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Newsletter

A Quarterly Update of Legal Developments in Korea

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ANTITRUST & COMPETITION

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

KFTC Begins to Enforce the Amended Consumer Dispute Resolution Standard to Reinforce Consumer Protection

On October 26, 2016, the Korea Fair Trade Commission (the "KFTC") announced that it would enforce its amendment to the Consumer Dispute Resolution Standard (the "Standard" or such amendment the "Amendment").

The Standard provides the criteria for the resolution of disputes between consumers and enterprises for each product/service and/or type of such dispute[1]. Unless the parties expressly agreed otherwise, the Standard served as the basis for a consensus on – or recommendation for – dispute resolution.

We include below the key aspects of the Amended Standard.

Relaxed Standards on Replacing or Refunding a Motor Vehicle

Prior to the Amendment, it was difficult to meet the standards on replacing or refunding a motor vehicle.

However, under the Amendment, the bar has been lowered to as much as foreign standards (including those of the US), so as to reinforce consumer protection.

	The Standard as-is	The Amendment
Duration for replacement or refund	(i) The date the vehicle is first registered; or (ii) Within 12 months from the last date of the year when the vehicle is manufactured	Within 12 months from the date the vehicle is delivered
When a vehicle can be replaced or refunded	Where a vehicle's defect affects driving and/or safety, and is significant: (i) The same defect recurs after three times repair work for the same defect; or (ii) A repair takes more than an aggregate period of 30 days (actual days in which repair is done)	Where a vehicle's defect is: (i) not significant;[2] but (ii) recurs after three times repair work for the same defect
		Where a vehicle's defect: (i) affects driving and/or safety and is significant; and (ii) recurs after twice repair work for the same defect
		Either significant or not, where a defect[3] takes more than an aggregate period of 30 days (actual days in which repair is done)

[1] As set forth under Article 16, Paragraph 2 of the Framework Act on Consumers
[2] A defect not significant refers to a technical or functional defect that may lead to practical damage to the use, value or safety of a vehicle, which requires repair, and not a simple defect to the exterior or interior finishers of a vehicle.
[3] A significant defect refers to a defect that may relate to a vehicle's engine, power transmission system, brake, steering mechanism, and otherequivalent defect that affects such a vehicle's driving and/or safety.

New Standard for Disputes Involving New Types of Gift Certificates

Increasing number of consumers are using new types of gift certificates that are being widely issued (e.g., e-cards and online/mobile gift coupons), and thus, the need for standards in dealing with disputes involving such gift certificates has been identified. As such, the Amendment newly provides for the criteria regulating the terms or conditions for redeeming gift certificates:

1) Full amount may be refunded if the purchase is cancelled within 7 days from the date of such a purchase.

2) Whether a gift certificate with a face value[4] is redeemable (for cash) should be indicated:
   - A gift certificate with a face value of more than KRW 10,000 will be redeemable if 60% of such amount is used.
   - Otherwise (KRW 10,000 or less), a gift certificate is redeemable if 80% or more of its face value is used.
   - If multiple gift certificates are used at the same time, an aggregate amount will be the basis for determining redeemability.

Amendments Concerning Product Components

Prior to the Amendment, the Standard provided that the clock for maintaining product components would start ticking from the moment the manufacturing of the relevant product is discontinued.

Now, considering the consumers' improved predictability of continuance/discontinuance of such a product, as well as greater convenience to be made available for manufacturers in terms of their management of components, the Amendment allows the clock to start running from the completion date of the product's manufacturing.

On balance, manufacturers are required to maintain product components one more year under the Amendment, if they manufacture products that are both widely used by consumers and also are often subjects of dispute (e.g., televisions, refrigerators, air conditioners, washing machines, boilers). The extension has been included in the Amendment, because the clock starts running earlier. Thus, the Amendment imposes a lower burden on manufacturers to maintain the components.

Also, the Amendment adds clarifications on what to do if a finished product's warranty period is over while its key component has a valid warranty. In such a case, under the Amendment, free repair is the only available option (and not the replacement or refund of a finished product).

[4] A gift certificate with a face value refers to an e-payment tool with an amount either chargeable or pre-determined. During the period before the expiration, such certificate holder may use it when purchasing a product or service within the amount available.

TAX

By Woo Hyun Baik (whbaik@kimchang.com), Christopher Sung (chrissung@kimchang.com), and Hyung Woo Song (hyungwoo.song@kimchang.com)

Now Effective in Korea: (1) Hong Kong Tax Treaty, and (2) Amendment to the Korea–India Tax Treaty

On September 12, 2016, the amendment to the Korea–India Tax Treaty entered into force.

In Korea, the provisions of the treaty for withholding taxes will have effect for amounts paid or credited, beginning on or after January 1, 2017. The provisions of the treaty for other taxes will have effect for the taxable year, beginning on or after the same date (January 1, 2017).

Reduced withholding rates and exemption under the Treaty

	Korean Domestic Tax Laws	Korea-Hong Kong Tax Treaty
Taxes Covered	All kinds of taxes	In Korea: ▪ income tax; ▪ corporate tax; ▪ special tax for rural development; and ▪ local income tax
Dividends (Article 10)	22%	▪ 10%, if the beneficial owner is a company directly holding at least 25% of the capital of the paying company; ▪ 15% in all other cases
Interest (Article 11)	22%	10%
Royalties (Article 12)	22%	10%
Capital Gains (from the alienation of shares) (Article 13)	Lesser of 22% of capital gains and 11% of sale proceeds	Capital gains from the alienation of shares are NOT exempt
Other Income (Article 20)	22%	Not taxable (But excess income due to a special relationship is taxable)

On September 12, 2016, the amendment to the Korea–India Tax Treaty entered into force.

In Korea, the provisions of the treaty for withholding taxes will have effect for amounts paid or credited, beginning on or after January 1, 2017. The provisions of the treaty for other taxes will have effect for the taxable year, beginning on or after the same date (January 1, 2017).

Notably, India has refused to initiate the Mutual Agreement Procedure on transfer pricing matters. India has done so based on the fact that the Treaty does not specifically provide provisions for such a procedure.

Now that the provisions are specified under Article 9, Section 2 in the amended Treaty, Korean companies that invest in India will be able to pursue the Mutual Agreement Procedure and the Advance Pricing Agreements ("APA") process.

Reduced withholding rates and exemptions under the previous treaty, and the amended treaty

	Previous Treaty	Amended Treaty
Taxes Covered	Income tax, corporate tax, inhabitant tax	Income tax, corporate tax, special tax for rural development on income (inhabitant tax or local income tax not included)
Associated Enterprises (Article 9, Section 2)	N/A	In case of transfer pricing disputes, Mutual Agreement Procedures with the competent authorities of both countries in case of transfer pricing disputes
Dividends (Article 10)	Between corporations: 15% Others: 20%	For all: 15%
Interest (Article 11)	Bank interest: 10% Others: 15%	For all: 10%
Royalties and Fees for Technical Services (Article 12)	For all: 15%	For all: 10%
Capital Gains (from alienation of shares) (Article 13)	Exempt from taxation (except for alienation of Stock of Real Estate Rich Company)	Taxable if directly or indirectly holding 5% or more of the capital of the company in a 12-month period preceding the alienation of shares (except for alienation of Stock of Real Estate Rich Company)
Exchange of Information (Article 26)	N/A	Information held by financial institutions could be exchanged
Definition of Stock of Real Estate Rich Company (Paragraph 1 of the Protocol)	▪ "Shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property" ▪ Taxed regardless of ownership percentage	▪ The term "shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property" means "shares deriving more than 50% of their value directly or indirectly from immovable property" ▪ Taxable regardless of ownership percentage

ENVIRONMENT

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

Questions on Product Safety Continue, Bringing About Strengthened Regulatory Oversight in Biocide Safety

In the midst of growing public concern over the health hazards of certain household chemical products,[5] concerns are now being raised about the safety of chemicals in other types of products, such as "quasi-drugs" (e.g., toothpastes) and cosmetics.

Primarily, these recent concerns focus on the health hazards associated with biocides contained in household products. In particular, Korean people are concerned about chemicals that were used as biocides in some humidifier sterilizers, such as chloromethyl-methylisothiazolone ("CMIT/MIT").

<u>Korean Government's Response</u>

In response to these public concerns, the Ministry of Environment ("MOE") initiated an exhaustive survey of biocides contained in household chemical products (since June 2016), while the Ministry of Food and Drug Safety ("MFDS") announced its plan to initiate an exhaustive survey of biocides contained in cosmetics and toothpastes in August and September 2016, respectively (in particular, those biocides used to manufacture certain humidifier sterilizers in the past).

<u>MOE's Parallel Regulatory Efforts</u>

As a parallel effort, it appears that the MOE is currently pushing for the legislation of a bill that would separately regulate the health hazards of biocides.

By referring to the EU's Biocidal Products Regulation ("BPR"), and the U.S.'s Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), the MOE plans to introduce the proposed Biocides Control Act (tentative name) as a separate legislation from the currently enforced Act on the Registration, Evaluation, Etc. of Chemicals ("K-REACH"). With the proposed law, the MOE hopes to strengthen regulatory oversight of products containing biocides.

Additionally, to strengthen the management of potentially risky products ("PRP"s), the MOE announced an administrative notice on the draft amendments to the "PRP Designation & Safety/Labeling Standards" (the "MOE Guidance") on October 7, 2016.

The draft amendments to the MOE Guidance include: (i) the designation of printer inks/toners, ironing aids, and algicides as new PRPs in addition to the 15 product types already designated as PRPs; and (ii) a more stringent set of safety and labeling standards applicable to PRPs.

<u>MOE's More Stringent Safety & Labeling Standards on PRPs</u>

The draft amendments to the MOE Guideline set out the following strengthened safety standards[6]:

1) Use of CMIT/MIT is prohibited in all spray products and air fresheners;

2) New content limits set for using didecyl-dimethylammonium chloride (DDAC) and ethylene glycol in spray-type deodorizing agents;

3) Prohibits the use of 1,4 dichlorobenzene in deodorizing agents; and

4) New content limits set for: (i) the use of tetra-chloroethylene in spray-type coating agents; and (ii) the use of limonene in fabric softeners.

