Temporary Operating Permit System for Autonomous Automobiles

Korea will join the ranks of countries where autonomous automobiles can be tested on public roads, with the amendment to the Motor Vehicle Management Act (the "Act") and the Enforcement Decree and Rules thereof becoming effective and the Regulations on Safe Operation Requirements and Test Operations of Autonomous Vehicles (the "Regulations") having been promulgated through notification by the Ministry of Land, Infrastructure and Transport (the "MLIT") as of February 12, 2016.

1. Definition of Autonomous Automobiles and Requirements for Temporary Operating Permits

An "autonomous automobile" is defined as an "automobile which controls its acceleration and deceleration, braking and steering based on its own recognition and judgment of the surrounding situation and road information without any active control of a driver." (Subparagraph 1-3 of Article 2 of the Act and Article 2(4) of the Regulations).

A permit for temporary operations for purposes of testing and research of autonomous automobiles requires meeting the "requirements for safe operation" under the Regulations in addition to the general vehicle safety standards. The said Regulations include various rules with respect to the structure and functions of the automobile such as the number of required operators and insurance coverage to ensure the safe operation of autonomous automobiles that are still undergoing testing and research.

More specifically, autonomous automobiles in test operations must: (i) have been sufficiently tested for autonomous driving in a testing facility (Article 5 of the Regulations); (ii) be covered by insurance (Article 4 of the Regulations); (iii) have at least two (2) test personnel including the operator during test operations (Article 19 of the Regulations); (iv) have a function that disables autonomous driving whenever the operator attempts manual control while the automobile is driving autonomously (Article

15 of the Regulation); (v) be equipped with proper failure detectors and warning devices (Articles 13 and 14 of the Regulations), a frontal collision avoidance system and a speed limiting system (Article 16 of the Regulations), and black box recording device (Article 17 of the Regulations); and (vi) display a sign indicating that it is an autonomous automobile for the sake of motorists following behind it on the road (Article 8 of the Regulations).

2. Procedure to Apply for a Temporary Operating Permit

In order to obtain a temporary operating permit for an autonomous automobile, an application must be filed directly with the MLIT unlike applications for other types of vehicles. The MLIT will determine whether the concerned automobile satisfies the requirements for the permit based on testing by the Korea Automobile Testing & Research Institute of the Korea Transportation Safety Authority (Proviso to Article 27(1) of the Act and Article 26-2(2) of the Enforcement Rules). Once the requirements are found to have been satisfied, a permit will be issued within 20 days from the date of application with an effective period of up to 5 years, and the MLIT will notify the relevant municipality to issue a number plate for the autonomous automobile (Article 7(4) of the Enforcement Decree).

An autonomous automobile with a temporary operating permit may only be operated on a section of an expressway (41 km stretching from Seoul to Shingal and then to Hobeop) and five sections of highway: (i) Suwon-Yongin-Pyeongtaek (61 km), (ii) Suwon-Yongin (40 km), (iii) Yongin-Ansung (88 km), (iv) Goyang-Paju (85 km), and (v) Gwangju-Yongin-Seongnam (45 km) (Notice No. 2016-174 by the MLIT).

3. Overseas Legislation Regarding Test Operations of Autonomous Automobiles

Taking the U.S. as an example, a country that is at the forefront of efforts surrounding autonomous automobiles, the State of Nevada became the first to introduce legal grounds on which automobiles could be tested on public roads, followed by California, Florida, Michigan and others. Among the foregoing states, California particularly may serve as a reference in improving systems for autonomous automobiles in Korea considering that the State of California (i) requires without any exception that the operator of an autonomous automobile must be an employee of the manufacturer, providing more clarity with regard to where the responsibilities lie with respect to testing, and (ii) requires the manufacturer to have a minimum $5 million insurance policy or surety guaranty to cover against any possible accident.

4. New Legal Issues Related to Autonomous Automobiles

Meanwhile, it is anticipated that various, new legal issues will arise with the implementation of the temporary operating permit system and actual operation of autonomous automobiles on the road. One issue likely to emerge will be the issue of who would be liable for an accident involving an autonomous automobile, if any, during the temporary permit period. Judgment will likely depend particularly on whether the automobile owner was in control of the automobile and was driving for its own benefit under the Guarantee of Automobile Accident Compensation Act, and whether the automobile had any "defects" under the Product Liability Act.

In addition to the above, there could be other legal issues such as, among others, (i) hacking of private information (such as location information) and invasion of privacy; (ii) the liable party when an accident occurs due to communication errors; (iii) liabilities of the automobile manufacturer and the parts supplier when product liability is acknowledged; (iv) civil and criminal liabilities of the manufacturer, the automobile owner, the network operator or a hacker in case of a failure to follow proper preventative measures, follow-up actions and/or a failure to properly manage the incident when an accident occurs due to hacking of driving software. When autonomous automobiles reach a certain level of commercialization in the future, such legal issues will become even more complicated and sharply disputed. Therefore, timely preparations and studies are especially required with respect to such development.

5. New Legal Issues Related to Autonomous Automobiles

The autonomous automobile is coming, as evidenced by Nissan Motors' announcement that it will put into practical use "autonomous driving on multiple-lane expressways" by 2018 and "autonomous driving on general roads including crossroads" by 2020. While it is fortunate that legal grounds for the test operation of autonomous automobiles have now been established with the recent amendment to the Motor Vehicle Management Act, there is still is a long way to go until we reach the commercialization of autonomous automobiles including the enactment of other needed legislation and resolution of various legal issues. The Information Technology Practice Group at Shin & Kim is continuously monitoring the latest proposals for legislation and legal issues in this exciting area of technology so that we can quickly provide comprehensive legal services and advice relating to autonomous automobiles.

If you have any questions or need assistance in relation to the subject of this newsletter, please contact:

- Keonjoo Lee, Partner TEL : +82 2 316 4211 E-Mail: kjlee@shinkim.com
- Seong-Jin Choi, Partner TEL : +82 2 316 4405 E-Mail: sjinchoi@shinkim.com
- Junghee Cho, Partner TEL : +82 2 316 1624 E-Mail: jhcho@shinkim.com
- Han Kyul Nam, Associate TEL : +82 2 316 1766 E-Mail: hknam@shinkim.com
- Daniel Yoo, Senior Foreign Attorney TEL : +82 2 316 4684 E-Mail: dyoo@shinkim.com

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