 2019, it would be prudent for companies to: (i) confirm whether they have any chemical substances subject to the proposed K-BPR; (ii) prepare compliance with the proposed K-BRP; and (iii) incorporate such efforts into their business plans.

3. **Five newly designated Potentially Risk Products & enhanced safety/labeling standards**

On August 22, 2017, the MOE published the Potentially Risky Products Notice to add antifreeze, washer fluid, desiccant, and candle (all of which were regulated under the Electrical Appliances and Consumer Products Safety Control Act), and sealant as new "Potentially Risky Products."

If any of these products is newly released after August 22, 2017, those products must comply with the applicable safety/labeling requirements without any grace period. However, if those products were already released on or before August 22, 2017, then the new products to be released after February 23, 2018 (as for the safety requirement) and June 30, 2018 (as for the labeling requirement) must comply with the safety and labelling requirements, respectively.

Significance:

As one of the major policies of this administration, we expect that the regulations on the safe control of chemical substances will continue to be enhanced.

Past experience has shown that when there is a heightened regulatory scrutiny, in addition to chemical companies, companies that are not traditionally considered to be subject to chemical regulations (e.g., auto, distribution, fashion), often also become subject to chemical regulations. Hence, it is important to pay close attention to ensure compliance through close monitoring of new and revised regulations and the enforcement practice of relevant government authorities.

CORPORATE

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Korean Supreme Court Finds No Wrongdoing in a Derivative Suit Filed with the Sale of a Company's Shares in an Affiliate to the Controlling Business Group's Family Member

On September 11, 2017, in a derivative suit filed in connection with the sale of a company's shares in an affiliate to a related party (family member) of the same person controlling the business group (the "Transaction"), the Supreme Court ruled that the Transaction did not involve any appropriation of the company's opportunities, self-transaction, or negligence of duties.

Details of the Ruling:

1. Misappropriation claim

   The Supreme Court concluded that even if the company's opportunities were provided, if the company's board of directors – after collecting and analyzing sufficient information – made a decision through a legitimate procedure to forgo the business opportunity, or if a certain director gave approval to utilize the opportunity, unless there was a reason to believe that the decision-making process was significantly unreasonable, a business decision made by the directors must be respected. Moreover, as long as there are no circumstances to believe that the decision-making process for the Transaction was significantly unreasonable, such a decision could be deemed as an appropriation of the company's opportunities.

2. Self-transaction claim

   The Supreme Court held that it was not a self-transaction, because the counterparty to the Transaction was not the same person controlling the business group, but a specially related person. Even if the Transaction was a self-transaction, given that the same person controlling the business group disclosed key transaction terms (such as the fact that the buyer of the Transaction was a specially related party, and the sales price), the necessity of a paid-in capital increase of the affiliate, and the necessity to sell shares based on the restrictions on the total amount of shareholding, there had been a legitimate approval of a self-transaction under Article 398 of the Commercial Code (i.e., the Board of Directors' resolution took place after learning that the sales price was evaluated by an accounting firm).

3. Duty of care / Negligence claim

   Regarding the claim that the officers breached their duty of care by making a low-price sale, the Supreme Court ruled that: (i) it was impossible to conclude that the Transaction was not an improvement of the financial structure through the sale of non-core investment assets of the company; (ii) the shares had to be sold once the grace period for the restrictions on the total amount of shareholding was over; (iii) the affiliate was in poor financial condition at the time; and (iv) the circumstances following the Transaction did not suggest that the Transaction incurred a loss to the company, and that the share valuation that the Plaintiffs claimed to be legitimate were all after-the-fact judgment or were not an objective valuation. Therefore, the Court viewed the original court ruling denying the negligence of duties by the directors of the company to be reasonable.

Significance:

This ruling is noteworthy, because the Court found no wrongdoing in a case where a company sold shares in an affiliate to a family member of the person controlling the business group on the grounds that there had been a business necessity, and that the company had undergone a careful review by the board of directors, an objective evaluation of the transaction terms, and engaged in the Transaction at a fair price.

We believe this ruling could be used as a reference to minimize the legal risks relating to low-price sales in equity transactions between companies and large shareholders/specially related persons.

ANTITRUST & COMPETITON

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KFTC Implements a Penalty Compelling Submission Requests to Reinforce Its Investigative Power

Effective October 19, 2017, under the amendment to the Enforcement Decree of the Monopoly Regulation and Fair Trade Law ("FTL"), the KFTC implemented a penalty that compels submission of requested documentation or materials in case an investigatee fails to submit on the KFTC's initial request. This aligns with the KFTC's recent emphasis on strict enforcement of the law, reinforcing its investigative power.

1. **Adoption of more sanctions to compel submission to the KFTC's investigation**

   Previously, the KFTC was authorized to impose only an administrative surcharge when an investigatee failed to comply with a request for submission.

   Under the amended FTL, which was promulgated on April 18, 2017, the KFTC may now impose criminal sanctions, such as imprisonment of up to two years or a criminal fine of up to KRW 150 million.

   Further, under the amended Enforcement Decree, the KFTC may impose a penalty to compel submission of requested documentation or materials.

Prior to the Amendment	After the Amendment
Administrative surcharge ▪ Up to KRW 100 million for a company ▪ Up to KRW 10 million for an employee/officer	Criminal sanctions ▪ Imprisonment of up to two years or a criminal fine of up to KRW 150 million Penalty to compel submission ▪ Up to 0.3% of daily sales amount on average per day

2. Relevant procedures and amount of penalty

Under the amended Enforcement Decree, the KFTC may impose a penalty to compel submission within 30 days from the expiration date of the submission period. In case an investigatee fails to remedy, a penalty may be cumulatively imposed every 30 days from the expiration date of the submission period. Below are the penalty amount standards:

Average sales per day	Rate	Amount to be imposed per day
No greater than KRW 1.5 billion	2/1000	Daily average sales multiplied by 2/1000
Greater than KRW 1.5 billion, but no greater than KRW 3 billion	2/1500	KRW 3 million + amount in excess of KRW 1.5 billion multiplied by 2/1500
Greater than KRW 3 billion	2/2000	KRW 5 million + amount in excess of KRW 3 billion multiplied by 2/2000
N/A (i.e., where no sales revenue is generated or it is impossible to assess such an amount)	--	No greater than KRW 2 billion

BANKING & SECURITIES

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FSC Continues to Strengthen Corporate Governance-related Regulatory Measures to Tighten Financial Companies' Internal Controls and Risk Management

On September 5, 2017, the Amendments to the Enforcement Decree of the Act on Corporate Governance of Financial Companies ("Enforcement Decree"), and the Regulation for the Supervision of Corporate Governance of Financial Companies ("Regulation") ("Amendment") took effect.

Since December 6, 2017, the Amendment – including the terms for deferred compensation – has been in effect.

The Amendment is primarily designed to strengthen the obligation of financial companies making deferred incentive payments to resolve the side effects caused by the practice of providing large amounts of short-term incentives to their officers and employees, and also seeks to encourage certain small financial companies to streamline their organizational structures.

Key Changes of the Amendment:

1. Requirements for internal control and risk management of small financial companies relaxed

Certain requirements for internal control and risk management of small-sized financial companies (including banks, securities companies, asset management companies, and insurance companies) have been relaxed.

Until recently, a Korean branch of a foreign financial company could not have its risk management officer concurrently serving as a compliance officer or vice versa. Under the Amendment, a Korean branch of a foreign financial company with assets less than KRW 700 billion and not engaged in the dealing of derivatives as a concurrent business can have its risk management officer concurrently serving as a compliance officer, and vice versa.

Also, previously, all financial companies (except investment advisory companies and discretionary investment companies with assets under management of less than KRW 500 billion) were required to have separate risk management and internal control departments (including their respective supporting personnel). Now, this requirement has been abolished for financial companies with assets less than KRW 100 billion.

2. Deferred compensation regulation clarified

The Amendment clarified that incentive payment should be made on a deferred payment basis for officers and employees responsible for structuring, sales, and investment management of securities or derivatives, as well as employees performing certain roles designated under the Enforcement Decree. Specifically, for officers and employees in charge of structuring, sales, and investment management of securities or derivatives, at least 40% of their incentive payments should be deferred for at least three years.

Further, if a financial institution incurs any loss in connection with his or her work during the deferral period, the deferred incentive payments must be recalculated to take into account the realized losses.

3. Additional changes

Inside directors of financial companies and non-standing auditors concurrently serving as officers or employees of other financial companies are required to obtain an approval from, or report such concurrent position holding to the Financial Services Commission ("FSC").

FSC Amends Financial Institution Audit & Sanction Rules

The FSC recently enacted an amendment (the "Amendment") to the Regulations on the Audit and Sanction of Financial Institutions (the "Audit Regulations"), which went into effect on October 11, 2017.

This Amendment is designed to give structure to the amendment of ten major finance-related enforcement decrees for reforming the sanction system for the finance sector, all of which took effect on October 19, 2017.

Summary of the Amendment:

1. Restructuring the standard for imposing monetary penalty

Prior to the Amendment, the standard imposition rate of monetary penalty was set only in consideration of the amount relating to the violation (e.g., unjust enrichment), and did not reflect other standards (e.g., manner or severity of such a violation).

However, the Amendment applies differential rate not only according to the related amount, but also to the severity of the violation. As a result, it is estimated that the amount of penalty imposed will increase by approximately 2.47 times.