[5] For example, humidifier sterilizers, air fresheners, deodorizers.
[6] A grace period of 3 months from the effective date of the amended MOE Guideline is provided for companies to become compliant with these strengthened safety standards.

The draft amendments to the MOE Guideline set out the following strengthened labeling standards[7]:

1) If a PRP contains a substance having a sterilizing, antibiotic, disinfectant, antiseptic, or preservative function, such a PRP is required to be labeled with the statement: "contains a biocide (name of the chemical substance, toxic)" or with statements of the substance name, the substance function, and its content, irrespective of the substance content.

   Further, misleading language relating to the PRP's hazards and effects on humans, animals/plants, and the environment, as well as terms, such as "low risk", "non-toxic", "harmless", "environmentally friendly" or any similar expressions, cannot be used in the label to describe the PRP;

2) If a MOE-designated hazardous chemical substance is used in a PRP (regardless of its concentration), the PRP's label must contain: (i) the hazardous chemical substance name; (ii) the reason why the hazardous chemical substance is added; and (iii) the hazardous substance content; and

3) If an allergy-inducing fragrance (26 types, including benzyl alcohol) is used in a detergent product in an amount exceeding the designated concentration limit,[8] the product must be labeled with: (i) the name of the fragrance substance; and (ii) function of the fragrance substance.

ANTITRUST & COMPETITION

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

KFTC Announces Proposed Amendments to Its Leniency Guidelines

On March 29, 2016, the Monopoly Regulation and Fair Trade Act ("Fair Trade Law" or "FTL") was amended to include a new provision that denies leniency benefits to repeat cartel offenders (for five years from their previous leniency application, resulting in a full or partial immunity from sanctions).

On September 30, 2016, the Korea Fair Trade Commission ("KFTC") amended its "Notice on the Operations of the Leniency Guidelines for Voluntary Disclosure of Unfair Collusive Acts" ("Notice").

Key amendments to the Notice include:

<u>New Standards for Determining the Timing of Leniency Applications</u>

Prior to the amendment, the KFTC's receipt of the leniency applications was judged under the civil law theory of "acceptance upon arrival."

Now, the amended Notice explicitly states that the leniency application is deemed to have been formally received by the KFTC upon their arrival, ensuring a more consistent implementation.

<u>Oral leniency application exception:</u> Considering the long time needed in recording/filming the oral application, the oral application will be deemed to have

[7] A grace period of 6 months from the effective date of the amended MOE Guideline is provided for companies to become compliant with these strengthened labeling standards.
[8] 0.01% or over for products that are cleansed after use, and 0.001% or over for products that are not cleansed after use.

been formally received by the KFTC as of the time the applicant begins the recording/filming of the application.

Improvements to the "Amnesty Plus" System

Under the Fair Trade Law, cartel participants are granted leniency for both cartels where they: (i) missed the opportunity to secure a leniency position for one cartel; and (ii) are the first to voluntarily disclose the details regarding another cartel. This is called the "Amnesty Plus" System.

Before the amendment, the Notice simply stated that "the leniency for the relevant act shall be decided based on the severity of the other cartel activity reported by the amnesty plus applicant," and did not provide specific standards for cases where there are multiple collusive acts under investigation.

The amended Notice specifies that the extent of leniency that may be granted in cases involving multiple cartels will be based on a comparison between the aggregate relevant revenues of the cartel under investigation, and the aggregate relevant revenues of the other cartel reported by the amnesty plus applicant. The resulting ratio will be applied to each cartel.

Conditions Added to Leniency Position Succession

Before the amendment, the Notice stipulated that if a leniency applicant withdraws its leniency application or loses its leniency position, the next leniency applicant in line will succeed the leniency position of the outgoing leniency applicant.

The amended Notice provides that the succession of the leniency position is conditioned on satisfying the requirements for maintaining the leniency position to be succeeded by the next leniency applicant.

The amendment strengthened the need for leniency applicants to maintain the requirements for leniency until the end of the investigation. This demonstrates KFTC's determination to strictly operate the leniency program.

Standards for Determining Repeat Cartel Offenders Deleted

Before the Amendment, the Notice restricted leniency for: (i) collusive acts or violations of the corrective measures after the date of corrective action; and (ii) collusive acts after the date of leniency.

However, the amended Fair Trade Law moved the standards for identifying repeat cartel offenders from the subordinate regulations to the Fair Trade Law itself. As such, the KFTC deleted the relevant provisions from the Notice: (ii) (above) was deleted because of redundancy, but (i) (above) is still included.

KFTC Announces Two Proposed Regulations in Hopes of Preventing Unfair Trade Practices in Supplier-Distributor Transactions

One year ago, on December 22, 2015, the Korean National Assembly passed the Fairness in Distributor Transactions Act (the "FDTA"). The aim of passing the FDTA was to prevent unfair trade practices in supplier-distributor transactions, or such practices in transactions between large and smaller enterprises.

On December 23, 2016, the FDTA became effective. As such, the Korean Fair Trade Commission (the "KFTC") recently announced two proposed Regulations subsidiary to the FDTA:

1) Proposed Enforcement Decree to the FDTA ("Proposed Enforcement Decree") and

2) Proposed Notification of the Penalty Surcharge Guideline for Enterprises in violation of the FDTA ("Proposed Surcharge Notification").

Proposed Enforcement Decree

Under the proposal, the following four are worth noting.

1) For items to be included in a distributorship agreement, detailed description of each item is required for more in-depth explanation.
2) Detailed explanations of the types of unfair trade practices and guidelines are included.[9]
3) Dispute resolution methods (e.g., the secretariat for resolving disputes in supplier-distributor transactions) have been developed and included.
4) Penalty surcharges imposed on violations of the FDTA, and the calculation formula have been incorporated.

Proposed Surcharge Notification / Assessment: 3 Levels

The Proposed Surcharge Notification shows how to calculate and impose penalty surcharges on those in breach of the FDTA and the Enforcement Decree.

According to the proposal, a penalty surcharge will be assessed based on the harm incurred by the relevant distributor due to its supplier's unfair trade practice in breach of the relevant laws and regulations. This is then multiplied by the standard rates, depending on the gravity of the violation.

Where it is difficult to assess the exact amount of the relevant harm, a liquidated amount of the surcharge will be imposed (up to KRW 0.5 billion), with the gravity of such violation taken into account. Here, the adjustment of the surcharge amount may be made, taking into account various factors, such as a violator's prior violation history or self-correction efforts.

Depending on the factors (e.g., illegality of the relevant trade practice, extent of harm suffered by the relevant distributor, ratio of the distributors suffered to the entire distributor group), the gravity of such a practice is divided into three levels:

Gravity	Range of the standard rate	Liquidated surcharge amount
Significantly grave violation	60% to 80%	KRW 0.4 billion to 0.5 billion
Grave violation	40% to 60%	KRW 0.2 billion to 0.4 billion
Less grave violation	20% to 40%	KRW 5 million to 0.2 billion

In addition, the proposal provides for aggravating factors (e.g., repeat violators (50%), long-term violators (50%), retaliatory unfair trade practices (20%)), as well as mitigating factors (e.g., a violator's self-correction (20%) or cooperation in investigation (20%)).

[9] Relating to practices such as forced purchases, imposition of undue sales target, imposition of terms or conditions disadvantageous to a distributor, and interference with another's business activity

SECURITIES

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

Financial Regulatory Authorities Jointly Announce Reform Measures for the Initial Public Offering System

On October 5, 2016, the Financial Services Commission ("FSC"), the Financial Supervisory Service ("FSS"), the Korea Exchange, and the Korea Financial Investment Association jointly announced proposed measures for reforming the Initial Public Offering ("IPO") system (the "Measures").

By the first quarter of 2017, the Measures are expected to take effect after being incorporated into the Enforcement Decree of the FSCMA, the Korea Exchange Regulations, the Subscription Business Regulations, and the Template Form of Securities Issuance Report.

While the Measures maintain the basic framework of listing and public offering, they offer different listing and public offering options for an issuer and its lead manager.

Key Points of the Measures

1. **Lead Manager's Strengthened Discretion on Book Building Procedure, and Obligation to Provide a Put-Back Option**

   Under the current system, it is customary for a lead manager to include all institutional investors for book building.

   On the other hand, the Measures allow the lead manager to include certain institutional investors on the IPO book building, and also provide a legal basis for the lead manager to treat certain trustworthy institutional investors as priority.

   To maintain the robust offering price, the Measures require the lead manager to provide a put-back option to general investors subscribing listed shares. The investors should be entitled to exercise the put-back option for at least a month following the IPO.

2. **Optional Disclosure of the Basis for Calculating the Offering Price in the Securities Registration Statement**

   Under the existing system, the securities registration statement must disclose the basis for calculating the offering price. This requirement has been criticized for its lack of flexibility, and for its tendency to induce the use of a uniform pricing method.

   To address such shortfalls, the Measures give the lead manager an option to decide whether or not to disclose the basis for calculating the offering price in the securities registration statement.

   In short, the Measures would give the lead manager flexibility (options) on different methods for calculating the offering price.

3. **Use of Auction-Based or Single Agreed Offering Price Permitted**

   Under the existing system, all offering price is undertaken uniformly through the general book building method. Such a method, however, has been criticized for restricting the issuer and lead manager's freedom in determining offering prices.

   To address such a criticism, the Measures permit the issuer and its lead manager to use an auction-based pricing method, or to agree on a single IPO price through mutual consultation. Where the single IPO price is agreed upon, the issuer and lead manager will be required to provide general investors subscribing new shares with a put-back option. Such an option must be exercisable for at least one month following the IPO, with the goal of preventing the possibility of over-estimating the demand.

