Update On Legislative Provisions

1. The Special Act on the Prevention of Insurance Frauds

(a) Background

The detected financial loss arising from insurance frauds escalated from KRW 374.6 billion in 2010 to KRW 599.7 billion in 2014. Leakages in insurance payments due to insurance frauds have impaired the management of insurance companies and increased insurance premiums, ultimately harming insurance policyholders. In response to this, the *Special Act on the Prevention of Insurance Frauds* (the "*Insurance Frauds Prevention Act*") has finally been ratified and will come to effect on 30 September 2016.

(b) Key Provisions

The following are the key provisions of the *Insurance Frauds Preventions Act*.

(i) If there is a reasonable ground to suspect that a policyholder has engaged in an insurance fraud, the Financial Services Commission, the Financial Supervisory Service, or an insurance company must report such matter to the relevant authorities and request for an investigation (Article 6).

(ii) A person who has received, or caused a third person to receive, any insurance payout by committing an insurance fraud will be subject to an imprisonment of up to 10 years or a fine of up to KRW 50 million (Article 8).

(iii) Where a person has received a final and conclusive judgment to have committed an insurance fraud, such person's right to any insurance claim will be extinguished and such person must return all insurance payouts s/he has received until the date of such judgment (Article 12).

(iv) In the absence of any ground listed under the *Presidential Decree of the Insurance Frauds Prevention Act*, an insurance company cannot delay, deny or reduce insurance payouts by reason of an investigation on any insured contingency (Article 5).

(c) Implications

Under the *Insurance Frauds Prevention Act*, the criminal fine applicable to an insurance fraud has been increased from KRW 20 million to KRW 50 million. Further, the Financial Supervisory Services has formed an insurance fraud special taskforce dedicated to monitoring and investigating insurance frauds. On the other hand, to prevent unreasonable delay, refusal or reduction of insurance payouts arising from any insured contingency investigation, the *Presidential Decree of the Insurance Frauds Prevention Act* will provide for specific grounds on which an insurance payout can be delayed, denied or reduced. Exactly what entails such ground remains to be seen when the *Presidential Decree* is announced.

2. The Amendment to the Enforcement Decree of the Insurance Act

(a) Background

Following the Reinforcement Plan for the Competitiveness of the Insurance Industry announced by the financial supervisory authorities in October 2015, the *Amendment to the Enforcement Decree of the Insurance Act* (the "Amendment") came into effect on 1 April 2016 to reduce the scope of matters subject to reporting obligations to ease the insurance companies' burden of developing new insurance products. Further, in an effort to strengthen insurance consumers' rights following the deregulation of insurance products, the Amendment expands the scope of matters to be explained by insurance companies to general policyholders in different stages of an insurance transaction.

(b) Key Provisions

The following are the key provisions of the Amendment.

(i) Additional confirmation / authentication permitted when entering into an insurance agreement online

Whereas insurance agreements could only have been executed, subscribed to or withdrawn online by way of an electronic signature in accordance with the *Digital Signature Act*, the Amendment introduces various additional methods of execution which (x) have proven stability and reliability, and (y) are in compliance with the standards given by the Financial Services Commission as provided under Article 21(2) of the *Electronic Financial Transactions Act*.

(ii) Matters to be explained to policyholders during different stages of an insurance transaction

Under the Amendment, insurance companies must, when dealing with general insurance policyholders, explain to such policyholder (x) that an insurance agreement can be cancelled

within three months from the date of its execution under the *Commercial Code* prior to the execution of an insurance agreement, (y) the relevant division and contact details of the responsible person, documents required for the policyholder's claim, and matters relating to calculation of loss and any insured contingency investigation, upon receipt of any insurance claim, and (z) the relevant payment details when making any insurance payout.

(iii) Reduced prior reporting requirements with respect to creation or amendment of basic documentation for an insurance product

Under the Amendment, prior reporting is required with respect to the creation or amendment of basic documentation for an insurance product only if such insurance product (x) contains risks that have not been reported or has not been sold, or (y) is a crop disaster insurance as defined under the *Agricultural and Fishery Disaster Insurance Act*, which is an insurance subsidized by the government or a local municipality. Prior reporting is no longer required for amendments to the existing basic documentation for an insurance product so long as such amendments do not change the substantive content of the basic documentation (e.g., formatting or structural changes, correction of typographical errors, etc., are not subject to prior reporting).

3. Supreme Court Cases

Case 1. Whether a macular grid laser treatment for the treatment of diabetes retinopathy constitutes an operation conducted specifically for the treatment of diabetes (Supreme Court Decision 2012DA50087 dated 28 May 2015)

Under a special insurance agreement for certain diseases between 'A' and insurance company B (the "Special Insurance Agreement"), diabetes was defined as one of the nine illnesses. The Special Insurance Agreement further provided that insurance company B must pay for A's operation costs if A received an operation conducted specifically for the treatment of one of the nine illnesses. The Supreme Court of Korea decided that A's receipt of a macular grid laser treatment constituted 'an operation conducted for the specific purpose of one of the nine diseases' as A was diagnosed with diabetes and the macular grid laser treatment was given for the treatment of a diabetes retinopathy, a form of a diabetes complication.

To elaborate, the Supreme Court of Korea reasoned that (a) diabetes retinopathy is listed in the 4th and 5th divisions under the diabetes (E10-E14) category, (b) the Special Insurance Agreement does not provide for any specific restriction on the definition of an 'operation', and (c) if interpreted broadly, a macular grid laser treatment can be a form of an operation.

Case2. Where a physically damaged insurance policy is submitted for an insurance claim (Supreme Court Decision 2014DA81542 dated 17 November 2015)

'A' brought a proceeding against insurance company B claiming that A was entitled to a pension saving insurance payout. As evidence, A submitted the original insurance policy which was folded into thirds with the third section ripped out. The insurance policy which A submitted stated that the expected insurance payout amount upon maturity was KRW 1.8 million. Insurance company B argued that the ripped out section had provided that the actual amount of payout may be adjusted depending on the interest rate.

Where there is a possibility that a damaged section of a document contains matters contrary to those provided in the remainder of such document, any loss arising from such uncertainty should be borne by the person that submits the document. Accordingly, the Supreme Court of Korea dismissed A's claim, taking into consideration the possibility that the ripped out section of the insurance policy could provide for the adjustment of the payout amount depending on the interest rate given insurance company B's computer data as well as other insurance products it offered at the time.

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