Also, the Amendment inserted new grounds for the reduction or exemption of the penalty. When the estimated penalty exceeds 10% of the institution's equity or ten times the institution's unjust enrichment, such excessive amount may be exempted from the sanctions. Further, when there is reasonable ground for the offender's error such that his or her conduct was not wrongful (i.e., when the offender made the conduct according to the administrative supervision, or public opinion of public officials, including the Financial Supervisory Service ("FSS"), the penalty may be exempted.

2. Improving the standard for imposing administrative fine

While there was controversy in deciding the amount of administrative fine when there are two or more violations or wrongful acts of the same type, the Amendment clearly states that in principle, the amount of administrative fine is to be separately applied to each violation or wrongful act.

Further, the Amendment enables the reduction of fine by 30% – separately for each case of a voluntary report and/or a voluntary correction. Prior to the Amendment, the reductions were taken together as a single reduction. Thus, the Amendment seeks to actively encourage the institution's voluntary report and voluntary amendment.

3. Repealing regulations without legal grounds

Because sanctions should be imposed according to the grounds provided by law, the Amendment repeals the pre-amendment provision that listed the violations and wrongful acts subject to sanctions for lacking a legal basis.

Additionally, the Amendment repeals the pre-amendment provision that restricts an institution from using its own discretion to impose sanctions on its employee for his or her violations or wrongful acts before the FSS requests for such measures (since such a provision lacks legal grounds).

Significance:

With the Amendment, the level of the standards for imposing monetary penalty and administrative fine has been substantially heightened. As such, we expect that the amended monetary penalty and administrative fine to be actively utilized as disciplinary measures against financial institutions.

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Insurance Regulation Amendment Addresses Issuance of Hybrid Securities and RBC Issues

On August 28, 2017, the Regulation on Supervision of Insurance Business and Detailed Regulations on Supervision of Insurance Business (including the insurer's capital position and risk-based capital ("RBC") calculation) was amended, and went immediately into effect.

The primary purpose of the amendment was to support and induce insurance companies to improve their capital position and to strengthen risk management to comply with the implementation of IFRS 17 (which will occur in 2021).

Key Changes:

1. **Insurance companies are now permitted to issue hybrid securities to satisfy financial soundness standards.**

   Prior to the amendment, insurance companies were only allowed to issue hybrid securities to "maintain adequate liquidity." Under the amendment, the regulations now expressly allow insurance companies to preemptively issue hybrid securities to satisfy financial soundness standards.

2. **Risk of principal and interest-guaranteed type retirement pension will be reflected in the RBC ratio.**

   Previously, although they impact an insurance company's financial soundness, credit and market risks related to the asset management of principal and interest-guaranteed type retirement pension were not reflected in the RBC ratio calculation. Now, the amendment to the regulations requires insurance companies to gradually reflect such risks over a three year period (from 2018 to 2020).

3. **New risks and repeal of overlapping items in quantitative evaluation items for the management status evaluation will be reflected.**

   - The amendment provides for subdivisions or adds relevant evaluation items to review the adequacy of increasing interest rate risks, expanding alternative investment and preparing for system changes, including IFRS17.

   - The amendment deletes items concerning adequacy of general administration and non-financial risks from the business management risks, and combines overlapping items in the investment risks and the liquidity risks to alleviate the insurance companies' inspection burden.

Significance:

While it was unclear to the insurance companies whether issuing hybrid securities was permitted in specific cases, the amendments relax the issuing requirements for hybrid securities. These amendments are expected to persuade the companies to preemptively improve their capital positions and to raise their RBC ratios.

As such, it would be prudent for insurance companies to continue monitoring the developments and closely review relevant issues.

FSS Announces Its 2018 Reorganization Plan

The FSS announced the 2018 Reorganization Plan to strengthen oversight over financial institutions and to strengthen consumer protection.

For the insurance sector, the most substantial change is that the FSS departments responsible for supervision and inspection of the insurance industry will be placed under the Financial Consumer Protection Bureau. Overall, these changes are expected to strengthen protection of insurance customers and to allow multi-layered supervision and inspection of insurance companies.

Key Points Affecting the Insurance Sector:

1. **FSS departments responsible for supervision and inspection of the insurance industry now placed under the Financial Consumer Protection Bureau.**

   Previously, the FSS departments responsible for supervision and inspection of the insurance industry reported to the First Senior Deputy Governor of the FSS. Now, those departments will be placed under the Financial Consumer Protection Bureau. This change was made to address the high number of customer complaints filed by financial consumers regarding the insurance sector (63.7% of all financial consumer complaints as of 2016), and strengthen consumer protection.

2. **Supervision and inspection of financial soundness responsibilities now given to the Deputy Governor in charge of financial soundness, and supervision and inspection of business activities of insurers given to the Deputy Governor in charge of business activities.**

   Responsibility for supervision and inspection of financial soundness will be given to the Deputy Governor in charge of financial soundness (currently, the Deputy Governor responsible for bank). Responsibility for business activities of insurers will be given to the Deputy Governor in charge of business activities (currently, the Deputy Governor responsible for capital markets).

   This change would enable multi-layered supervision and inspection that would allow consistency in inspections while retaining the existing sector-based organization.

3. **Supplemental measures to strengthen consumer protection granted.**

   - Assign responsibility for supervision and inspection of business activities to the departments responsible for the supervision and inspection of the insurance industry to strengthen consumer protection.
   - To improve the speed of processing complaints, grant the Complaint Handling Department under the Financial Consumer Protection Bureau the authority to conduct on-site investigations.
   - Reassign inspection duties for financial soundness, compliance, and business offices to the Insurance Examination Department. Previously, these inspection duties were exercised by the Insurance Examination Department, Compliance Examination Department, and Business Examination Office, respectively.

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Supreme Court Issues Important Decision on Permanent Establishment Issues Relating to Foreign Private Equity Funds

On October 12, 2017, the Korean Supreme Court handed down an important decision dealing with Permanent Establishment ("PE") issues relating to foreign private equity funds with Korean investments. Overall, this decision is significant, because it provides important guidelines for determining the existence of a Korean PE of foreign private equity funds and, thus, would be helpful in structuring Korean investments in the future.

Background:

In this case, the foreign private equity funds (the "Funds") made equity investments into several Korean companies through special purpose companies established in Belgium ("SPCs"). The Korea-Belgium Tax Treaty provides for capital gains tax exemption. The Funds were formed in the form of a limited partnership in the U.S. and Bermuda with a general partner ("GP") that had an unlimited liability partner ("Company A") and limited liability partners. Company A, through a series of ownership chains, established two wholly-owned subsidiaries in Korea ("Korean Subs"), each of which provided origination services and asset management services to the Funds' Korean investments.

PE Issue & Basis for Assessment:

The PE issue arose as some of the limited liability partners of the GP ("Officers at Issue") were appointed as the representative directors or officers of the Korean Subs, and they performed the above-mentioned origination services and asset management services in Korea.

The Korean tax authorities assessed taxes on the Korean source income of the Funds at the domestic tax rate, arguing that the Funds had a fixed-place type PE in Korea, because the Officers at Issue performed essential and significant activities of a typical private equity fund at a fixed place of business in Korea.

In addition, the Korean tax authorities argued that a dependent agent type PE existed, because the Officers at Issue and/or Korean Subs were dependent agents, who habitually exercised authority to conclude contacts on behalf of the Funds.

Supreme Court's Decision & Implications:

The Supreme Court held that a fixed-place type PE is found when either an employee of a foreign entity or a person who is directed by the foreign entity performs essential and significant business activities (i.e., going beyond preparatory or auxiliary activities) at a fixed place of business, such as a building or facility in Korea, which is at the disposal of the foreign entity.

The Supreme Court reconfirmed the legal principle that all relevant facts and circumstances, including the nature and magnitude of business activities in Korea, their relative significance, and his/her role in the overall business activities, should be considered in determining whether such business activities constitute essential and significant business activities. This ruling affirmed the lower courts' decision that no Korean PE of the Funds existed.

- **No fixed-place type PE:** The Supreme Court found that: (i) decisions on all significant matters, such as fund raising, acquisition of targets, and divesture of investments, were made abroad; (ii) the activities of the Officers at Issue were not performed on behalf

of the Funds, but the Officers at Issue functioned as officers of Korean Subs, both of which were legal persons separate from the Funds; and (iii) the activities of the Officers at Issue relating to the acquisition and management of the target companies were ex-ante and preparatory activities for making investment decisions, or were ex-post and auxiliary activities to assist in the management of assets and in the determination of the timing of the divestment, especially in view of the purposes of the Korean Subs.

- **No dependent agent type PE:** The Supreme Court found that: (i) even if the Officers at Issue participated in negotiations and signed agreements based on such authorities delegated to them in the process of the acquisition of a target company, such activities were conducted in their capacity as officers of the Korean Subs, which are legal entities separate from the Funds, and not as agents of the Funds; and (ii) there was no evidence proving that the Officers at Issue otherwise had habitually exercised the authority to conclude contracts on behalf of the Funds.

Factors Considered:

In short, when a foreign private equity fund establishes a domestic company to search for potential investments, or to manage the fund's investment portfolio, a Korean PE of the fund would not be found to have been set up, simply because there is a Korean company providing services to the fund.