4. Lead Manager Allowed to Receive Preemptive Rights, and Expanded Liability for IPO Managers

The Measures allow the IPO's lead manager to receive preemptive rights for new shares as compensation for providing its services (including offering the put-back option), besides receiving fees from the issuer. This will permit the lead manager to partake in a financial gain arising from the issuer's future growth.

Additionally, under the Measures, all financial investment companies participating in the IPO as managers will be exposed to liability, if the securities issuance report includes inadequate disclosures. Regulators hope this measure will encourage the issuer and its lead manager to be more responsible in conducting the IPO than under the current system.

5. Strengthened Regulation of Institutional Investors Participating in Book Building

The Measures restrict an institutional investor from future book building procedures, if such an institutional investor participates in book building in bad faith.

Also, the lead manager can, at its discretion, exclude, for example, a certain institutional investor, who provides unreasonable information during the book building, or a major shareholder of a company who undertook the IPO in the preceding one-year period. Alternatively, the lead manager can demand such an institutional investor or major shareholder to hold their new shares for at least six months following the IPO.

FSC Proposes Amendment to the FSCMA, Including Adopting Statute of Limitations for Imposing Regulatory Sanctions on Officers and Other Employees of a Financial Investment Company

On July 21, 2016, the Financial Services Commission (the "FSC") announced an amendment to Financial Investment Services and Capital Markets Act (the "FSCMA"). The FSC has completed on receiving public comments on the proposed amendment and plans to announce its detailed legislation schedule in the near future.

Details

The proposed amendment includes provisions for adopting the statute of limitations ("SOL") for imposing a regulatory sanction on an officer or employee of a financial investment company.

Under the existing rule, it is possible to impose a regulatory sanction on an officer or employee of a financial investment company even long after the person takes an action subject to such sanctions. To address this issue, the FSC is contemplating on introducing the five-year SOL, or a longer SOL, if the corresponding criminal SOL exceeds five years.

CORPORATE

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

In Attempt to Reinvigorate Troubled Korean Companies, Government Introduces a 3-year Special Act

The Special Act for Business Reinvigoration (commonly known as the "One Shot Law") will be temporarily enforced for three years, beginning on August 13, 2016. The One Shot Law aims to promote rapid and smooth business improvement of Korean companies that face insolvency threats.

Deliberation Committee and Implementation Guidelines

In accordance with the One Shot Law, the business restructuring deliberation committee ("Deliberation Committee") was established to deliberate on business restructuring plans of the affected companies. On August 18, 2016, the first Deliberation Committee meeting took place, where the "business restructuring plan implementation guidelines" ("Implementation Guidelines") was finally confirmed. The Implementation Guidelines took effect on August 19, 2016.

Affected Companies

The One Shot Law applies to Korean (domestic) companies that engage in business restructuring to resolve "excess supply."

The criteria used to determine "excess supply" are specifically provided in the Implementation Guidelines, which provide that a company has "excess supply" if:

1) the average operating profit ratio to the sales amount for the last three years decreases by 15% or more (compared to the average operating profit ratio for the past 10 years);
2) manufacturing business satisfies two or more – and service business satisfies one or more – of the five sub-indicators (including operation rate, in-stock rate, price/cost change rate, service production index) compared to the number of workers, and the industry indicator; or
3) there is no expectation for the recovery of demand in the near future, or the gap between supply and demand cannot be narrowed due to the difficulties in responding to the changes in demand, because of the industry characteristics.

However, whether the "excess supply" exists may be determined differently if the Deliberation Committee acknowledges that: (i) it is highly probable that a company will face "excess supply" in the near future; or (ii) it is difficult to determine whether the above criteria for "excess supply" are satisfied due to the short history of the industry and insufficient information.

Post-Approval of Company's Restructuring Plan

Once a domestic company obtains approval for its business restructuring plan ("Approved Company"), it may be entitled to enjoy:

1) exemptions from certain requirements of the Korean Commercial Code, including mitigated requirements for small-sized mergers, and simplified procedures for general shareholder meetings;
2) exemptions from certain requirements of the Monopoly Regulation and Fair Trade Act ("MRFTA"), including suspension or mitigation of the regulation on debt ratio of a holding company, regulation on stock ownership standards, and regulation on investment in domestic companies, other than affiliates; and
3) tax and funding benefits.

Tax Benefits

According to the "comprehensive assistance plans for the companies approved for business restructuring under the Special Act for Business Reinvigoration" which was released on July 28, 2016, tax benefits will be provided, including mitigation of follow-up management requirements regarding legitimate mergers.[10]

[10] (1) Mitigation requirement for share ratio to the acquisition price from 80% to 70%; and (2) exclusion of overlapping assets caused by the merger from the fixed assets of the merged company, which are mandatorily required to be held

INTELLECTUAL PROPERTY

By Jay (Young-June) Yang (yjyang@kimchang.com), Duck-Soon Chang (ducksoon.chang@kimchang.com), and Seung-Chan Eom (seungchan.eom@kimchang.com)

Korean Government Proposes Greater Protections for Trade Secret Holders

The Presidential Council on Intellectual Property and other government entities have been exploring various approaches to address concerns in Korea that the current law has been ineffective in preventing technology theft from small and medium size companies.

One measure the Korean government is now proposing is to amend the Unfair Competition Prevention and Trade Secret Protection Act ("UCPA"). Specifically, the amendment would broaden protections for trade secret holders by making it easier to show that certain information is a "trade secret," and by increasing sanctions against trade secret infringers.

Major Proposed Changes:

- Greater Ease in Qualifying Information as a "Trade Secret"
  Under the current UCPA, "reasonable efforts" must be used to maintain the secrecy of information to claim it as a trade secret. Under the amendment, the definition of a "trade secret" would be revised, so that no showing of "reasonable efforts" is required (i.e., it is sufficient to simply show that information is "kept secret").

- Introduction of Punitive Damages
  Under the amendment, where there is intentional infringement, a court would be allowed to grant compensation for damages in an amount up to 3 times the amount of actual damages. In calculating the damages, a court would have discretion to consider all relevant circumstances, including: (i) whether the infringer is in a superior position to the trade secret owner; (ii) the infringer's wrongful intent and degree of willfulness; (iii) the duration and number of infringing acts; and (iv) the economic benefits resulting from the infringement.

- Stronger Criminal Penalties
  Under the amendment, in addition to other existing criminal acts of infringement, it would now be a criminal infringement to commit an "act of leaking or keeping a trade secret beyond the scope of an authorization to use or keep the trade secret." Further, in certain circumstances, the amendment would substantially increase the potential criminal fines for infringement.

Status

The government has now collected public comments after announcing the proposed amendment on August 17, 2016, and is currently preparing a final proposal for review and approval by the National Assembly.

LABOR & EMPLOYMENT

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

Recent High Court Decision Denies the Status of a Union at a Former Single-Union Company as the Designated Collective Bargaining Channel

Issue Undertaken in a Recent Case

In Korea, the lower courts are split on the issue of whether a union at a former single-union company, which went through the process of establishing a single bargaining channel, may enjoy the status as the designated single bargaining channel after a new union has formed.

For its part, the Ministry of Employment and Labor ("MOEL") has recognized the status of such unions as designated single bargaining channels.

Recently, the High Court questioned the validity of the process of establishing a single bargaining channel in a formerly one-union company, and denied the representative status of that union.

Relevant Facts of the Case[11]

- In 2013, an auto parts manufacturing company (the plaintiff in this case) had a single industrial union ("1st union"), which requested collective bargaining.
  - Under Article 29-2 of the Trade Union and Labor Relations Adjustment Act ("TURLA"), the company designated the 1st union as the representative bargaining unit, and entered into a collective bargaining agreement ("CBA") in March 2013 for one year ending in March 2014.[12]
  - The company and the 1st union also agreed that the union leader ("Participant") would be entitled to a full time-off schedule, so that he could manage union matters.

- In December 2013, a new company union was formed ("2nd union").
  - The 1st union and the 2nd union both requested collective bargaining in January 2014.
  - The company designated the 2nd union as the representative bargaining unit in February 2014, because the 2nd union represented the majority of the employees.
  - On April 3, 2014, the company and the 2nd union entered into a CBA for two years, ending on April 3, 2016.

- In February 2014, when the Participant's time-off schedule expired, the company ordered him to return to work, and warned that failure to return to work could lead to a disciplinary action.
  - Thereafter, the Participant refused to return to work, and resumed his duties despite repeated requests by the company.
  - The company eventually terminated the Participant in June 2014 on the ground of his unexcused absence.

Participant's Claim

The Participant, claiming wrongful dismissal, argued that the 1st union's status as the representative bargaining unit was valid until March 20, 2015 (i.e., two years from the effective date of the CBA, per Article 14-10 of the Presidential Decree), and that the company had no right to refuse to collectively bargain with the 1st union. Therefore, Participant argued that his absence was justified.

The High Court's Decision

Whether the 1st union should have been deemed as the representative bargaining unit, the High Court held:

[11] Seoul High Court 2015nu54690

[12] According to Article 14-10 of the Presidential Decree of the TURLA, the representative status of a single bargaining unit shall last two years from the date the CBA takes effect.

- For the 1st union to be deemed as the representative bargaining unit for a period of two years from the effective date of the CBA (March 21, 2013), under the TURLA, the 1st union would have to have been selected as the representative bargaining unit through the process of establishing a single bargaining channel among multiple unions.

- The process of establishing a single bargaining channel is relevant only when there are multiple unions in one company, because: (i) the TURLA stipulates that unions must determine the representative bargaining unit to request collective bargaining where there are two or more unions; (ii) the purpose of the single bargaining channel system is to establish an effective and secure bargaining channel, so that the working terms and conditions of the members of multiple unions at a company are harmonized.

- At the time the 1st union entered into the CBA with the company in March 2013, no other unions existed at the company. Therefore, the process the 1st union went through after the company had announced the bargaining request was not the process for establishing a single bargaining channel in accordance with the TURLA.

Supreme Court's Decision

The Supreme Court dismissed the Participant's appeal to the High Court decision, confirming it through summary dismissal[13]).

