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NEWSLETTER

[Antitrust] - Byung-Il Im and So-Hyun Hong

Supreme Court Decision on Joint Application for Leniency (Supreme Court 2010 Du 2548 Decision on September 9, 2010)

Collusive acts (cartels) have recently been the focus of increased attention, as evidenced by the imposition by the Korea Fair Trade Commission (the "KFTC") of a series of heavy penalties on companies involved in collusive acts, together with the criminal indictment of the relevant company executives. However, some discrepancy may exist among those engaged in the same collusive acts: some may be subject to an astronomical amount of penalties along with criminal prosecution while others are not sanctioned at all by the KFTC.

Such big difference in sanctions among participants for the same collusive act stems from the "Leniency Program" as prescribed in the Monopoly Regulation and Fair Trade Act (the "MRFTA"). As an aside, please note that the Korean expression for applying for leniency is "self-reporting."

The Leniency Program consists in reducing sanctions

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against colluding companies that report information on their collusive act thus allowing an easier uncovering of collusive acts. The first party that applies for leniency is eligible for full immunity from corrective measures, penalties, and prosecution; the second applicant can obtain a reduction in penalties by half and immunity from prosecution. Starting from the third, applicants can see their penalties reduced by not more than 30% (increased from 20% through an amendment on October 20, 2010) but with no guarantee of immunity from prosecution.

Because benefits substantially differ depending on the order in which companies apply for leniency, companies tend to rush to file an application for leniency as soon as they realize they are engaged in a collusive act.

However, if two or more companies were allowed to apply for leniency together, they would cooperate on their joint application and all become the first applicants, so that nobody would face any sanctions. This would render meaningless a Leniency Program designed to eliminate cooperation among companies and root out collusive acts. For this reason, the MRFTA prohibits, in principle, any joint application for leniency by two or more companies.

But one may ask whether the prohibition of joint application for leniency also applies to companies which, in spite of having legally distinct personalities, can in fact be deemed as the same company. This question was controversial due to the lack of relevant regulations, but the Enforcement Decree of the MRFTA (amended on June 25, 2009) provides that joint application for leniency is permitted for two or more companies that are affiliated by effective control or are engaged in a spin-off or a transfer of business and meet certain requirements (Article 35(1)1(a) and (c) of the Enforcement Decree).
The Supreme Court recently rendered a significant decision on whether joint application is permissible for a collusion that occurred under the pre-amendment MRFTA, and, if so, requirements apply to such joint application. The case (Supreme Court 2010 Du 2548 Decision on September 9, 2010) is summarized below.

1. Background

Company A and Company B were in competition with each other as domestic elevator operators. Company A and Company B, along with three other operators, colluded to allocate among themselves the contracts ordered by customers in the private and public sectors through domestic elevator bidding ("First Collusive Act"). They, along with five other operators, also colluded to allocate among themselves the contracts ordered by Korea National Housing Corporation ("Second Collusive Act").

While such collusive acts were ongoing, Company A transferred its elevator business to Company B and discontinued the elevator business.

Afterwards, Company B reported its collusive acts and applied for leniency.

Then, when the KFTC imposed penalties for such collusive acts, Company B benefited from the KFTC's leniency but Company A did not. At the time when the KFTC made such decision, there was no provision in the Enforcement Decree allowing joint application for leniency.

Company A asserted before the court that it was not able to report such collusive acts in an application for leniency since it did not have any related material due to the transfer of its elevator business and employees to Company B, and as such, Company B's application for leniency should be deemed as including collusive acts conducted by Company A prior to such transfer of business, or should be deemed as application for leniency performed on behalf of Company A. Company A concluded that it should be treated as (i) a joint applicant for leniency or (ii) an independent cooperator.

2. Court Ruling

The High Court rejected Company A's argument, on the grounds that joint application is expressly prohibited under the pre-amendment MRFTA; Company B's application that is purported to have included Company A's application or to have been done on behalf of Company A is nothing but an unlawful attempt to circumvent the prohibition of joint application as set forth in the pre-amendment MRFTA.

However, the Supreme Court overturned the High Court ruling, stating that, although joint application may be permitted under the pre-amendment MRFTA, Company A cannot be deemed to be an applicant as it failed to meet the requirements. In other words, the Supreme Court said "Joint application may be permitted only when such permission is in conformity with the intent of the Leniency Program, including where two or more companies that are affiliated by effective control or are engaged in a spin-off or a transfer of business did not commit the collusive act together." Since Company A and Company B committed the First Collusive Act with three other operators and the Second Collusive Act with five other operators, the Supreme Court denied Company A the benefit of any leniency.