In determining whether the fund conducts essential and significant business activities in Korea, the following factors should be considered: (i) whether all important decisions on "fund raising, acquisitions, and divestments" are made overseas; and (ii) whether the activities of the officers of the Korean service company are limited to: (a) services specified in a service contract between the company and the fund; (b) ex-ante and preparatory activities to make investment decisions; and (c) ex-post and auxiliary activities to assist management of assets and determination of the timing of divestments.

LABOR & EMPLOYMENT

By Weon Jung Kim (wjkim@kimchang.com) and Do-Yoon Kim (doyoon.kim@kimchang.com)

Ministry of Employment and Labor Plans to More Aggressively Police Companies Engaging in Illegal Dispatch Arrangements

On September 22, 2017, the Ministry of Employment and Labor ("MOEL") announced that it had concluded that Paris Baguette, a leading bakery brand belonging to Korean conglomerate SPC Group, had engaged in an illegal dispatch arrangement with respect to the bakers at its franchise stores. This conclusion was based upon the MOEL's recent on-site inspections at 68 locations, including Paris Baguette's headquarters, Paris Baguette's partner firms ("Partner Firms") and franchise stores. The MOEL then issued a corrective order that Paris Baguette directly hire 5,378 bakers who are working at its 3,396 franchise stores. If Paris Baguette fails to comply with this corrective order, the MOEL intends to impose an administrative fine and request that the Prosecutors' Office further investigate.

Details:

The bakers who executed employment agreements with the Partner Firms were working at Paris Baguette's franchise stores under a service agreement that was executed between the Partner Firms and the franchise store owners. According to the MOEL, Paris Baguette determined and implemented matters such as the hiring of the bakers, performance evaluations, wages, and promotions (which, according to the Franchise Business Promotion Act, are not matters that a service recipient company may determine). Moreover, Paris Baguette also controlled the bakers by managing their attendance and provided work instructions through Paris Baguette's quality control managers.

The MOEL opined that Paris Baguette had exerted more than the typical franchisor's level of control that is permitted under the Franchise Business Promotion Act, and played the role of the user company (like the bakers' employer) under the Act on Protection of Dispatched Workers.

Legal Proceedings:

In November 2017, Paris Baguette filed two separate petitions requesting nullification of the MOEL corrective order to directly hire the bakers, and sought preliminary injunction for suspension of the MOEL order. The court, however, refused to review the company's request for a preliminary injunction, stating that the MOEL order is a form of administrative guidance that did not cause any irreparable harm to Paris Baguette.

Recent Cases Finding Illegal Dispatch Arrangements:

In two recent cases involving Asahi Glass (a glass manufacturer) and Mando-Hella Electronics (a vehicle parts manufacturer), the MOEL found that dispatched factory workers who were employed by Asahi Glass and Mando-Hella Electronics' subcontracting companies were illegally dispatched workers. On September 22, 2017, the Daegu Regional Employment and Labor Office's Gumi branch stated that Asahi Glass engaged in an illegal dispatch arrangement and ordered the company to directly hire 178 of its subcontractor's workers. On September 28, 2017, the Jungbu Regional Employment and Labor Office also stated that Mando-Hella Electronics had engaged in an illegal dispatch arrangement and ordered it to directly hire 300 of its subcontractor's workers. The MOEL has also stated that it referred both cases to the Prosecutors' Office requesting indictment for violation of the Act on Protection of Dispatched Workers.

Significance:

The Act on Protection of Dispatched Workers requires that a company which received the services of illegally dispatched workers directly hire those workers, and further provides that companies that violate this requirement may be subject to an administrative fine up to KRW 30 million.

Previously, when there was room for debate as to whether there was an illegal dispatch arrangement, the MOEL would not immediately issue a corrective order to the company in question without instructions from the Prosecutors' Office – even in cases where the MOEL had reported to the Prosecutor's Office that it believed that an illegal dispatch arrangement existed. However, in light of recent MOEL practices, it now appears that the MOEL will immediately issue corrective orders to directly hire the dispatched workers where the MOEL believes that an illegal dispatch arrangement exists. It is further expected that the MOEL will impose administrative fines on companies that fail to comply with its order.

Also, in the press release regarding the Paris Baguette case, the MOEL announced that "going forward, the MOEL will take preemptive measures (e.g., preemptive inspections) with regard to the job types that especially require the protection of Korean labor laws to better protect the workers in these job types." Thus, we expect that the MOEL will be more proactive in issuing corrective orders to hire illegally dispatched workers where they determine there was a violation of law.

Ministry of Employment and Labor Responds to Frequently Debated Labor Issues on Better Protecting the Three Fundamental Labor Rights for Persons in Special Types of Employment

With heightened media and public attention, the MOEL responded to one of the frequently debated labor issues surrounding the treatment of persons in special types of employment, including insurance solicitors and courier workers, and clarified its position that it would make improvements to existing systems to better protect the "three basic labor rights" for this class of workers. The three basic labor rights guaranteed under the relevant Korean law are the right to organize, right to bargain collectively, and the right to take collective actions.

Background:

Recently, delivery workers organized the National Coalition of Delivery Workers' Union, and held a campaign demanding that the three fundamental labor rights be guaranteed for their members. Further, the National Constriction Workers' Union that belongs to the Korean Confederation of Trade Unions held a full strike on November 28, 2017, to demonstrate its support for stronger protections of these special types of employment in the construction industry (e.g., concrete mixer drivers).

There have been continuous legislative discussions, calling for appropriate legislation designed to protect persons in special types of employment and to grant them the three basic labor rights. In fact, the National Human Rights Commission has recommended to the Minster of Employment and Labor and the National Assembly Chairman to take prompt actions to introduce and/or amend the law that will protect the labor rights of the special type workers.

In October 2017, in response, the MOEL announced its plan to prepare and implement legislative measures by amending the existing law or enacting a special law through a survey on the current status of persons in special types of employment (e.g., the status of provision of labor and level of dependency), followed by discussions among labor, management, and government sectors, as well as civilian experts. In this regard, MOEL's announcement is drawing attention to what measures will be taken for persons engaged in special types of employment.

Current Status:

Currently, there is a bill pending at the National Assembly that proposes to amend the Trade Union and Labor Relations Adjustment Act to include persons engaged in special types of employment in the definition of employees so that they are granted the three basic labor rights.

If the proposed bill is passed, it is expected that a number of complicated issues that are difficult to predict will arise, including: (i) the formation of a collective body advocating uniform working terms and conditions applicable to special type of employment workers; (ii) request for negotiations; (iii) indemnity for collective actions; and (iv) introduction of systems to resolve collective disputes, among many others.

Significance:

In light of the recent developments, it is possible that other related laws and regulations, such as social security insurance laws, may need to be amended.

Hence, employers using the services of workers in special types of employment will need to monitor social discussions and the legislative process, and carefully review and consider if there are any potential disputes that may arise (e.g., in connection with the performance of workers engaged in special types of employment, the potential effects on their businesses, and strategic measures to minimize any potentially adverse impact).

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Amended Privacy Regulations Now Effective, Requiring Changes to Consent and Request Forms

Recently, the Ministry of Interior and Safety ("MOIS") announced the draft amendments (the "Amendments") to the Enforcement Decree and Enforcement Rule of the Personal Information Protection Act ("PIPA"), South Korea's data privacy law. The Amendments became effective on October 19, 2017.

Key Aspects of the Amendments:

The Amendments introduced: (i) new formatting requirements for privacy consent forms; (ii) simplified procedure for requesting to view, correct, delete, or demand cessation of processing personal information; and (iii) expansion of the data leakage reporting requirement. We examine each aspect in detail below.

1. New formatting required for privacy consent forms

   Following a recent court case dealing with the question of whether a consent form using a 1mm font size was a valid consent form, the PIPA was amended to require that the "important aspects" of the consent form be clearly visible.

   The Amendments define "important aspects" to include: (i) the fact that the data controller may contact the data subject for marketing purposes; (ii) the fact that sensitive personal information or unique identification information (e.g., passport number, driver's license number or foreigner registration number) will be processed; (iii) if personal information is to be provided to a third party, the identity of the recipient and the recipient's purpose of using the personal information; and (iv) the retention and usage period of personal information.

   Additionally, the Amendments require such "important aspects" to be: (i) shown at least 20% larger than the rest of the content of the consent form, and in any case, in at least font size nine or larger; (ii) clearly noticeable to the data subjects by using a different color, underline or bold typeface; and (iii) separately summarized if the consent form contains many "important aspects."

2. Procedure simplified for requesting to view, correct, delete, or demand cessation of processing personal information

   The former Enforcement Decree of the PIPA provides that when a data subject wishes to view, correct, delete, or demand cessation of processing personal information, the data subject must submit to the data controller a paper request form prescribed in the Enforcement Rule of the PIPA. However, many have voiced opinion that the requirement to use only the prescribed paper request form is too difficult in practice.

   Thus, the Amendments allow the data subject to make the request by phone, e-mail, website or other more easily accessible methods, and require the data controller to make the procedure and method for making the request not any more difficult than consenting to the original collection of personal information.

3. Data leakage reporting requirement threshold expanded

   The former Enforcement Decree of the PIPA requires that when the personal information of 10,000 or

more data subjects have been leaked, the data controller must file a leakage report with the MOIS or the Korea Internet & Security Agency.