Impact

Since the Supreme Court's decision was a summary dismissal, we cannot conclude that the Supreme Court accepted the High Court's rationale or ruling on this issue.

However, when establishing a single bargaining channel, it would be prudent for companies to take heed of the requirements and procedures discussed in the case.

Labor Ministry Publishes New Guidebook on Wage System Reform

On August 17, 2016, the Ministry of Employment and Labor ("MOEL") published The Guidebook on Wage System Reform ("Guidebook").

Revamping Wage Systems

The Guidebook is designed to assist businesses with revamping their wage systems. For example, it provides useful information on the processes and methods for altering wage systems, potential legal issues, and case studies.

Despite recent developments in the Korean society (e.g., low growth economy and an aging population), many domestic businesses still use traditional, seniority-based salary step systems more often than their counterparts in other developed countries.

However, in the first half of 2016, there was a trend, particularly among state-owned enterprises, toward implementing (or attempting to implement) merit-based annual pay systems. Building on this momentum, the timely publication of the Guidebook is seen as the MOEL's effort to reduce the negative effects of the seniority-based salary system on the Korean economy, by shifting towards a merit-based or a job-based salary system.

[13] Supreme Court Decision 2016du33797.

Changing Wage Systems – Employer Considerations

In addition to a general discussion of wage system types and the direction of reform, the Guidebook provides detailed information on potential legal issues employers should consider when changing the wage systems.

For example, the Guidebook explains the "generally-accepted justification" theory, which is a legal doctrine based on court cases where employers failed to obtain employee consent when making unfavorable changes to working terms and conditions contained in the rules of employment.

Another example is a discussion of relevant issues that may be placed on the agenda during union negotiations.

The "generally-accepted justification" test is based on the following six factors:

1) Severity of the disadvantage to the affected employee;
2) Need for, and degree of the change to be made to the rules of employment;
3) Reasonableness of the change;
4) Whether other working terms and conditions were adjusted favorably to offset the disadvantageous change;
5) Whether there was progress in negotiating with the union, and the reaction of the union or other employees; and
6) Whether the intended change is considered common in Korea under similar circumstances.

Labor Groups' Perspective & What It Means to Employers

Labor groups have objected to the generally-accepted justification theory in the Guidebook, and have requested that the Guidebook be discarded.

Further, they are threatening legal action against employers who attempt to implement wage reforms in an illegal manner.

Given this resistance, it appears that legal challenges to changed wage systems may become a major hurdle for employers.

Impact

Korean employers are moving toward merit-based and job-based wage systems, which is a goal that requires a long-term commitment. To achieve this goal legally and reasonably, we believe it is most important to engage in management-union (or employee) discussions, while also complying with relevant case laws and steps contained in the Guidebook.

By Dong Shik Choi (dschoi@kimchang.com) and Hyun-Kyu Lee (hyunkyu.lee1@kimchang.com)

Korea Communications Commission Proposes Key Amendments to the Network Act

In response to the criticism that the current online privacy regulations in Korea are insufficient to accommodate technical developments and global trends, the Korea Communications Commission ("KCC") announced the following proposed amendments to the Act on the Promotion of Information and Communications Network Utilization and Information Protection ("Network Act") on September 23, 2016. The amendments aim to meet global privacy protection standards, while also providing for reasonable regulations.

Until November 2, 2016, the KCC accepted opinions from various industries. Now, the KCC is finalizing the proposed amendments.

Key Amendments

1. Additional Exceptions to Prior Consent Requirement when Collecting, Using or Transferring Personal Information (Amended Act Article 22(2))

   In principle, the Network Act requires a service provider to obtain prior consent before collecting, using or transferring personal information.

   Currently, the Network Act only includes a very narrow exception to such a requirement when economic or technical obstacles make obtaining such prior consent difficult.

   Proposed Amendments: Introduces two new exceptions, so that prior consent to collect, use or transfer personal information will no longer be required when: (i) entering and performing a contract; and (ii) protecting life or property.

2. New Mandatory Notification Requirement for Sale of Personal Information (Amended Act Article 24-2(1), Item 5)

   Currently, the Network Act does not clearly limit or restrict the sale of personal information to third parties when the information subject has consented to having his/her personal information transferred.

   Proposed Amendment: To ensure that informed consent is obtained, information subjects must be specifically notified that their personal information will be provided to third parties in exchange for payment.

3. Right to Stop Personal Information Processing (Amended Act Article 30)

   Currently, the Network Act acknowledges an information subject's "right to withdraw consent to the collection, use, and provision of personal information."

   As the right presumes that consent from the information subject had originally been obtained, the law was unclear on information subject's rights when his/her personal information had been collected, used and/or provided without consent.

   Proposed Amendment: Clarifies this issue, and strengthens the information subject's autonomy over his/her personal information. Now, the information subject has a "right to request cessation of personal information processing." Even when personal information was collected, used, and provided without consent, information subjects will be able to retrospectively request that such activities be stopped.

4. **Additional Exceptions to Prior Consent Requirement for Overseas Transfer of Personal Information (Amended Act Article 63(3))**

   The current Network Act was criticized for being unduly burdensome regarding the overseas transfer of personal information, mainly since the prior consent requirement could only be waived when performing a contract, and for convenience of the information subject.

   Proposed Amendment: Lessens such a burden by introducing two more exceptions to the prior consent requirement for the overseas transfer of personal information: (i) when there is a special provision in other laws or international agreements; and (ii) when the overseas recipient of the personal information has obtained certain certifications designated by the KCC.

Korea Communications Commission Proposes Key Amendments to the Location Information Act

On September 23, 2016, the Korea Communications Commission ("KCC") announced proposed amendments to the Act on the Protection and Use of Location Information ("Location Information Act").

The amendments were proposed as a response to criticism that the current Location Information Act was insufficient to deal with technical developments and global trends reflecting the increased use of location information, such as Internet of Things ("IoT"). With the amendments, the KCC aims to streamline regulations, and strengthen protection of location information.

As with the proposed amendments to the Network Act, the KCC accepted opinions from various industries until November 2, 2016. It is also in the process of finalizing the proposed amendments to the Location Information Act.

Key Amendments

1. **Streamlining Entry Regulations for Location Information Businesses (Amended Act Article 5)**

   The Location Information Act has been criticized as being an entry barrier for new Location Information Businesses ("LIB's") that only collect object location information (i.e., location information not pertaining to an individual). Specifically, the current law was requiring such businesses to obtain the same license as businesses that collect personal location information.

   Proposed Amendment: Relaxes such regulations by allowing LIB's that do not collect personal location information to file a report with authorities (instead of obtaining a license).

2. **Streamlining Consent Requirements for Object Location Information (Amended Act Article 15)**

   The current Location Information Act requires an object owner's prior consent to collect, use or transfer the location information of an object, which posed practical difficulties.

   Proposed Amendment: Allows for the collection, use, and transfer of an object's location information without the owner's prior consent.

3. New Rules on Delegated Processing and Overseas Transfer of Location Information (Amended Act Article 35-2(1))

   The prevalent use of cloud and other similar services have increased the need for location information to be transferred overseas and processed by a delegatee.

Proposed Amendments: Provide a legal basis for delegating the processing of location information, and defines: (i) the legal obligations of the delegator to manage, oversee and train the delegatee; (ii) the delegator's liability for damages; and (iii) the legal basis for sub-delegation (Amended Article 16-2). Also permit overseas transfer of location information subject to the location information owner's prior consent.

INSURANCE

By Jae-hong Ahn(jhahn@kimchang.com), Hyun Wook Shin(hwshin@kimchang.com), and Ilsuk Lee (ilsuk.lee@kimchang.com)

Does the Insurer Have to Pay Accidental Death Benefits for Deaths by Suicide if Statutory Claim Period Lapses?

On September 30, 2016, Kim & Chang successfully defended an insurer client in obtaining a Supreme Court decision that an insurer is not obligated to pay accidental death benefits for suicide deaths of a covered person after the statutory claim period has expired, thereby barring the claim from recovery[14].

Case Details

1. Whether the Statute of Limitations Lapsed

   In July 2006, a certain covered person under the subject life insurance policy committed suicide. In May 2004, the covered person had concluded a whole life insurance policy with an accidental death rider (which included exclusion of deaths resulting from suicide and its restrictive clauses). It was not until August 2014 that the husband of the covered person, a named beneficiary under the life insurance policy, filed a claim for accidental death benefit under the foregoing rider. The insurer paid the general death benefit under the policy's standard terms and conditions.

   Supreme Court's Holding: The statute of limitations ("SOL") for an insurance claim expires two years from the date of an insured accident unless any special circumstances exist, thereby suspending or tolling the period to timely file a claim. Here, the SOL for the insurance claim had already expired.

2. Whether the Insurer's Statute of Limitations Defense Constituted Abuse of Rights

   To assert that an insurer's life insurance claim is barred due to the lapse of the SOL is contrary to the principle of good faith to be afforded by insurers to claimants which constitutes an abuse of rights by insurers and there must be special circumstances. Examples of such exceptions include: (i) insurer's conduct made it impossible or substantially difficult for the claimant to exercise his/her right to insurance benefits or to toll the running of the SOL; or (ii) insurer's conduct caused the claimant to believe that such exercise of rights or tolling of the SOL was unnecessary.

[14] Supr. Ct., 2016 Da 218713, Sep. 30, 2016

Supreme Court's Holding: In applying the rule to the facts of this case, the Court concluded that no such special circumstances were found to exist between the insurer and the claimant. In its reasoning, the Court also stated that it is difficult to find that the insurer's assertion of the lapse of the SOL presumptively constituted an abuse of rights solely on the ground that the insurer had refused to pay the life insurance proceeds for the suicidal death of the covered person, despite its obligation to cover such event under the subject rider.

Further, the Supreme Court held that a finding of an abuse of rights pursuant to the exercise of the insurer's right of defense under an applicable SOL should generally be avoided. In explaining its position, the Court stated that: (i) the purpose of the SOL is to bring finality to a dispute between parties by subjecting legal claims to a fixed date once the prescribed period has expired; and (ii) that the lapse of time should apply indiscriminately and objectively to any person for legal stability.