The Supreme Court also decided that Company B cannot be deemed to have applied for leniency or cooperated with the KFTC's investigation as an agent or a representative of Company A for the following reasons: (i) Company B only applied for leniency or cooperated with the investigation under its own name and did not expressly state it acted as an agent or a representative of Company A; (ii) though Company A transferred its business to Company B, they participated in collusive acts together prior to such transfer of business so that their joint application for leniency cannot be acknowledged and their interests are conflicting in respect of sequence of reporting; (iii) pursuant to the Asset Transfer Agreement between Company K (predecessor to Company A) and Company L (predecessor to Company B), Company A and Company B are separately liable for any illegal act they committed prior to the transfer, so that their interests with respect to penalties are not intertwined; (iv) there is no proof that Company B effectively controls Company A or that they share a common interest; and (v) even if it were acknowledged that, as part of the application for leniency or cooperation with the investigation, Company B revealed any illegal act committed by Company A, it is nothing more than the disclosure by Company B, as a leniency applicant or an investigation cooperator, of the illegal act committed by another collusion participant. By the same token, the Court also visited the issue of effective control.

In conclusion, the Supreme Court opened the possibility that even a collusion which took place before the exception to the prohibition of joint application for leniency was adopted by the MRFTA, and on which the KFTC already rendered a ruling, may be the subject of a joint application only if the requirements as stipulated in the MRFTA are met. But it made clear that, as in the above case, joint application is not permitted for such two companies which were engaged in a transfer of business but participated in the collusion together at their own discretion while being in competition with each other.

[Construction and Real Estate]

- Jae-Doo Shim and Seung-Soo Lee

Project Financing – Litigation over Preferred Beneficial Interest in Trust

In a Project Financing ("PF") transaction consisting in the construction and presale of a building, the operator may grant the lending institution and the constructor a preferred beneficial interest in trust based on a trust agreement on the building. However, if the project results in lower profits than expected and ordinary creditors who provided funding at the initial stage of the project cannot recover their investments from the operator, such ordinary creditors may challenge the fairness of the trust agreement granting a preferred beneficial interest in trust to certain creditors only. On the other hand, because the lending institution and the constructor cannot provide a substantial amount of financing or promise payment guarantee and construction completion without any collateral, they have to obtain the preferred beneficial interest in trust. As a result, both sides' interests are diametrally opposed.

The constructor may refuse to deliver the building, occupying it, as long as it is fully paid the construction amount (exercise of a lien). Then, the operator may ultimately have to forfeit the presale of the building as it cannot take possession of the building. In this regard, the issue arises whether it is fair to grant a preferred beneficial interest in trust in return for non-exercise of a lien.

In a recent PF case relating to a mixed-use residential building (Daesung Skyrex in Daegu), the operator obtained a PF loan from a financial institution (Hana Bank) which was guaranteed by the constructor (Daesung Industry), by the conditional debt acquisition of the PF loan as well as by the constructor's promise of completion. In the process, the operator agreed to execute a trust agreement on any units of the building unsold during the presale. As the constructor could not be paid the construction amount, however, it refused to deliver the building and the operator had no choice but to grant the constructor a preferred beneficial interest in trust. Moreover, the presale was not successful and ordinary creditors were not able to recover their investments from the operator. Accordingly, they filed a lawsuit against the operator, claiming that it unfairly executed a trust agreement which grants the preferred beneficial interest in trust only to the financial institution and the constructor.

The court ruled, however, that from the two perspectives as discussed above, the provision of the preferred beneficial interest in trust to the constructor does not harm ordinary creditors, thereby resolving an unexpected legal problem which may arise in operators' PF projects.

Shin & Kim was able to successfully represent the operator in the above case by effectively arguing the relevant issues. This case should be regarded as a meaningful precedent for other PF project cases.

[International Trade and Customs]
- Dae-Young Lee, Jae Hyuk Lee and Seung-Yeol Lee
(Licensed Customs Consultants)

Decision on Tariff Classification of Apparatus for Cable TV by WCO Harmonized System Committee

1. Background

With the advance of broadband telecommunications networks and digital broadcasting on the back of the development of information and telecommunications and digital technologies, telecommunications and broadcasting have been converging worldwide. Not to be outdone, Korea's terrestrial broadcasters and cable TV operators have imported equipment for digital broadcasting systems since the launch of digital broadcasting in 2001.

A digital broadcasting system is comprised of: an Encoder that converts and compresses an analogue signal into a digital signal; a Multiplexer that selects one of many signals and forwards the selected signal into a single line in conformity with ISO/IEC; a Modulator that takes an input signal and outputs a QPSK modulated signal or QAM modulated signal; and a Decoder (IRD) that decodes a digital signal. The Korea Customs Office (the "KCO") held the First Harmonized System Committee Conference in May of 2004 and assigned Encoder, Multiplexer, Modulator, Decoder (IRD) constituting a digital broadcasting system ("Digital Broadcasting Equipments") into the category of "Transmission Apparatus for Television" or HS 8525, subjecting them to an 8% tariff.