Under the Amendments, the threshold is lowered to 1,000 or more data subjects.

Significance / Relation to Privacy Audits:

As the Amendments require changes to the currently used consent forms and request forms, we advise companies to begin amending the relevant forms as early as possible, especially since these forms are almost always checked by government agencies when conducting privacy audits.

Ministry of Science and ICT Proposes a Major Modification to the Regulatory Framework for the Telecom Industry

On August 23, 2017, the Ministry of Science and ICT published a notice of proposed amendment to the Telecommunications Business Act (the "Act") (the "Proposed Amendment"). In general, the Proposed Amendment aims to: (i) reduce regulatory barriers that hinder entry into facility-based telecommunications service market; (ii) change how telecommunications services are classified, and adjust the application scope of major regulations; (iii) exempt non-telecommunications service providers from the obligation to register as a facility-based telecommunications service provider ("FSP"); and (iv) launch a universal rate plan.

Once the new regulatory framework is organized as the amendment of the Act proposes, more telecommunications service operators with various business objectives (such as the Internet of Things ("IoT") or the fourth-generation (4G) mobile communications) will be seen in the market. Also, the Proposed Amendment will create an environment that would encourage the development and improvement of cross-industry convergence – i.e., products and services integrated with telecommunication functions, such as smart cars (or connected cars). Further, if an overseas service provider without a physical business presence in Korea intends to introduce products and services with telecommunications functions to Korea, the overseas service provider would be able to enter the Korean market through a much more simplified procedure than the current system.

Background:

The current Act divides the telecommunications services into facility-based, specific, and value-added telecommunications services, and requires FSPs to abide by stricter regulations, which include license requirements, restrictions on foreign stock ownership, and obligation to report their user policies. However, as services forming new networks are often classified as FSPs, many within the industry and academic circles have pointed out that these restrictions obstruct the emergence of new telecommunications networks and services, such as the IoT.

Key Aspects of the Proposed Amendment:

Based on an awareness of these issues, the Moon administration collected opinions from various groups, and announced the Proposed Amendment. Below we highlight some key aspects:

1. Reduces regulatory barriers prohibiting entry into facility-based telecommunications service market

   By relaxing the requirements to operate as a FSP from a license system to a registration system – the Proposed Amendment intends to make the entry into facility-based telecommunications service market easier. Thus, the current administration will be able to promote the emergence and development of new telecommunications networks and services, such as the IoT.

2. Reorganizes the application scope of various regulations

   The Proposed Amendment abolishes the distinction between FSPs and specific telecommunications service providers. Moreover, once the Proposed Amendment takes effect, major regulations – such as restrictions on foreign stock ownership, and the obligation to report user policies – that were uniformly applied to all FSPs will only be applied to a limited group of FSPs that fall under the criteria set forth by the Presidential Decree. The criteria will be based on factors such as scale of business and whether the FSP possesses major telecommunications line equipment and facilities.

3. Exempts non-telecommunications service providers from the obligation to register as FSPs

   When a service operator of an industry other than telecommunications (e.g., automobiles or home appliances) sells products or services on which telecommunications functions are added, such a service operator will be exempted from the obligation to register as a FSP. Also, when facility-based telecommunications services are being offered to Korea from abroad, the obligation to obtain an approval of agreement on cross-border provision will be exempted.

4. Introduces a universal rate-plan

   In addition, as part of the new administration's policy to lower telecommunications costs, the Proposed Amendment sets grounds for adopting a universal rate plan, and makes it mandatory for FSPs in market-dominant positions to adopt and launch the universal rate plan. The details of the universal rate plan will be announced by the Ministry of Science and ICT.

Road Ahead:

Comments on the proposed amendment were collected until October 2, 2017. Next, regulatory review by the Regulatory Reform Committee, review by the Ministry of Government Legislation as well as review and deliberation by the National Assembly will take place.

This Proposed Amendment is considered to be a major modification of the current regulatory framework. Thus, we believe those that are likely to be affected by this modification will need to pay close attention to the legislative developments (e.g., telecommunications service providers or service providers that are considering the launch of products and services converging (or integrating) with telecommunications functions).

SELECTED REPRESENTATIONS

CORPORATE

Hyundai Mipo Dockyard Acquires 7.98% Stake in Hyundai Robotics

On June 22, 2017, Hyundai Mipo Dockyard sold 7.98% of Hyundai Robotics shares at approximately KRW 350.3 billion in a stock exchange.

The transaction was a block trade, intended to resolve a circular ownership structure created within Hyundai Heavy Industries Group in the course of establishing Hyundai Robotics, and required an in-depth review of various legal issues relating to a series of group governance restructuring efforts.

Kim & Chang advised Hyundai Mipo Dockyard on the entire transaction.

Kakao Partners with Global Private Equity Firm TPG to Establish Kakao Mobility

On September 29, 2017, a consortium of four private equity investors and one financial institution, led by the global private equity firm TPG (Texas Pacific Global Group), collectively invested KRW 450 billion (approx. USD 400 million) for 26.47% stake of Kakao Mobility, a company newly established by Kakao Corp. for this transaction.

Our Representation:

This transaction required significant time and efforts in devising optimal deal structures and documentations, which were necessitated by the need to contractually address various issues arising from the situation under which the definitive agreements needed to be signed before the Kakao Mobility spin-off.

As the Korean counsel to the investors, Kim & Chang spearheaded the efforts that led to the successful closing of the transaction by providing strategic advice on salient regulatory issues, as well as practical counsel to the negotiation of contractual scheme, both between Kakao parties and the investors and among the investors.

Also, based on our extensive experience of advising on foreign investment, foreign exchange, and anti-competition filing in the investors' country, our team delivered tailored solutions and efficiently coordinated potentially divergent business interests of the consortium members into a well-thought-out contractual scheme that achieved the business goals of all parties.

E-Land Retail Sells Its Home & Living Business to Korean Private Equity Giant MBK Partners for KRW 643.5 Billion

On August 17, 2017, E-Land Retail ("E-Land") sold its home & living business to MH & Co., Ltd. ("MH & Co."), a company newly formed by MBK Partners, and MBK Partners for KRW 643.5 billion.

The transaction garnered a high level of interest, as E-Land's home & living business has a large market share in the Korean home & living market. Structured as a business transfer, this transaction required detailed and complex legal analysis and advice on the transfer of various assets and liabilities as well as permits and licenses.

Representing MBK Partners in this transaction, Kim & Chang delivered a successful completion of the deal by providing comprehensive legal advice on the transaction, including deal structure, legal due diligence, contract drafting and negotiation, and closing.

Bain Capital Private Equity Acquires South Korea's Botox Maker, Hugel, for KRW 473 Billion

On July 5, 2017, Bain Capital Private Equity ("Bain Capital") acquired new shares of a South Korean biopharmaceutical firm, Hugel Inc. ("Hugel"), for KRW 354 billion, and its convertible bonds for KRW 100 billion. Bain Capital also entered into an agreement to

purchase all 800,000 Hugel shares held by Tongyang HC Co., Ltd. ("Tongyang") for KRW 473 billion.

On July 14, 2017, by closing the transaction to acquire the new shares and convertible bonds, Bain Capital secured 23.1% of Hugel's shares. The share transaction deal with Tongyang is scheduled to be closed in January 2018.

Our Representation:

Because this transaction involved a listed company whose technology is a crucial asset to the nation, it required thorough legal analysis and advisory services to complete the timely filing of licenses, approvals, declarations, and reports with relevant government authorities.

Kim & Chang, advising Bain Capital, set up the transaction structure (including financing); conducted due diligence; and negotiated and prepared the terms and conditions for the share purchase agreement, the share/bond subscription agreement as well as the acquisition loan agreement. Our firm also provided comprehensive legal services in producing declarations and reports required for the transaction and the closing.

LITIGATION

Gwangju High Court Broadens the Application of the Employers' "Good Faith Exception" Defense, Dismissing Employees' Claims for Additional Allowances

In an important development in the on-going "ordinary wage" litigation currently pending in several courts throughout the country, the Gwangju High Court dismissed all claims brought by several employees of a large Korean manufacturer seeking additional allowances. The Court did so by expanding the scope of the "good faith exception" defense applicable to the employer company.

The case is expected to serve as an important and useful precedent for other companies that have pending ordinary wage litigation in which the company has not yet concluded new wage agreements with its labor union after the 2013 Supreme Court decision.

Case Details / Court's Decision:

The case involved a suit brought by the employees of Kumho Tire ("Kumho"). They argued that parts of their fixed bonuses (which were paid every two months based on the wages of the preceding two months) were "ordinary wages," entitling them to additional statutory allowances.[1]

Although the Gwangju High Court agreed with the employees that the fixed bonuses in question should be properly characterized as "ordinary wages," the Court nevertheless dismissed the employees' claims in their entirety on grounds that the employer's very business would be in jeopardy if the employer was obliged to make such payments, recognizing the "good faith exception"[2] defense in favor of our client Kumho.

The Court found that (i) (due to the large number of workers who had worked overtime on a regular basis) the amount of the additional allowances the company would need to pay substantially exceeded the amount of total wages the employer had originally expected to pay when it was discussing wage increases with the company's labor union; and (ii) the company's financial and business situation was very difficult.