Significance / Impact

Since the Supreme Court's May 2016 decision which held that an insurer is obligated to pay accidental death benefits for suicide deaths[15], the insurance industry sought clarification on whether the insurer's obligation to pay would extend to those claims even after the lapse of the SOL. In this regard, the September decision is meaningful as it confirmed the importance of upholding the policy, and the application of the SOL.

In the cases that followed, the Supreme Court has consistently ruled that an insurer was not obligated to pay accidental death benefits after the lapse of the SOL. In so doing, the Court has solidified its position that an insurer is not also responsible for payment of damages even when it had not provided any further explanations as to why a claim had been denied.

[15] Supr. Ct., 2015 Da 243347, May 12, 2016.

CORPORATE

Leading North Asian Private Equity Firm, MBK Partners, Sells 98.63% of Shares in One of Korea's Oldest Mutual Savings Banks to Acuon Capital

On July 28, 2016, MBK Partners sold 98.63% of its shares in HK Savings Bank, one of Korea's oldest mutual savings banks, to Acuon Capital for KRW 198 billion.

This was a complex transaction from the initial stages. For example, as the actual acquiring entity involving a savings bank was a U.S. private equity fund, the regulatory authority's approval for change in the major shareholder was a critical issue. Also, certain complicated issues required detailed legal analysis, as the transaction involved an increase in paid-in capital through issuance of redeemable convertible preferred shares in connection with the acquisition financing.

Kim & Chang represented both MBK Partners and Acuon Capital. Our team provided comprehensive legal services, including drafting and negotiation of transaction documents, report filings, as well as notifications and assistance on the closing, leading to the successful consummation of the sale.

Consortium Led by Korea's Jeonbuk Bank and JB Woori Capital Acquire Cambodia's Phnom Penh Commercial Bank

On August 29, 2016, a consortium led by Jeonbuk Bank and JB Woori Capital[16] acquired 100% shares of a Cambodian entity, Phnom Penh Commercial Bank ("PPCB"), for USD 134 million.

The companies being regulated financial entities and subsidiaries of JB Financial Group, in-depth analyses of various laws were required. Specifically, our team analyzed the Financial Holding Companies Act, the Banking Act, and the Foreign Exchange Transactions Act to structure the acquisition of a controlling interest (60%) in a foreign bank.

Further, we worked to align the complicated interests of the consortium parties, and successfully liaised with the relevant regulatory bodies for all filing requirements.

As the acquired entity was Cambodian, our team had to carefully navigate the not-yet-mature Cambodian local regulatory environment, and fully grasp local laws and regulations relating to banking and foreign direct investment. For this purpose, our team procured local legal assistance to introduce a more advanced financial group holding structure into the existing system. Specifically, we helped to introduce an innovative governance structure with balanced power and authority by and among shareholders, board of directors, and the executive officer, while in compliance with PPCB's articles of association as well as its internal regulations and policies.

Kim & Chang, as a lead counsel overseeing all aspects of the transaction, advised on all legal and regulatory issues, including investment structure, legal due diligence, formation of consortium, and collaborated with financial regulators from both countries to a successful closure of the transaction.

Korea's KEB Hana Bank Looks to Expand into the Chinese Reinsurance Market with an Investment Subscription to Newly-Issued Shares of a Singaporean Subsidiary of a Chinese Investment Company

On August 29, 2016, KEB Hana Bank ("Hana Bank") executed an investment deal to subscribe to newly-issued shares of CM International Holding Pte. Ltd. ("CMIH"), a Singaporean subsidiary of China Minsheng Investment Co., Ltd of People's Republic of China, for the subscription price of USD 200 million.

In April 2015, CMIH acquired all of the common stocks of Sirius International Insurance Group, Ltd. ("Sirius"), a U.S. reinsurer, which serves over 1,700 corporate clients in 145 countries. CMIH procured a position to connect the global and Chinese reinsurance market, which Hana Bank may utilize as an opportunity to expand into the Chinese reinsurance market.

[16] Both are JB Financial Group subsidiaries.

As counsel for Hana Bank, Kim & Chang's team advised on all aspects of the transaction, including transaction structuring, due diligence, preparation and negotiation of transactional necessary documents, and other closing-related matters to assist Hana Bank in successfully consummating the transaction.

Doosan Engineering & Construction Transfers Its Heat Recovery Steam Generator Business to GE for KRW 300 Billion

On May 10, 2016, Doosan Engineering & Construction Co., LTD ("Doosan") entered a business transfer agreement with General Electric International (Benelux) B.V. ("GE") to transfer its Heat Recovery Steam Generators ("HRSG") business to GE for KRW 300 billion.

The transfer of Doosan's domestic HRSG business to GE's Korean affiliate company under the business transfer agreement required thorough legal analysis and careful advice in relation to relevant laws, regulations, and procedures.

Kim & Chang represented Doosan and provided comprehensive legal services including drafting the agreement, negotiating with GE, and filing or submitting of necessary reports in order to close the transfer of domestic HRSG business.

Bain Capital and Goldman Sachs Acquire 60.39% Stake in Carver Korea

On August 8, 2016, Bain Capital and Goldman Sachs acquired 60.39% of the outstanding shares of Carver Korea for the purchase price of KRW 416.9 billion.

Bain Capital and Goldman Sachs established a company with a special purpose outside Korea to serve as the acquiring entity for the transaction, and obtained the funding from within and outside Korea. This transaction required careful management and comprehensive legal analysis, as the acquiring entity purchased the 60.39% stake not only from the largest shareholder, but also from multiple minority shareholders through over-the-counter market.

Kim & Chang's team successfully advised both Bain Capital and Goldman Sachs in their due diligence of the target company, negotiation and finalization of the definitive share purchase agreement, the financing agreements with the lenders, in obtaining all the required governmental approvals, and other closing-related matters.

LITIGATION

A Multinational Pharmaceutical Company Gets First Generics Ban under Korea Patent Linkage Law

Recently, a multinational pharmaceutical company (an original drug manufacturer) successfully obtained a sales stay of a generic product under Korea's patent-regulatory approval linkage system, blocking the generic's market entry.[17]

In addition, the pharmaceutical company defended its patent while obtaining a district court decision, which found the generic had infringed upon the original's patent. This is a notable decision, as it is the first case where a patentee succeeded in preventing the generic's launch under the new patent linkage system.

Kim & Chang represented the pharmaceutical company in these matters.

Invalidation Action with the IPTAB by the Generic

The generic manufacturer filed an invalidation action with the Intellectual Property Trial and Appeal Board ("IPTAB") against the formulation patent for an injectable antibiotic drug with reported worldwide sales in the hundreds of millions of dollars.

[17] Korea's patent-regulatory approval linkage system, similar to the U.S. Orange Book-type patent linkage system, has been fully implemented since March 2015.

The drug was listed on the so-called "Green List," which is Ministry of Food and Drug Safety's ("MFDS") medical drug patent list.

The generic manufacturer then filed for approval of the generic product with the MFDS, and notified the pharmaceutical company, the market approval holder, and the patentee. In its notice, the generic manufacturer merely stated that the listed formulation patent is invalid without disclosing its own product formulation or indicating when its generic product would be launched.

Request for Sales Stay and Patent Infringement Action

On January 20, 2016, the pharmaceutical company filed a request for sales stay with the MFDS, and simultaneously brought a patent infringement action before the Seoul Central District Court.

The MFDS issued a sales stay against the generic manufacturer, prohibiting the generic manufacturer from selling its generic products for nine months.

To remove the sales stay, the generic manufacturer strongly argued in the invalidation and infringement actions that the formulation patent should be invalidated for lack of inventiveness. However, the IPTAB affirmed the validity of the patentee's formulation patent. Subsequently, the Seoul Central District Court rendered a decision finding that the generic manufacturer had infringed the patent.

If the generic manufacturer had prevailed in the invalidation action, the stay on the sales of its generic products would have been lifted, and it would have enjoyed a nine-month exclusive sales period for its products.

In the district court case, the original drug manufacturer and the patentee asserted that they simply had no choice but to file the infringement action because they did not have knowledge of the generic manufacturer's formulation and they had to meet the requirements for requesting sales stay under the patent linkage system. The original drug manufacturer also argued that either the generic manufacturer or the MFDS must disclose the generic formulation, since it was impossible to ascertain such information otherwise.

The Seoul Central District Court was persuaded by these arguments, and urged the generic manufacturer to clarify whether its generic product fell within the scope of the formulation patent. The court indicated that if the generic manufacturer refused, the court would have requested the MFDS to produce the relevant information.

The generic manufacturer eventually admitted that its product fell within the claim scope of the formulation patent. As a result, the court granted injunctive relief, ordering the generic manufacturer not to – among other things – manufacture or sell its generic products, and to discard any intermediate products that may be used to manufacture the generic products.

Impact / New Precedent Established

As one of the first cases involving the new Korean patent linkage system, this dispute serves as a useful guide on how the system functions.

Kim & Chang conducted in-depth analysis on the issues that could arise after the adoption of the patent linkage system, and was able to successfully assist the patentee and the original drug manufacturer from infringement of their rights by generic manufacturers.

Now that a new precedent is in place through this landmark decision, original drug manufacturers will have a clear avenue to prohibit generic entry into the market under the Korean patent linkage system.

Korean Supreme Court Renders Significant Decision on a Bank's Duty to Explain Floating Rate-Based Loan Products

Recently, the Supreme Court of Korea rendered a significant decision regarding the scope of a bank's duty to explain floating rate-based foreign currency loans.

Case Details

The loan in question was a Japanese Yen-based loan extended by five banks to the plaintiffs (the banks'

customers): Shinhan Bank, Kyongnam Bank, Hana Bank, Kookmin Bank, and the Industrial Bank of Korea.