2. Issue

The KCO decided that Digital Broadcasting Equipment should belong to the tariff classification of HS 8525 of "Transmission Apparatus for Television" as they are used as cable TV broadcasting equipment.

However, the Customs Team at Shin & Kim representing the importers of Digital Broadcasting Equipment (the "Plaintiff") asserted that only "transmission apparatus" among the apparatuses for television should be classified as HS 8525, and as such, Digital Broadcasting Equipment should be classified as HS 8517 or "Apparatus for the Transmission or Reception of Voice, Image or Other Data."

At issue, therefore, is whether Digital Broadcasting Equipment qualifies as "Transmission Apparatus" or "Apparatus for the Transmission."

3. Court Ruling

The court decided that only when individual imports can function as transmitters on their own can they be classified as "Transmission Apparatus." Since individual Digital Broadcasting Equipment cannot perform transmission on their own, they cannot belong to the tariff classification of HS 8525, and thus, the KCO ruling on Digital Broadcasting Equipment is illegal. (Decision 2007 Du 4209 on June 14, 2007 and Decision 2007 Du 17090 on October 26, 2007)

More specifically, the court ruled in favor of the Plaintiff, recognizing the illegality of the KCO ruling for the following reasons: First, Digital Broadcasting Equipment is used in the preparatory stage to make final data transmission easier as it is capable of compressing, modulating or converting text, voice, and image, etc. and as such, whether the apparatus to compress or convert data in the preparatory stage for transmission can also be included in "Transmission Apparatus for Television" under the tariff classification of HS 8525 should be strictly reviewed in accordance with the principle of legality of taxation. Second, since a Digital Broadcasting Equipment does not have any direct transmission function, it is difficult to classify it in the category of "Transmission Apparatus for Television" just because it is used in the preparatory stage for television transmission. Third, the KCO ruling that Digital Broadcasting Equipment should be classified as "Transmission Apparatus" is illegal on the ground that some Digital Broadcasting Equipment is specified in the tariff classification of HS 8517.50.

4. WCO Secretariat's Incorrect Advice on Tariff Classification

Despite the two rounds of decisions by the Supreme Court, the KCO referred this matter to the World Customs Organization (the "WCO"). In January 2008, the Secretariat of the WCO sent to the KCO an Advice that classified Encoder, Multiplexer, and Modulator under HS 8525.10 as "Transmission Apparatus for Television" and Decoder under HS 8525.20 as "Transmission Apparatus incorporating Reception Apparatus." Then, the KCO decided on the tariff classification of Digital Broadcasting Equipment, reflecting the WCO opinion.

The WCO Secretariat gave the Advice that Digital Broadcasting Equipment should belong to the HS 8525 class, on the ground that the explanatory note of HS 8525 states "Apparatus for Television Broadcasting should be classified as HS 8525" and Digital Broadcasting Equipment is used as apparatus for cable TV broadcasting. But the explanatory note of HS 8525 provides only for "Apparatus for Television" not "Apparatus for Television Broadcasting." That is why the Plaintiff pointed out that the WCO Secretariat incorrectly quoted the explanatory note in the Advice by arbitrarily including the term "Broadcasting" and submitted this matter, as an official agenda, to the WCO Harmonized System Committee.

5. Tariff Classification Decision by WCO Harmonized System Committee

The Seoul High Court approved the tariff classification of Digital Broadcasting Equipment to be submitted as an official agenda to the WCO Harmonized System Committee, on the ground that the committee is a professional organization specializing in tariff classification under the World Trade Organization and its official decision may be used for reference in determining the tariff classification of Digital Broadcasting Equipment at the court. As a result, the 44th WCO Harmonized System Committee reviewed and decided in September of 2009 that Digital Broadcasting Equipment should belong to HS 8517.

At the 44th WCO Harmonized System Committee Conference, the European Commission argued that Encoder, Multiplexer, and Modulator should be classified under HS 8517 as "Other Broadcasting Apparatus," not under HS 8525 as "Transmission Apparatus" since they themselves cannot perform signal transmission whereas the U.S. asserted that Encoder, Multiplexer, Modulator, and Decoder should be classified as HS 8525 as they are a part of the transmission system. The WCO Harmonized System Committee reached a majority decision that Digital Broadcasting Equipment belongs to HS 8517.62, and such decision was adopted as its official opinion.

Based on such decision, the KCO announced in January 2010 that the tariff classification of Digital Broadcasting Equipment would change from HS 8525 to HS 8517 and dropped the relevant lawsuit.