In addition, the Court dramatically expanded the period in which employers could plead such good faith exception defense. The Court noted that despite the decision of the Supreme Court in 2013 confirming that fixed bonuses and incentives may constitute "ordinary wages,"[3] the previously negotiated wage standards (based on the employer's assumption that fixed bonuses

[1] "Allowances" are additional payments to employees made on a one-off or regular basis; statutory allowances are mandated by law and include overtime allowances and allowances for night shifts. The amount of statutory allowances claimed by the employees in this case was calculated based on the total amount of ordinary wages.

[2] Although agreements between employers and labor union that exclude fixed bonuses in the calculation of ordinary wages are invalid, the SupremeCourt has recognized a "good faith exception" to allowing additional payment to employees in cases where doing so would result in serious financial difficulties to the employer.

[3] Supreme Court Decisions 2012Da89399 and 2012Da94643, December 18, 2013 (en banc)

were not ordinary wages) continue to be in effect in many cases. And until new agreements between employers and the labor union[4] are concluded, or until the current decision by the Court is finalized upon appeal to the Supreme Court, the Court ruled that the good faith exception defense should continue to be available to employers in certain circumstances.

Significance of the Case & Our Representation:

This case is the first court decision that expressly addresses the period of applicability of the employer's good faith exception defense. Significantly, the Gwangju Court's acceptance of the company's good faith defense signifies the Court's willingness to recognize that a company's capacity to pay should serve as an inherent limit to the employees' claims for additional allowances.

Kim & Chang's team successfully persuaded the Gwangju High Court on behalf of Kumho to fully accept the expanded application of the company's good faith defense.

ANTITRUST & COMPETITION

KFTC Renders No-violation Decision on a Franchiser Accused of Shifting Cost of Reward Points to Franchisee Stores

In a recent no-violation decision, the KFTC found that a franchiser did not violate the Fair Transactions in Franchise Business Act ("Fair Franchise Business Act") when it provided reward points to customers and allegedly shifted the cost of the reward points to the franchisee stores.

Representing the franchiser in the case, the Kim & Chang team successfully argued that the franchiser's cost-allocation scheme should not be framed as an abuse of superior bargaining position, but should rather be considered in light of the increased economic efficiency and positive customer welfare aspects.

Details:

In this case, a certain percentage of the purchase price at any of the franchisee stores is awarded to the customer as reward points, and the customers are able to use the reward points at any franchisee store. The cost for providing the reward points is assumed by the franchisee store that generated the reward points and the store where the reward points are used.

When the store that generated the reward points closes, the cost of providing for the reward points is assumed by the franchiser and the store where the points are used. However, some franchisee stores claimed that the franchiser violated the Fair Franchise Business Act by unfairly shifting more burden of cost to the franchisee stores.

The KFTC found that the franchiser's practice did not violate the Fair Franchise Business Act, because: (i) the reward point scheme creates significant sales revenue, which is largely enjoyed by the franchisee store where the reward points are used; and (ii) considering the customers' tendency to revisit the same franchisee store, if a franchisee store that generated the reward point closes down, customers who used to visit that store will likely become new and regular customers of the store where the reward points were used. In essence, the KFTC viewed the cost-allocation scheme to conform to the basic principle that the beneficiary should bear the costs.

Significance:

This judgment in favor of the franchiser is noteworthy in the midst of the KFTC's strong will to combat unfair trade practices in the franchise industry. Notably, in its annual plan for 2018, the KFTC picked "termination of unfair practices in the franchise industry" as one of its key objectives of the year. In future disputes with the franchisees with regards to cost allocation, franchisers are advised to prepare a well-crafted explanation of the benefits that the franchisees would gain in return for bearing the costs.

[4] Reflecting the Supreme Court's 2013 decision

SECURITIES

Celltrion Healthcare, Distribution Arm of Celltrion, Korea's Leading Biopharmaceutical Company, Makes Its Historic Debut on the KOSDAQ

In late July 2017, Celltrion Healthcare Co., Ltd. ("Celltrion Healthcare"), the exclusive distribution arm of Celltrion Inc. ("Celltrion"), South Korea's leading biopharmaceutical company, held its initial public offering ("IPO").

Celltrion Healthcare's listing is the largest KOSDAQ IPO ever valued above KRW 1 trillion, and was one of the largest IPOs completed in 2017. Celltrion's market cap is the largest on the KOSDAQ market.

Our Representation:

Kim & Chang successfully advised Celltrion Healthcare in all aspects of its unique listing.

This transaction was unique, because Celltrion, the developer of specific pharmaceutical products, was already listed, with Celltrion Healthcare, the listed company's exclusive distribution arm, being also listed (on the same market). The listing is expected to offer both Celltrion and Celltrion Healthcare many flexible options in various situations, such as when the companies transact with each other, or when Celltrion decides to change its listing venue to the KOSPI market.

In the course of advising on the listing, Kim & Chang not only provided Celltrion Healthcare with general listing-related services but our team also reviewed various novel legal issues, including whether it is feasible to list the shares of an exclusive distributor of pharmaceutical products when those of their developer is already listed separately, and whether there would be concerns under the Fair Trade Law given the exclusive right to distribute them.

Malaysian Subsidiary of Lotte Chemical Lists on the Malaysian Stock Exchange in Bursa Malaysia's Biggest IPO in over Two Years

On July 11, 2018, Lotte Chemical Titan Holding Berhad ("Titan"), a KOSPI-listed subsidiary of Lotte Chemical Co., Ltd. ("Lotte Chemical"), debuted on the Malaysian stock exchange.

The listing was valued at approximately KRW 4 trillion, resulting in the largest transaction in the petro-chemical industry since 2010, the same year Lotte Group bought Titan Chemicals Corp. Lotte Chemical is expected to use the listing proceeds to make new investments, mostly to finance the company's expansion in Malaysia and Indonesia, and eventually become the dominant petrochemical player in Southeast Asia.

Our Representation:

Kim & Chang provided Titan with advisory services throughout the entire listing process, helping the company successfully list on Bursa Malaysia. Because this transaction involved a foreign listing of an offshore subsidiary of a company listed in Korea, it demanded comprehensive legal solutions, including advising on Korean law throughout the course of the listing, conflict review between Korean and Malaysian laws, coordinating with overseas legal counsel on the listing, assisting Lotte Chemical in complying with its public disclosure obligations prompted by the listing of its subsidiary, and performing legal due diligence.

REAL ESTATE

Mirae Asset Completes Its Fourth Major Overseas Property Investment of 2017 in Frankfurt, Germany for KRW 360 Billion

Mirae Asset Global Investments Co., Ltd. ("Mirae Asset") completed its purchase of a landmark office building and local tourist attraction known as "Taunusanlage 8" or "T8" (the "Property") in the heart of Frankfurt, Germany, for approximately EUR 281 million (or KRW 360 billion).[5] Mirae Asset, advised by Kim & Chang, won the priority right to negotiate the deal to take over T8 from global asset manager Credit Suisse Asset Management ("CSAM"). Linklaters LLP, a top British law firm, is one of the anchor tenants of the Property.

Our Representation:

Our Real Estate team, working with a local German law firm, advised Mirae Asset on all aspects of this transaction including: (i) reviewing the laws and regulations on collective investment vehicles in Korea; (ii) reviewing and assessing due diligence issues concerning the Property; (iii) reviewing and negotiating various transaction documents; and (iv) creating the optimal transaction structure from both legal and tax perspectives to enable the funding and consummation of the transaction.

CONSTRUCTION & ENGINEERING DISPUTES

Supreme Court Sets Precedent, Ruling on the Administrative Powers of the Public Procurement Service on Bid Restrictions

Where a public institution entrusts the bidding and contracting process to the Administrator of the Public Procurement Service ("PPS"), the Korean Supreme Court recently ruled that the respective public institution has the authority to restrict such bidding based on a construction company's illegal act rather than the Administrator of the Public Procurement Service. The Court based its decision on the Act on the Management of Public Institutions.

Significance:

This Supreme Court ruling on June 27, 2017 is significant, because it is the first time in which the Court essentially spoke up against the Administrator of Public Procurement Service for arbitrarily applying the Act on Contracts to which the State is a Party and imposing bid restrictions without any legal basis.

Background:

As a central procurement agency, PPS handles the procurement for large-scale construction works for the use of government agencies and semi-government institutes, and also, with its in-house officials, provides supervision services for major construction projects at the request of the end-user, be it a national agency, local entity, or a public institution, and where contractors agreements have been executed for such entities. In this process, if illegal acts by participating bidders were found, the PPS Administrator was of the position that, under the Act on Contracts to which the State is a Party, he or she has the authority to restrict bidding on such bidders, and thus far, PPS Administrators have actually imposed such sanctions.

However, depending on who has the authority to impose bidding restrictions, there are significant differences for the construction company. Specifically, if the authority is given to "public institutions" under the Act on the Management of Public Institutions, a restrictive sanction constitutes a "judicial notice" rather than an administrative order, resulting in restrictions only applying to construction projects initiated by the public institution. On the other hand, if the authority is given to the PPS, a restrictive sanction will be listed on the G2B (Government to Business) as an administrative order, preventing the construction company from participating in the bidding for any project initiated by any national agency, local entity or public institution. Thus, there is a significant difference in the impact on the affected construction company depending on who has the authority to impose bidding restrictions.