The lower court found that for loans with applicable interest rates linked to a domestic or foreign benchmark interest rate, the bank extending such loans has the affirmative duty to explain the meaning of "floating rate," and the type of benchmark interest rate applicable to such loans.

The court ruled that a bank will be deemed to have violated such duty if: (i) the loan agreement in question does not contain any specific description of the applicable interest rate; or (ii) (except in cases where the interest rate is a widely recognized rate used in the international financial markets, such as LIBOR) evidence showing that the bank provided explanation on possible fluctuation of such a rate is absent.

However, the Supreme Court held that: (i) when an interest rate is determined by reference to a rate such as LIBOR; and (ii) the bank does provide an explanation to its customers that the interest rate is linked to such rate, together with an explanation regarding the risks associated with exchange rate fluctuations, then the bank would not be viewed as having violated its duty to explain, even where the loan agreement failed to contain any provision on specific interest rates.

Further, the Supreme Court rejected the conclusion of the lower court that it was necessary for the banks to explain the detailed constituent elements that determine an interest rate in cases where it is difficult for customers to understand specific elements of an interest rate (e.g., Market Opportunity Rate ("MOR"), "standard interest rate," "standard interest rate applicable to a foreign currency loan," "inter-office rate"). Specifically, these were standard variable rates that changed every one to three months, which were published by the banks on a regular basis, and linked to the LIBOR spread. In such cases, the Supreme Court ruled that as long as the banks explained the meaning of applicable floating rate, and the risks associated with exchange rate fluctuations, the banks did not violate their duty to explain despite the fact that they did not provide the specific constituent elements.

Significance

The case is significant, because it clarifies the scope of the duty to explain does not extend to require banks to provide the specific constituent elements of the interest rates, which are their business secrets, after sufficiently taking into account the facts and circumstances of loan transactions.

Kim & Chang's Successful Representation

Kim & Chang successively represented the banks in this case. Among other things, our team proactively explained to the Supreme Court the characteristics of the elements that determine the interest rates as well as the realities of loan agreement transactions.

ANTITRUST & COMPETITION

The Seoul High Court Partially Rejects the KFTC's Decision on Home Shopping Channel's Mobile Marketing

On September 23, 2016, the Seoul High Court issued a decision partially rejecting the Korean Fair Trade Commission's ("KFTC") corrective order and penalty surcharges on Home & Shopping Co. Ltd. ("Complainant"), a domestic home shopping channel.

Case Details

On June 3, 2015, the KFTC issued a corrective order to the Complainant, and imposed penalty surcharges, alleging that the Complainant imposed unfair disadvantages to the supplier, which is prohibited under the Monopoly Regulation and Fair Trade Act (the "Fair Trade Law" or "FTL").

The KFTC explained that when the Complainant entered into a distributorship contract in 2014, the commission fees were partially calculated on a flat sum, and also, at a fixed rate, based on the sale price for orders made through television. On the other hand, the commission fees for orders made through mobile applications were solely based on a fixed rate, which was 2 to 4 times higher than the fixed rate commission fees for TV orders.

The KFTC further claimed that the Complainant used subtitles to induce consumers to make orders through mobile applications. Thus, the KFTC argued that the higher commission fees and the subtitles encouraging mobile application orders were unfair disadvantages to the distributor, and a violation of the FTL.

The Appeal

The Complainant appealed the KFTC decision. Kim & Chang represented the Complainant, and successfully rebutted the KFTC decision in court.

The Seoul High Court held that:

1) The commission fee for mobile orders was purely at a fixed rate basis, unlike the commission fee for TV orders, which was a combination of a fixed rate fee and a flat sum. Therefore, claiming that the commission fee for mobile orders was disadvantageous merely based on a comparison of the fixed rates for mobile orders and TV orders were insufficient.

2) The ratio of the actual commission fee to the sales price was higher for TV orders than for mobile orders.

3) Advertising various ways for customers to buy the product is a justifiable act to maximize sales, which is the purpose of Home Shopping's broadcasting.

4) Since many home shopping businesses advertise mobile applications in their broadcasting, marketing via mobile applications was foreseeable.

5) After mobile orders were activated there was an increase in both the per-minute efficiency and also in sales for the distributor.

Hence, the Court did not believe that the Complainant's actions provided unfair disadvantages to the distributor.

Impact

In a rapidly changing market environment, many businesses are focusing on smartphone marketing. This decision is a good reference point when setting mobile-based marketing strategies.

SECURITIES

Doosan Bobcat, a Unit of Korea's Biggest Construction Equipment Maker, Listed on the Korea Exchange

On November 18, 2016, Doosan Bobcat undertook its initial public offering (the "IPO") of 30,028,180 shares held by its existing shareholders at the price of KRW 30,000 per share on the Korea Exchange. The IPO was valued at over KRW 900 billion.

First-of-its-Kind IPO

In 2002, the Korea Exchange adopted new IPO regulations for the listing of a Korean company, whose main business is to control a foreign company it owns through shareholding. The regulations refer to such a Korean company as "foreign company-controlled holding company."[18]

This Doosan Bobcat IPO transaction is significant, because it is the first-of-its-kind case in Korea for a "foreign company-controlled holding company" to undertake its IPO both in and out of Korea at the same time.

Kim & Chang acted as Doosan Bobcat's legal advisor. Our team advised on various Korean legal issues relevant to the IPO and listing of its shares, including: (i) reviewing various agreements needed for the public offering and listing processes; (ii) streamlining company's regulatory compliance system necessary for a listed company; (iii) handling special securities depository procedures; (iv) reviewing issues relating to granting employee stock options; and (v) conducting due diligence.

In particular, we successfully advised on complicated offshore listing procedures and disclosure issues by collaborating with overseas advisors, as the transaction involved the first ever concurrent listing of a "foreign company-controlled holding company" in and out of Korea.

[18] Refers to a holding company, which owns shares of a foreign company to control such foreign company

Woori Bank Undertakes Another Historical Offshore Issuance of Tier 1 Subordinated Notes

On September 27, 2016, Woori Bank undertook its offshore private placement of Tier 1 Subordinated Notes, in the amount of USD 500 million.

This transaction was the second-ever offshore issuance of such notes by a Korean bank after the introduction of Basel III – the first issuance took place in June 2015.

Kim & Chang successfully advised Woori Bank in issuing its Tier 2 Subordinated Notes offshore for the first time under Basel III in May 2015, and we also assisted Woori Bank in issuing new hybrid equity securities for the first time in June 2015.

On this issuance, our team provided comprehensive legal services for the transaction, including reviewing all relevant agreements, ensuring compliance with applicable laws in light of revised equity capital recognition rules under the amended Bank Act, and advising on interest and dividend payment, as well as early re-payment terms used widely in offshore markets.

INSURANCE

Singapore-based Reinsurer, Asia Capital Re, Opens its Korea Branch

On September 21, 2016, Asia Capital Reinsurance Group Pte. Ltd. ("Asia Capital Re") obtained a reinsurance business license for its Korea Branch from the Financial Services Commission ("FSC").

Kim & Chang's Insurance Practice played a critical role in supporting Asia Capital Re during the Preliminary Application and Formal Application process for the regulatory approval of the newly-established branch office of Asia Capital Re in Korea.

Asia Capital Re is a Singapore-based reinsurer focusing on clients in the Pan-Asia Region, covering the Middle East to China and Japan. Asia Capital Re specializes in providing reinsurance solutions for risks across a number of lines of business, including aviation, casualty, credit and surety, energy, engineering, marine, medical, catastrophe, and property insurance.

REAL ESTATE

Korea's Mirae Asset Global Investment Acquires One of Amazon's Buildings in the U.S.

Mirae Asset MAPS US Professional Investment Private Real Estate Investment Trust 8, a privately qualified investor collective investment vehicle (the "Fund") established by Mirae Asset Global Investments Co. Ltd., acquired an office building located in Seattle, Washington, U.S., known as "Amazon Phase VIII" (the "Property," and such acquisition, the "Transaction").

Details

The Property is currently leased by Amazon Corporate LLC ("Amazon"). The Transaction was accomplished by using the Fund's overseas intermediary investment vehicles. The Fund initially formed a real estate investment trust in the U.S. (the "REIT") as a wholly-owned subsidiary of the Fund. Next, the REIT incorporated a limited liability company (the "LLC") in the U.S. as its wholly-owned subsidiary. The LLC ultimately acquired the Property as its direct purchaser.

Kim & Chang contributed to the successful closing of the Transaction by providing comprehensive legal advice during all stages of the Transaction, including due diligence review of the Property, and the review, negotiation, and execution of the sale and purchase agreement, the loan agreement for the funding, and the master lease agreement with Amazon. Our team also crafted optimal structuring of the investment and transaction terms to ensure smooth funding and closing of the Transaction.

TAX

Tax Tribunal Decides that Investors of Foreign Funds are Beneficial Owners

Recently, the Tax Tribunal held that investors of foreign funds are beneficial owners ("BO" or "BO's").

This decision deviates from the 2013 Korean Supreme Court decision, where the Court held that a fund, such as a Cayman limited partnership, may be regarded as a company and BO for Korean tax purposes.

Case Details

A foreign company resident in a treaty jurisdiction, with funds domiciled in the Cayman Islands etc., ("Funds") as shareholders, sold shares in a Korean company to another Korean company ("Purchaser"), and claimed a treaty exemption on the capital gain.

In a tax audit that shortly followed the transaction, the Korean tax authority assessed withholding tax on the Purchaser by treating the underlying investors of the Funds as the BO's of the capital gain (rather than the foreign company).

After the initial assessment of the withholding tax, the Korean tax authority amended the previous assessment, and imposed further withholding tax on the Purchaser by treating the Funds as the BO's instead. The tax authority's action followed the recent string of Korean Supreme Court decisions.

The Tax Tribunal held that an additional imposition of withholding tax by the Korean tax authority was unlawful for the following reasons:

1) The burden of proof was with the Korean tax authority (that the Funds are companies and BO's for Korean tax purposes), and this was not sufficiently discharged by the Korean tax authority.