[5] Specifically, Mirae Asset MAPS Germany Professional Investment Private Real Estate Investment Trust 1, established by Mirae Asset, indirectly acquired a 100% interest in a Luxembourg company (the "Interest"), which owns T8 (with 17 above-ground and three basement floors).

Case History:

In this case, both the Seoul Administrative Court (first trial) and the Seoul High Court (second trial) ruled that in cases of procurement contracts, the PPS Administrator has the authority to impose restrictions under the Act on Contracts to which the State is a Party, as claimed by the PPS, and dismissed the claims of the construction company (Plaintiff).

Our Representation:

On appeal, Kim & Chang, in representing the construction company before the Supreme Court, insisted that the PPS had no authority to impose such bidding restrictions. Agreeing with such position, the Supreme Court ruled that the authority to impose bid restrictions is an administrative sanction that must be provided by law. Since there is no law that provides such authority to procurement entities, the Supreme Court held that the PPS has no authority to impose bid restrictions under the Act on Contracts to which the State is a Party, or any other act, reversing and remanding the prior court rulings. On remand, agreeing with the Supreme Court's decision, lower courts ruled that the PPS' claimed authority to impose bidding restrictions was illegal, and the case was finalized without appeal from the PPS.

INTELLECTUAL PROPERTY

Supreme Court First Recognized Inventiveness of an Enantiomer as a "Selection Invention" with a Qualitatively Different Effect

On August 29, 2017, the Korean Supreme Court issued first-of-its-kind decisions when it recognized the inventiveness of Novartis' patents for an enantiomer selection invention related to two products used to treat dementia associated with Alzheimer's disease (Exelon® Capsule and Exelon® Patch).[6]

Background:

Novartis separated a novel optical isomer, (S)-N-ethyl-3-[1-(dimethylamino)ethyl]-N-methyl-phenyl-carbamate ("rivastigmine"), from a racemate[7] disclosed by prior art references, and found that it has the remarkable effect of superior transdermal penetration and 24-hour duration ("transdermal effect"), as well as superior anti-dementia effect over the racemate. As a result, Novartis obtained two patents relating to the above inventions: (i) a compound patent directed to Exelon®'s active ingredient (rivastigmine); and (ii) a pharmaceutical composition patent for systemic transdermal administration comprising rivastigmine.[8]

Exelon® Patch is the first patch-type transdermal therapy approved worldwide to treat dementia associated with Alzheimer's disease and has achieved huge commercial success.

Procedural History:

SK Chemicals imported a significant amount of the rivastigmine active ingredient during the patent term of the compound patent, and then manufactured and exported their rivastigmine patches. Accordingly, Novartis filed a patent infringement action and a preliminary injunction action against SK Chemicals based on their compound patent in 2012. In response, SK Chemicals filed invalidation actions with the Intellectual Property Trial and Appeal Board ("IPTAB") against both Novartis' patents for Exelon® Capsule and Exelon® Patch.

The IPTAB denied the novelty of Novartis' compound patent on the ground that a person skilled in the art could have directly recognized the enantiomer, rivastigmine, from the racemate[9] based on common technical knowledge at the time of the filing date of the patent. Further, the IPTAB denied the inventiveness of the

[6] "See Novartis AG v. SK Chemicals cases - Supreme Court Decision 2014Hu2696 and 2014Hu2702, August 29, 2017.
[7] 'Racemate' refers to a mixture where a pair of optical isomers (comprised of dextrorotatory and levorotatory optical isomers) is mixed in equal ratio. Dextrorotatory and levorotatory optical isomers have the same physiochemical properties (e.g., melting point, boiling point, specific gravity) with different directions to rotate polarized light. However, a racemate has different physiochemical properties from each optical isomer. Although a racemate indicates a mixture comprising the same amount of dextrorotatory and levorotatory optical isomers, the racemate as a whole mixture has new physiochemical characteristics different from each isomer. As such, a racemate is a totally different concept from a general mixture comprising two compounds having different chemical structures.
[8] The pharmaceutical composition patent for systemic transdermal administration is a divisional patent of the compound patent.
[9] Only two types of optical isomers exist - the (R) and (S) forms

compound patent stating that rivastigmine did not have a qualitatively different effect, since the racemate disclosed in the prior art would have the same effect as rivastigmine – both have the same chemical structure. By contrast, the IPTAB held that the pharmaceutical composition patent is inventive, recognizing the transdermal effect as a new use of the pharmaceutical composition.

On appeal, however, both patents were held to be invalid by the Patent Court for lack of inventiveness.

Finally, both cases were further appealed to the Supreme Court, where the Patent Court decisions were reversed, and the Supreme Court recognized the inventiveness of both patents, finding that the transdermal effect of rivastigmine was a qualitatively different effect from effects that could have been expected from the prior art.

Significance & Our Representation:

There are two reasons why we see the Supreme Court's decisions as significant. One, the Court recognized the inventiveness of the compound patent even though it concluded that the patent was a selection invention (i.e., specific enantiomer vs. racemic mixture). This is significant because very strict patentability requirements apply to selection inventions in Korea. In fact, there has been only one case in Korea[10] before the present case where the inventiveness of a selection invention has been recognized by the Supreme Court.

Second, this decision is also noteworthy because both the IPTAB (first instance tribunal) and the Korean Patent Court (second instance) denied the inventiveness of the compound patent. Where both tribunals of the lower instance come to the same decision, the Supreme Court will usually summarily dismiss the appeal without any substantive review.

Despite the low chance for review, Kim & Chang's Intellectual Property Team convinced the Supreme Court to review this case, and was able to obtain a favorable outcome for our client, Novartis.

ENVIRONMENT

Seoul High Court Sets Precedent, Clarifying Restoration and Defects Liability Associated with Restored Lands

On September 28, 2017, the Seoul High Court issued a precedent-setting opinion in a real estate transaction dealing with liabilities associated with debris/wastes generated during construction on restored lands.

This was a noteworthy decision, because the High Court addressed several potential liabilities that often arise during real estate transactions, including the applicability of soil contamination warning levels and its standards, and the scope of liability associated with construction defects and land restoration.

Case Details:

In this case, the Plaintiff purchased land that was formerly a quarry, but was later restored with construction debris and recyclable wastes from Defendant A, and began operating its waste treatment business on that land.

During the foundation construction for its new building, the Plaintiff discovered wastes buried underground (e.g., old concrete blocks, sludge, etc.). Subsequently, the Plaintiff filed a complaint, seeking damages for: (i) a breach of warranty and contract from Defendant A; and (ii) improper restoration from Defendant B, which performed the restoration.

Seoul High Court's Decision:

The Court acknowledged that the land was restored with construction debris, concrete blocks, and organic wastes, which were not treated properly, and that certain test results indicated exceedances of soil contamination warning levels. Nonetheless, for the following reasons, the Court held there was insufficient evidence for both a breach of warranty and contract, and improper restoration of the land:

- As large stones or other wastes can also be found under the ground on clean lands, the mere fact that the Plaintiff discovered construction debris, concrete

[10] Supreme Court Decision 2010Hu3424, August 23, 2012

blocks, or organic wastes underground is not sufficient to establish that the land has a defect.
- Sporadic samples showing exceedances of soil contamination warning levels do not necessarily suggest that the entire land is contaminated above the soil contamination warning levels.

Our Representation:

Representing Defendants A and B, Kim & Chang persuaded the Seoul High Court to dismiss the Plaintiff's appeal in its entirety. Environmental law experts in our Environment Practice and experienced litigators with environmental law expertise provided critical legal and industry insights, successfully advising our clients on the appeal of this case.

INTERNATIONAL ARBITRATION & CROSS-BORDER LITIGATION

Korean Court Recognizes the Importance of the Nationality of an Arbitral Tribunal Chair from a Neutral Country in International Arbitrations

In an important precedent-setting decision, the Korean court exercised its authority under the Korean Arbitration Act to appoint a national of a neutral country not involved in the international arbitration proceeding.

Case Details:

The case involved a dispute between a foreign construction company that had purchased an insurance policy to cover the risks related to its maintenance works, and the Korean insurance company that issued the insurance policy. When the Korean insurance company failed to pay after the foreign company made a claim under the policy, the foreign party commenced arbitration in accordance with the dispute resolution clause in the policy. However, because the arbitration clause did not provide for a specific arbitration institution to which the parties could refer for procedural rules and administration, they had to resort to ad hoc arbitration (i.e., the parties must agree on each procedural matter without the assistance of arbitration institutions' rules).

Appointment of an Arbitrator of Neutral Nationality:

During the arbitrator appointment process, a dispute arose between the parties regarding the nationality of the chair arbitrator. The foreign party emphasized the need for a third-country national to ensure fairness of the proceedings, while the Korean insurance company argued for a Korean chair, claiming that since the governing law is Korean, the chair arbitrator need not be a third-country national so long as the individual was otherwise qualified and appropriate for the case.

Since the arbitration was seated in Seoul, Korea, the issue of appointment of the chair arbitrator had to be referred to the Korean courts, in accordance with the Korean Arbitration Act.

In making the appointment, the Korean court held multiple hearings, where each side presented their arguments through written and oral submissions. The court then sought recommendations for a chair arbitrator from the Korean Commercial Arbitration Board ("KCAB").

The court ultimately agreed with the foreign party's position that the arbitrator's neutrality is of paramount importance to the neutrality of the proceeding and, therefore, the arbitrator's nationality is a key factor.

For the actual appointment, the court drew from a list of third-country national candidates provided by the KCAB. Relying on the KCAB list was a practical solution given that the court does not possess its own pool of arbitrators.

Our Representation:

Kim & Chang's arbitration team was able to draw on its vast experience in international arbitration to persuade the court on behalf of the foreign party. Our efforts ultimately led to the appointment of an experienced, internationally recognized arbitrator as the chair of the tribunal.

Given the limited number of ad hoc arbitrations seated in Korea, this was a rare instance in which the Korean court exercised its authority to appoint under the Arbitration Act. Our team's experience was critical in bringing about a result that was both favorable to the client and consistent with the global standard of best practices in international arbitration.

AWARDS & RANKINGS

Kim & Chang Named "Asia-Pacific Firm of the Year" - Asialaw Asia-Pacific Legal Practice Awards 2017

On November 28, 2017, Kim & Chang was recognized as the "Asia-Pacific Firm of the Year" in the inaugural Asialaw Asia-Pacific Legal Practice Awards.

Our firm also received four additional recognitions as "South Korea Firm of the Year," "Construction and Real Estate Law Firm of the Year," "Financial Services Regulatory Firm of the Year," and one of our attorneys was honored with the "Lifetime Achievement Award."

O-Gon Kwon of our International Arbitration & Cross-border Litigation Practice was the recipient of the "Lifetime Achievement Award," which honors an individual who has made significant contributions to developing the legal systems in the Asia-Pacific region. Mr. Kwon was particularly commended for his work as one of the permanent judges of the UN's International Criminal Tribunal for the former Republic of Yugoslavia.

Below are the details of our wins:

- Asia-Pacific Firm of the Year
- South Korea Firm of the Year
- Construction and Real Estate Law Firm of the Year
- Financial Services Regulatory Firm of the Year
- Lifetime Achievement Award: O-Gon Kwon

Asialaw Asia-Pacific Legal Practice Awards 2017: This year's awards marked the first year of Asialaw Asia-Pacific Legal Practice Awards. Hosted by Asialaw, one of the most reputable legal publications in Asia and an affiliate of Euromoney, these awards determine the most outstanding law firms from 24 jurisdictions in the Asia-Pacific across 18 practice areas based on three key aspects: innovation, complexity and impact. This year's awards ceremony took place at the JW Marriott in Hong Kong.

Kim & Chang Remains Korea's Top Law Firm in the Asia-Pacific - The American Lawyer's Asia 50 (2017)

According to the latest "Asia 50," an annual special feature published by The American Lawyer, Kim & Chang ranked 11th among the top 50 Asia-Pacific law firms.

Since The American Lawyer introduced these rankings in 2013, our firm has retained its position as the highest ranking Korean law firm on the list.

About "Asia 50": A special feature annually published by the market-leading legal publication, The American Lawyer, "Asia 50" relies on firm surveys and independent research to determine the top 50 firms with the largest number of full-time equivalent lawyers in the Asia-Pacific. This year's results were included in the November 2017 issue of *The American Lawyer.*

Kim & Chang Still Among Largest Asian Law Firms and Biggest in Korea - ALB Asia's Top 50 (2017)

According to "Asia's Top 50," a feature story in the November issue of Asian Legal Business (ALB), Kim & Chang is the 12th largest Asian law firm, with the top 11 being China-based firms. Our firm continues to lead this chart among Korean firms, and once again, this is the highest ranking for a Korean firm.

About "Asia's Top 50": Asian Legal Business is one of Asia's leading legal magazines, and is affiliated with one of the world's premier mass media and information organizations, Thomson Reuters. ALB annually announces the 50 largest law firms in Asia in its feature story, "Asia's Top 50." ALB analyzes law firm submissions and conducts independent research to determine the largest law firms in Asia based on the "total number of lawyers" (combined number of partners, associates, counsel, consultants, and foreign counsel in a law firm).

Kim & Chang Wins "Korea Law Firm of the Year" for the Fifth Consecutive Year - ALB Korea Law Awards 2017

Kim & Chang was once again named "Korea Law Firm of the Year" at the *ALB Korean Law Awards 2017*, a recognition we have won five consecutive times since these awards began in 2012. Our firm was also once again honored with the highest number of recognitions at this year's ceremony held on November 16 at the Grand Hyatt in Seoul.

We earned six Firm Awards, including "Korea Law Firm of the Year" and "Deal Firm of the Year," as well as four Deal Awards, bringing home a total of ten awards. Below are our winning details:

Firm Award Categories – Sole winner

- Korea Law Firm of the Year
- Deal Firm of the Year
- Banking and Financial Services Law Firm of the Year
- Private Equity Law Firm of the Year
- Projects, Energy and Infrastructure Law Firm of the Year
- Regulatory and Compliance Law Firm of the Year

Deal Award Categories – Co-winner

- Debt Market Deal of the Year: Coral South FLNG
- M&A Deal of the Year: Samsung's Landmark Acquisition of Harman
- Projects, Energy and Infrastructure Deal of the Year: Coral South FLNG
- Real Estate Deal of the Year: Acquisition of IFC Seoul by Brookfield Asset Management

ALB Korea Law Awards 2017: *ALB Korea Law Awards* is in its fifth year of paying tribute to the outstanding performance of law firms, private practitioners and in-house teams that have significantly contributed to the evolving legal landscape of the Korean legal market. An independent judging panel comprised of senior and expert legal industry leaders review and evaluate law firms' submissions, and ALB conducts independent research based upon the submissions. The awards are hosted annually by Asian Legal Business (ALB), a renowned legal publication in Asia affiliated with Thomson Reuters.

Kim & Chang Breaks Own Market-leading Record with Top Firm and Individual Lawyer Rankings - Chambers Asia-Pacific 2018

In the 2018 edition of the prestigious legal guide, *Chambers Asia-Pacific*, Kim & Chang was the only law firm in Korea to receive top rankings ("Band 1") across all 19 practice areas surveyed.

Our firm was also the only Korean firm to receive "Band 1" rankings in three firm categories – Dispute Resolution: White-Collar Crime; Intellectual Property: Patent Specialist; and Technology, Media, Telecoms (TMT).

Additionally, our firm again continues to be regionally ranked for International Arbitration – Asia-Pacific Region (in "Band 4"). We were also recognized for our North Korea-related work by being ranked in "General Business Law – North Korea."

On an individual lawyer/professional level, we broke our own record by five, having a total of 60 attorneys, patent attorneys and accountants be recognized as "Leading Individuals" across all surveyed practice areas. 17 additional professionals were also chosen as "Other Noted Practitioners."

Below are the details of our rankings:

Firm Rankings

South Korea ("Band 1" in All 19 Practice Areas)

- Banking & Finance
- Capital Markets
- Competition/Antitrust
- Corporate/M&A
- Dispute Resolution: Arbitration
- Dispute Resolution: Litigation
- Dispute Resolution: White-Collar Crime
- Employment
- Insurance
- Intellectual Property
- Intellectual Property: Patent Specialist
- International Trade
- Projects & Energy
- Real Estate
- Restructuring/Insolvency

North Korea
- General Business Law: Desk based Abroad in South Korea

Asia-Pacific Region
- Arbitration (International): Band 4

Leading Individuals

South Korea
- Banking & Finance: Young Kyun Cho, Hi Sun Yoon, Young Min Kim
- Capital Markets – Capital Markets: Young Man Huh, Chang Hyeon Ko, Myoung Jae Chung
- Capital Markets – Securitisation: Hoin Lee
- Competition/Antitrust: Kyung Taek Jung, Sung Eyup Park, Youngjin Jung, Jay Ahn, Gene-Oh (Gene) Kim, Brian Tae-Hyun Chung**
- Corporate/M&A: Kyung Taek Jung, Jong Koo Park, Young Jay Ro, Young Man Huh, Bo Yong Ahn, Jong Hyun Park**, Shin Kwon Lim**, Sun Yul Lee**
- Dispute Resolution – Arbitration: Byung-Chol (B.C.) Yoon*, Eun Young Park, Liz Kyo-Hwa Chung, Kay-Jannes Wegner, Richard Menard, Joel E. Richardson, Byung-Woo Im**
- Dispute Resolution – Litigation: Sang Ho Han, Jin Yeong Chung, Jung Keol Suh, Hye Kwang Lee, Sun Seong Park**
- Dispute Resolution – White-Collar Crime: Kook Hyun Yoo, Sung Gwan Chun, Dong Min Cha, Myungsuk Sean Choi, Seung Ho Lee, Byung Suk Lee, Hankyu Kim, Jae Don Sim**, Michael H. Yu**
- Employment: Chun Wook Hyun (E), Weon Jung Kim, Wan Joo, Deok Il Seo, Jung Taek Park, Ki Young Kim**, Jong Chul Jung**
- Insurance: Jay Ahn, Woong Park, Jae Ho Baek**
- Intellectual Property: Jay (Young-June) Yang, Duck Soon Chang, Young Kim, Sang-Wook Han, Ann Nam-Yeon Kwon**, In Hwan Kim**, Seong-Soo Park**
- International Trade: Juhong Kim
- Projects & Energy: Young Kyun Cho
- Real Estate: Yon Kyun Oh, Kwan Sik Yu, Keun Ah Cho, Jin Ho Song**, Heung Suk Oh**, David Pyun**
- Restructuring/Insolvency: Jin Yeong Chung, Chiyong Rim
- Shipping: Byung-Suk Chung, Jin Hong Lee, Chul-Won Lee
- Shipping – Finance: Hi Sun Yoon
- Tax – Tax: Je Heum Baik, Stefan L. Moller
- Tax – Consultants: Woo Hyun Baik, Dong Jun Yeo, Dong So Kim, Im Jung Choi, Tae-Yeon Nam
- Technology, Media, Telecoms (TMT): Dong Shik Choi, Min Chul Park

North Korea
- General Business Law: Eun Min Kwon

About Chambers Asia-Pacific and Its Methodology: *Chambers Asia-Pacific* is an annually published guide to 41 legal markets in the Asia Pacific region by Chambers and Partners, a publisher of one of the most globally renowned legal directories. *Chambers Asia-Pacific* relies on in-depth interviews with key clients and lawyers in the market, assessments of recent works, and independent research to determine the leading law firms and legal practitioners in each major practice area in each jurisdiction of the Asia Pacific region.