2) The Purchaser made a good faith effort to comply with its withholding tax obligations.

3) The Korean tax authority's initial assessment of withholding tax was based on a full review of the facts, and applying the prevailing interpretation and practice at that time. Accordingly, to go back and amend the previous assessment based on the subsequent Supreme Court ruling amounted to a breach of the principle of prohibiting retroactive application of tax law.

4) Also, imposing additional withholding tax on the Purchaser, who no longer had any right of getting reimbursement from the seller (i.e., the foreign company), also amounted to a breach of the principle of taxation based on good faith.

Kim & Chang's Representation

On behalf of the Purchaser, our team successfully drew the Tax Tribunal decision that such imposition of additional withholding tax was unlawful. We did so based on a thorough analysis of the facts, and by presenting diverse legal arguments, including burden of proof, good faith effort of the Purchaser to comply with its withholding tax obligation and principles of prohibiting retroactive application of tax law, and taxation based on good faith.

INTELLECTUAL PROPERTY

Korean Patent Court Rules that "Reasonable Expectation of Success" Must be Shown to Invalidate Medicinal Use Patents

In a recent case, the Korean Patent Court upheld the validity of a second medicinal use patent, while clarifying the "reasonable expectation of success" test for evaluating prior art when assessing the inventiveness of patents.

Background

Under Korean law, a patented invention lacks inventiveness over prior art if a person skilled in the art could easily have arrived at the patented invention from the prior art in view of several factors (i.e., the existing technology, technical knowledge, the basic problem to be solved, the trend of development, or other demands in the relevant art at the time of filing the invention).[19]

[19] See Korean Supreme Court Decision No. 2005Hu3284 rendered on September 6, 2007.

Until now, there has been no specific guidance on how to evaluate inventiveness while accounting for different levels of technological difficulty in various fields of industrial technology. This has particularly been problem for pharmaceutical and biotech inventions, since the effects of such inventions are well known to be much less predictable than inventions in other fields (e.g., mechanical inventions).

Recent Case

In the above case, the Patent Court held that "considering the special circumstances that apply to developing anticancer agents, the inventiveness of a medicinal use invention concerning an anticancer agent should be denied only if a person skilled in the art would have had a reasonable expectation based on the prior art that a potential anticancer medicinal use would be successful, and not merely a speculative possibility."

The Court upheld the validity of the patent after determining that the patented invention, which is directed to an anticancer medicinal use, could not have been reasonably expected to be successful based on the cited prior art, in view of the technical difficulty involved in the field.

Kim & Chang represented the patentee in this case.

Impact

By requiring parties challenging medicinal use patents to demonstrate that an ordinary practitioner would have had a reasonable expectation of success in developing the patented invention based only on prior art disclosures and knowledge, going forward, the Patent Court appears to be substantially supporting the inventiveness of medicinal use inventions.

INTERNATIONAL ARBITRATION & CROSS-BORDER LITIGATION

Korean Government Wins for the First Time in an ICSID Investor-State Dispute Against Netherlands-based Subs of IPIC

The Korean Government has won in an investor-state dispute arbitration brought under the International Centre for Settlement of Investment Disputes ("ICSID") Convention Arbitration Rules against two Netherlands-based subsidiaries of International Petroleum Investment Company of UAE. This is the first time the Korean government has won in an investor-state dispute.

Details

In the arbitration, the claimants claimed that the Korean Government's tax assessments for the subsidiaries' gains on the sales of Hyundai Oilbank's shares (approximately KRW 240 billion) was in violation of the Korea-Netherlands Bilateral Investment Treaty.

Kim & Chang, as the Korean Government's lead counsel, was involved in the selection of its co-counsel, an international law firm. We assembled a team of international tax and arbitration experts to develop a comprehensive defense strategy at an early stage.

As a result of these early efforts, including efforts to expedite the proceeding, the claimants notified their intent to withdraw from the arbitration on July 26, 2016. The case was formally closed on October 5, 2016 upon the tribunal's signing of the discontinuance order.

Investor-State Dispute Settlements & Our Representation

Investor-State Dispute Settlement ("ISDS") is a dispute resolution system through which a foreign investor – unfairly harmed by the laws, systems, policies or measures of a state that it invested in – can claim for damages against the state. The basis is usually on an existing bilateral investment treaty, or a free trade agreement between such a state and the state of the investor.

Recently, we have seen a significant upward trend in the number of ISDS's around the world – in particular, in the energy, nuclear, construction, and other business sectors. However, according to the ICSID, only 9.7% of ICSID disputes are concluded due to frequent withdrawals of claims by claimants.

Managing investor-state dispute cases requires international arbitration specialists, who are vastly experienced in complex arbitrations. Specialists need to also possess in-depth understandings of international investment law, public international law, and be up-to-date on recent trends and practices in ISDS, including government responsibility and investor protection standards.

The early achievement in this challenging case was possible due to the successful case management by our team of experienced professionals. Our client also benefitted from our multi-jurisdictional team members, whose linguistic skills as well as multi-cultural understanding helped to effectively communicate with the diverse arbitral tribunal.

This case stands as a leading example of how the Korean government was able to successfully defend an ICSID case at an early stage of the proceeding.

Supreme Court of Korea's Enforcement Decision Against the Denial of Enforcement of an ICC Arbitration Award in the Korean Courts

Recently, Kim & Chang obtained an enforcement decision for an International Chamber of Commerce ("ICC") arbitration award, which was debated at the Supreme Court of Korea.

Case Details

The ICC arbitration was between a joint venture company ("JVC") established by Lone Star Fund and Korea Deposit Insurance Corporation ("KDIC"), and KDIC, as the shareholder of the JVC.

The JVC had sold its real estate, and distributed the advance payment received from the sale to KDIC as dividend, subject to the condition that KDIC would return the advance payment if the sale of the real estate was cancelled. However, when the real estate sales contract was cancelled, KDIC refused to return the advance payment. The JVC then filed for arbitration, requesting the return of the advance payment, among other claims.

Our Representation

Kim & Chang represented the JVC in the ICC arbitration, and succeeded in obtaining an arbitration award in favor of the JVC, following a two-year period of intense written submissions and hearings.

We immediately sought execution of the award in the Korean courts. However, the 1st instance court denied enforcement on the ground that the JVC's sale of its assets was in violation of Korean laws, and constituted "violation of public policy." Violation of public policy is one of the grounds for denying recognition and enforcement of an arbitration award under the New York Convention.

In the appeal, the Seoul High Court also denied execution of the arbitration award on a different ground – the arbitration award was outside the scope of the arbitration agreement.

These decisions were considered extremely unusual and controversial for the Korean judiciary, which had thus far gained a reputation as being "arbitration-friendly."

At the Supreme Court, our experts successfully argued that there was no ground to deny recognition and enforcement of the arbitration award, because the arbitral award was within the scope of the arbitration agreement. The Supreme Court reversed the previous decision, and remanded the case back to the Seoul High Court to decide the remaining issues.

Back at the Seoul High Court, the issue of public policy was again fiercely debated. Finally, on October 26, 2016, the Seoul High Court ruled that the JVC's sale of assets was not in violation of Korean law. Further, the court considered the history behind the New York

Convention and its purpose, the function of arbitration system, and the stability of international transactions. In so doing, the High Court confirmed that the public policy exception under the New York Convention should be interpreted more narrowly than the "public policy" under article 103 of the Korean Civil Code. With this decision, the intent and the spirit of the New York Convention were upheld, and Korean courts proceeded to maintain its "arbitration-friendly" reputation.

This was not only a case of prevailing in the arbitration itself, but also about ensuring the enforceability of an arbitration award. This win demonstrates Kim & Chang's strength and focus in guiding clients through all facets of the dispute process until clients are able to receive final relief.

ENGINEERING & CONSTRUCTION DISPUTES

Precedent Set: Restriction of All Public Bids on a Specific Public Institution by Limiting Bidding Participation is Against the Principle of Statutory Reservation

Kim & Chang successfully represented Company K in the first-of-its-kind case, where the court held that the restriction of all public bids (i.e., all national institutions, local government bodies, public institutions) on a specific public institution by limiting the bidding participation is against the principle of statutory reservation.

Case Details

Company K participated in the bid of a public corporation ("the Corporation"), but was not selected as the winning bidder. Since then, the Corporation has restricted Company K and its representatives from participating in all public bidding of central government agencies, local governments and other public enterprises ("the disposition") for three months. The Corporation alleged that the Company "negotiated a bid price in advance, or negotiated for the purpose of selecting a bidder" pursuant to Article 15 section (1) of the Public enterprise/quasi-governmental Organizations Contract Office Rule ("Contract Office Rule") and Article 76 section (1) subsection (7) of the Enforcement Decree of the Acts on Contracts to which the State is a Party ("Acts on Contracts to which the State is a Party").

In this regard, Kim & Chang, represented Company K, arguing that the Corporation, as a quasi-governmental entity, may restrict the participation qualification only in relation to the bidding conducted by the Corporation under the Act on the Management of Public Institutions, and therefore that the disposition was in violation of the principle of statutory reservation.

Court's Holding

As a result, the court agreed with our analysis and arguments, and held that: "According to Article 39 section (2) of the Act on the Management of Public Institutions, there is no basis to interpret that the quasi-governmental organizations may limit the eligibility of bids conducted by other public agencies, and because Article 39 section (3) is about the delegation to the Ministry of Strategy and Finance in respect to "restriction on the participation qualification," its scope may be strongly construed as relating to the specific criteria of disposal."

The court found that "the disposition" was unlawful, contrary to the principle of statutory reservation.

Impact

Currently as part of the public bidding practice in Korea, the restriction of bidding participation of public corporation or quasi-governmental organization influences the bidding performance of other public corporations, quasi-governmental organizations, and/or local governments.

This case will serve as the first precedent of significant importance, showing that current public bidding practice as described above is being conducted without any legal basis.