* A 'Star' ranking is given to lawyers with exceptional recommendations in their field.

** A 'Other Noted Practitioner' (aka. Recognised Practitioner) handles notable matters and / or has received some recommendation during the course of our research. However, they have not received a sufficiently high level of sustained recommendation to be included in the printed version of the Chambers guide. Instead, the 'Other Noted Practitioner' category shows that these individuals are on our research radar.

Only Korean Law Firm to be Top-ranked in All 16 Practice Areas Surveyed - The Legal 500 Asia Pacific 2018

In the recently published *The Legal 500 Asia Pacific 2018*, one of the legal industry's most prominent guides to the legal market in Asia, Kim & Chang was the only Korean law firm to be top-ranked ("Tier 1") in all 16 practice areas surveyed. Particularly noteworthy is the fact that our IP group was the only Tier 1-ranked practice to be recognized in the "Intellectual property – Patents and Trademarks" category.

In addition to the firm awards, 27 Kim & Chang professionals were named as "Leading Individuals" and "Next Generation Lawyers" in their respective practice areas.

Below are the details of our ranking results:

Firm Rankings ("Tier 1" in All 16 Practice Areas)

- Antitrust & Competition
- Banking & Finance
- Capital Markets
- Corporate/M&A
- Dispute Resolution
- Employment
- Insurance
- Intellectual Property
- Intellectual Property – Patents & Trademarks
- International Arbitration
- Projects & Energy
- Real Estate
- Regulatory Compliance and Investigations
- Shipping
- TMT
- Tax

Leading Individuals

- Antitrust & Competition: Kyung Taek Jung
- Banking & Finance: Young Kyun Cho, Young Min Kim
- Capital Markets: Myoung Jae Chung
- Corporate and M&A: Young Jay Ro, Jong Koo Park, Young Man Huh
- Dispute Resolution: Sang Ho Han
- Employment: Chun Wook Hyun, Weon Jung Kim
- Insurance: Jay Ahn
- Intellectual Property: Jay (Young-June) Yang
- International Arbitration: Byung-Chol (B.C.) Yoon, Eun Young Park, Liz Kyo-Hwa Chung
- Projects and Energy: Young Kyun Cho
- Real Estate: Kwan Sik Yu
- Shipping: Byung-Suk Chung, Jin Hong Lee
- TMT: Dong Shik Choi
- Tax: Je Heum Baik

Next Generation Lawyers

- Corporate and M&A: Sun Yul Lee
- Employment: Hyun Jae Park
- Insurance: Joon Young Kim
- International Arbitration: Una Cho, Hye Sung Kim, Sejong Youn
- Real Estate: Sang Min Lee

The Legal 500 Asia Pacific 2018: A market-leading law firm directory for the region, The Legal 500 Asia Pacific is annually published by Legalease, a world-renowned UK legal media. The directory conducts extensive research and analyzes feedback of 250,000 clients to publish law firm rankings in 20 Asia Pacific jurisdictions across major practice areas.

Kim & Chang Beats Its Own Market-Leading Record, Achieving Highest Rankings in All 18 Practice Areas - Asialaw Profiles 2018

Kim & Chang was the only Korean law firm to receive "Outstanding," the highest possible ranking, across all 18 practice areas in the 22nd edition of *Asialaw Profiles 2018*, a definitive guide to Asia-Pacific's leading regional and domestic law firms. Additionally, we were the only Korean firm to be awarded "Outstanding" in the Financial Services Regulatory and Intellectual Property practice areas.

Firm Rankings ("Outstanding" in All 18 Practice Areas)

- Banking & Finance
- Capital Markets
- Competition & Antitrust
- Construction & Real Estate
- Corporate/M&A
- Dispute Resolution & Litigation
- Energy & Natural Resources
- Financial Services Regulatory
- Insurance
- Intellectual Property
- Investment Funds
- IT, Telco & Media
- Labour & Employment
- Private Equity
- Projects & Infrastructure
- Restructuring & Insolvency
- Shipping, Maritime & Aviation
- Taxation

About Asialaw Profiles 2018: *Asialaw Profiles*, a division of Euromoney, is published in print and online in October each year. It is a legal directory of leading law firms in the Asia-Pacific region, which uses law firm surveys, interviews of partners and clients, and independent research to assess firms across 18 practice

areas in 24 jurisdictions in the Asia-Pacific. The firms are classified among three rankings: "Outstanding," "Highly recommended" and "Recommended."

Kim & Chang Again Brings Home Highest Number of Wins Among Korean Firms - Asian-MENA Counsel Firms of the Year 2017

In the recently published Representing Corporate Asia and Middle East Survey, an annual ranking survey published by *Asian-MENA Counsel*, Kim & Chang won "In-House Community Firm of the Year" in 14 categories.

This is a meaningful survey, for the winners are determined through a client survey of more than 1,000 in-house counsels in Asia and the Middle East.

This year, our firm was again the winner of the highest number of categories among Korean law firms and was thus named "Top Multiple Category Winners: South Korea."

Additionally, our firm was recognized as the "Most Responsive Domestic Firms of the Year: South Korea" for our commitment to the needs of our clients.

Below are the details of our wins:

Winner

- Antitrust/ Competition
- Banking & Finance
- Capital Markets
- Compliance/ Regulatory
- Corporate and M&A
- Employment
- Energy & Natural Resources
- Insurance
- Litigation and Dispute Resolution
- Projects and Project Finance
- Taxation
- Telecommunications, Media & Technology

Honorable Mention

- Intellectual Property
- International Arbitration

About Asia-MENA Counsel In-House Community Firms of the Year 2017: A monthly legal magazine covering news and issues of Asia and the Middle East, *Asia-MENA Counsel* annually celebrates law firms that provide services of "meritable quality" and are responsive to their clients' needs "beyond the norm." This year's results were published as a feature article in the *Asia-MENA Counsel* Volume 15, Issue 4, 2017.

PRO BONO

Second Law Academy of 2017 at Gyeongsan Multicultural Family Support Center

On October 31, 2017, Kim & Chang Committee for Social Contribution hosted its second Multicultural Family Law Academy for 2017, a "mobile" legal service for multicultural families in Korea, in the City of Gyeongsan in Gyeongsangbuk-do Province. The first session was held in the City of Gimje in Jeollabuk-do Province earlier in 2017.

At the Gyeongsan Multicultural Family Support Center, Kim & Chang attorneys, labor law specialists, and other experts led a series of lectures designed to provide key legal information on various issues facing multicultural families, including real estate (e.g., housing leases), labor relations, marriage and divorce, nationality, and naturalization.

Many immigrant women who moved to Korea through international marriage came with their children or husbands to the academy, and actively participated in the event in a lively Q&A session.

In particular, during the lecture on labor relations, many inquired about childcare leave, unemployment benefits, retirement benefits, and other employment-related issues. The attendees also showed great interest in minimum wage policies and on general information about wage contracts.

Since hosting its first lecture in Chungcheongbuk-do Province in 2014, the Multicultural Family Law Academy has been supporting multicultural families adjust to Korean culture and society.

Making and Donating Kimchi to the Community

On November 18, 2017, more than 40 Kim & Chang attorneys and K&C Friends (staff volunteers) of Kim & Chang Committee for Social Contribution volunteered in *gimjang*, a Korean tradition of preparing large quantities of kimchi for the winter. Volunteers gathered early in the morning to learn how to do *gimjang*, and helped to make kimchi. The kimchi prepared through this event was donated to 100 foster care families supported by the Central Foster Care Family Center.

Delivering Coal Briquettes to Low-income Families and the Elderly Living Alone in a Tenement Housing Area in Seoul

On December 9, 2017, Kim & Chang attorneys and K&C Friends (staff volunteers) of Kim & Chang Committee for Social Contribution together with youth members of *Deulggot Youth World*, an organization dedicated to caring for and educating children in need, delivered coal briquettes to a *jjokbang* town in Seoul's Yeongdeungpo District. *Jjokbang* towns are low-income neighborhoods comprised of tenement housings with small rooms that barely accommodate one person.

The volunteers delivered the briquettes to low-income families, the elderly living alone, and others in the *jjokbang* town with hopes to give them a warmer winter.

Newsletter

Newsletter

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