AWARDS & RANKINGS

12 awards including "Korea Law Firm of the Year" - ALB Korea Law Awards 2016

Kim & Chang was named as "Korea Law Firm of the Year" for the fourth consecutive year at the ALB Korea Law Awards 2016 hosted by Asian Legal Business (ALB), a renowned legal publication in Asia affiliated with Thomson Reuters. The awards ceremony was held in Seoul on November 17th, 2016.

Mr. Kye Sung Chung of our firm was also selected as "Managing Partner of the Year." Kim & Chang received awards in the following 12 categories including "Korea Law Firm of the Year," and our firm received the highest number of awards among the winners.

Firm Categories – Only winner

- Korea Law Firm of the Year
- Managing Partner of the Year: Kye Sung Chung
- International Arbitration Law Firm of the Year
- Labour and Employment Law Firm of the Year
- Shipping Law Firm of the Year
- Tax and Trusts Law Firm of the Year
- Technology, Media and Telecommunications Law Firm of the Year

Deal Categories – Co-winner

- Korea Deal of the Year: MBK Partners' Acquisition of Homeplus from Tesco PLC
- Debt Market Deal of the Year (Midsize): Korea's Offshore RMB "Panda Bond Offering"
- Equity Market Deal of the Year: Mirae Asset Life Insurance's IPO
- M&A Deal of the Year (Midsize): Sale of 57.95% Equity in KUMHO Industrial Co.
- M&A Deal of the Year (Premium): MBK Partners' Acquisition of Homeplus from Tesco PLC, Merger Between KEB and Hana Bank

ALB announced the winners in 30 categories including best law firms, influential deals and in-house counsels, based on law firms' submissions, its own independent research and outside experts' voting results.

Ranked 68th among the 100 largest law firms - The American Lawyer's Global 100 (2016)

Kim & Chang has been named in the "Global 100," a special feature of The American Lawyer, a renowned US-based legal magazine, for three years in a row. Our firm was ranked among the Top 100 firms in each of the following charts: 68th on the "Most Lawyers (rank by number of lawyers)", 59th on the "Most Revenue (rank by gross revenue)", 46th on the "Most Profits Per Partners (rank by profits per partners). Kim & Chang is the only Korean firm to be listed on these charts.

The "Global 100" is an annual report published by The American Lawyer, and the results are based on research from variety of sources including a survey of global law firms.

Ranked 10th among the largest 50 law firms based in the Asia-Pacific region - The American Lawyer's Asia 50 (2016)

Kim & Chang has been ranked 10th among the 50 largest firms based in the Asia-Pacific region, according to the Asia 100 survey, a special feature of The American Lawyer, a renowned US-based legal magazine.

The American Lawyer regularly announces the Asia Pacific region's largest law firms, both international and domestic, by conducting a survey of firms based in the region and relying on the data from the surveys in its sibling publications and its own independent research. In this feature, the 50 largest firms, by head count, based in the Asia-Pacific region ("Asia 50") and the 50 international firms with the most lawyers in the Asia-Pacific region ("The Global Players") were announced.

Korea Law Firm of the Year - China Law & Practice Awards 2016

Kim & Chang was selected as "Korea Law Firm of the Year" at China Law & Practice Awards 2016, an event hosted by China Law & Practice, an affiliate of ALM, a world-renowned legal media group. Kim & Chang has been recognized as "Korea Law Firm of the Year" for sixth consecutive year.

China Law & Practice Awards select outstanding deals, firms, lawyers and in-house teams based on its independent research including law firm submissions.

Kim & Chang's China Practice, consisting of specialists in each legal practice area, provides high-profile legal services for outbound Korean corporations and inbound Chinese corporations with extensive experiences and close relationship with key partners in China.

Tier 1 in all 15 practice areas - The Legal 500 Asia Pacific 2017

Kim & Chang was named as "Tier 1" in all 15 practice areas surveyed, according to the Legal 500 Asia Pacific (2017 edition), a leading global law firm directory published by Legalease, a UK legal publisher.

Separately, 18 professionals at Kim & Chang were recognized as "Leading Individuals" in their respective practice areas; additional 6 professionals of the firm were selected as "Next Generation Lawyers" in their fields.

The Legal 500 wrote "Kim & Chang's 'excellent' team, which includes a mix of Korean and foreign counsel, 'works together very well, supporting the international legal advice with first-rate Korean law advice' and is commended for its 'consistent quality of advocacy, both written and oral'" based on quotes from some of our clients.

The details are:

Firm Rankings

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

Leading Individuals

- Antitrust & Competition: Kyung Taek Jung
- Banking & Finance: Young Kyun Cho, Jina Myung
- Capital Markets: Myoung Jae Chung
- Corporate & M&A: Young Jay Ro, Jong Koo Park, Young Man Huh, Sang Goo Lee
- 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
- Shipping: Byung-Suk Chung, Jin Hong Lee

Next Generation Lawyers

- Corporate & M&A: Sun Yul Lee
- Insurance: Joon Young Kim
- Intellectual Property: Sang Young Lee
- International Arbitration: Una Cho, Hye Sung Kim
- Shipping: Helen Heoun Joo Kim

Tier 1 in all practice areas - IFLR1000 Financial & Corporate 2017

Kim & Chang was named as "Tier 1" in all five practice areas surveyed by IFLR1000 Financial & Corporate for the 13th consecutive year.

IFLR also mentioned that "the firm has received strong feedback from clients in competition and M&A," quoting a client's comment that "[Kim & Chang has been] very attentive to client needs and produced quality results. I am satisfied with working with them," and another client's feedback that "it has excellent skills and know-how regarding M&A in outbound issues."

IFLR1000 Financial & Corporate is a global law firm directory published by Euromoney. The rankings are based on its independent research including law firm submissions and feedback from lawyers and clients.

Our winning details are as below:

Firm Rankings (Tier 1)

- Banking & Finance
- Capital Markets
- Competition
- M&A
- Restructuring & Insolvency

Leading Lawyers

Kye Sung Chung, Kyung Taek Jung, Ick Ryol Huh, Jin Yeong Chung, Jong Koo Park, Young Kyun Cho, Hi Sun Yoon, Chang Hyeon Ko and Chang-hee Shin

Rising Star

Myoung Jae Chung

Outstanding in 17 practice areas - Asialaw Profiles 2017

Kim & Chang was selected as "Outstanding" in 17 practice areas out of 18 areas surveyed and also selected as "Highly recommended" in one practice area, according to Asialaw Profiles 2017, a publication of Asialaw, affiliated with Euromoney.

Kim & Chang was introduced as a firm which "lives up to its reputation as the premier Korean law firm" and whose "expertise covers a wide range of industries and practice areas."

In addition, 19 attorneys of Kim & Chang were recognized as "Leading Lawyers" in Asialaw Leading Lawyers 2016, published in this June.

The details are:

Outstanding

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

Highly Recommended

- Energy & Natural Resources

Leading Lawyers

Kye Sung Chung, Kyung Taek Jung, Jay (Young-June) Yang, Woo Hyun Baik, Dong Shik Choi, Young Jay Ro, Jin Yeong Chung, Byung-Chol (B.C.) Yoon, Jong Koo Park, Hi Sun Yoon, Young Man Huh, Eun Young Park, Jin Hwan Kim, Myoung Jae Chung, Gene-Oh (Gene) Kim, Liz Kyo-Hwa Chung, Deok-Il Seo, Hoin Lee and Sup Joon Byun

Tier 1 in M&A in South Korea - ALB M&A Rankings 2016

Kim & Chang was recognized as one of the leading M&A firms in South Korea, named as a Tier 1 firm in the ALB (Asian Legal Business) M&A Rankings 2016, a feature article in the September 2016 issue of ALB.

ALB is one of Asia's most respected monthly legal magazines owned by Thomson Reuters, and the rankings were determined based on the volume, complexity and size of deals, firm's visibility and profile in the marketplace, feedback from key clients as well as market data.

Our M&A Practice is widely recognized in Korea and throughout Asia as providing service of the highest quality that is at the same time the most cost-effective for the clients.

National Law Firm of the Year - Asialaw Asia-Pacific Dispute Resolution Awards 2016

Kim & Chang was selected as "National Law Firm of the Year - South Korea" at Asialaw Asia-Pacific Dispute Resolution Awards 2016, hosted by Asialaw, a legal media group, affiliated with Euromoney.

Asialaw Asia-Pacific Dispute Resolution Awards recognizes national and international law firms, disputes and lawyers for excellence and influence in dispute resolution practice.

Kim & Chang's International Arbitration & Cross-Border Litigation Practice is recognized as the leading practice in Korea. The firm combines an extensive experience in representing both Korean and overseas clients in international arbitrations around the globe and litigations before Korean courts.

Leading Tax Advisory Firm - World Tax 2017

Kim & Chang was selected as one of the leading (Tier 1) tax advisory firms in Korea by World Tax 2017.

World Tax, published by International Tax Review, is the guide to the world's leading firms for tax advice around the world. The rankings are based on the International Tax Review's independent research, by way of assessing several law firm submissions and interviewing both clients and tax executives.

One client who participated in this survey complimented our work, saying "I have known [Kim & Chang] as a first class tax firm since 1980 ... [Kim & Chang] has done a great job, fabulous performance: alert, pro-active, technically and analytically savvy, and great in communication."

As the undisputed market leader in Korea, the Tax Practice at Kim & Chang has worked tirelessly for nearly 40 years to achieve the highest practice standards in providing tax and legal services to our clients. The firm continues to strive to improve client satisfaction.

Best National Firm for Work-Life Balance - Euromoney Asia Women in Business Law Awards 2016

Kim & Chang was selected as the "Best National Firm for Work-Life Balance" at the Euromoney Asia Women in Business Law Awards 2016, hosted by Euromoney.

Euromoney Asia Women in Business Law Awards recognizes the most influential female legal advisors in Asia and law firms taking the lead in training and developing women. The awards were based on research by way of evaluating submissions from law firms and interviews with lawyers. Euromoney Asia Women in Business Law Awards 2016 was held on November 9, at JW Marriott in Hong Kong.

Newsletter

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

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