[International Trade and Customs]

- Dae-Young Lee, Jae Hyuk Lee and Seung-Yeol Lee
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[Korea-EU FTA] Approved Exporter System

1. Who is an Approved Exporter?

Approved exporter system grants any exporter authorized by the competent customs authority a simplified issuance of origin certificates or submission of evidencing documents.

2. Need for Application for Approved Exporter Status

With the Korea-EU FTA to take effect within 2011, Korea and the EU are taking measures for a formal signature. The Korea-EU FTA provides that any Korean exporter who intends to export to the EU any goods in excess of 6,000 euros and be eligible for preferential treatment shall be granted the approved exporter status (Article 16 and 17 of the Origin Protocols of Korea-EU FTA).

Thus, even if the Korea-EU FTA becomes effective, any exporter who is not granted the approved exporter status may have problems with the declaration of origin for EU-bound export goods in excess of 6,000 euros, and as such, the Korea Customs Office is encouraging domestic exporters to the EU to obtain the approved exporter status as soon as possible.

As the EU has implemented the approved exporter system since 1975, EU exporters are not expected to face problems with respect to the approved exporter status when the Korea-EU FTA comes into force. But Korea adopted the approved exporter system in May 2010 and, as of now, only a few companies such as LG Display and Samsung Electronics have obtained the approved exporter status. So when Korean exporters fail to apply for the approved exporter status as soon as possible, they may not be able to enjoy benefits from the Korea-EU FTA.

3. Requirements and Procedures for Approved Exporter Status

The approved exporter status by company is granted when the following requirements are met (Article 7 of the Enforcement Rule of the FTA Special Customs Act):

(1) Proof of origin: to export such goods which meet the origin criterion and (in the case of approval by company) have a computer system or a business manual for origin control.

(2) Origin control: to keep and maintain a book for certificate of origin and appoint an origin controller.

(3) Legal compliance: to have neither record for any rejection of an origin investigation or any punishment pursuant to the FTA Customs Special Act or the Customs Act within the recent two years, nor record for any breach of exporter's obligation to keep export documents within the recent five years.

Any exporter who meets the above three requirements can submit an application for the approved exporter status, an explanation of origin, and evidencing documents inter alios, to the KCO or any local customs office which, in turn, evaluates such documents and grants the exporter the approved exporter status by delivering an approved exporter certificate within 20 days from the date of application.

4. Benefits from Approved Exporter Status

Any exporter who is granted the approved exporter status under the Korea-EU FTA can fill out an origin declaration for export goods in excess of 6,000 euros. There is no need to submit attached documents, sign or seal, but a single authorization number alone is sufficient.

However, Korea needs to brace itself for any verification of proofs of origin, as the EU is expected to conduct a verification of proofs of origin on 0.5% of the imported goods subject to preferential tariffs.

5. Shin & Kim's Consultation for Individual Companies

The Customs Team at Shin & Kim provides its services with respect to the rules of origin under the Korea-EU FTA, including considering if any exported goods are in compliance with the rules of origin, based on tariff classification and appropriateness of cost data and providing consultation on supplementary and corrective measures for any non-compliance, an application with the KCO for the approved exporter status, and steps to be taken to adjust to the Korea-EU FTA. Please contact any of the following persons for any question or inquiry.

[International Trade and Customs]

- Dae-Young Lee, Jae Hyuk Lee and Seung-Yeol Lee
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[Korea-EU FTA] Issuance and Verification of Origin Certificates, Investigation Procedures for Issuance of False Origin Certificates, and Countermeasures

On April 26, 2010, the Council of the European Union decided that anti-dumping duties would not be imposed on 11 out of 14 Korean companies which were subject to anti-dumping investigations with regards to alleged circumvention tactics of steel wire ropes manufactured in China.

To find out if Chinese steel wire ropes were temporarily imported to Korea to change the country of origin to Korea and then were exported to the EU to avoid anti-dumping duties at a rate of 60.4%, the EU requested the KCO to undertake an origins investigation and performed due diligence from October 2009 on the 14 companies that accepted such diligence from the EU. The EU eventually decided that 11 out of the 14 companies would be exempt from anti-dumping duties.

Matters regarding the origin of imports and exports were initially confined to violations of origin labeling or other anti-circumvention techniques to avoid anti-dumping duties, but with more countries entering into free trade agreements recently, it has become more important for customs authorities to verify certificates of origin which are essential for benefiting from preferential tariffs.

Investigations into the issuance, verification, and forging of certificates of origin and appropriate countermeasures to be taken, particularly with respect to the Korea-EU

FTA, are conducted as follows:

<Issue of certificates of origin under the Korea-EU FTA>

As the Korea-EU FTA allows exporters to certify the origin of goods by means of "an invoice declaration," which is needed to decide whether such goods should be subject to preferential treatment, exporters can use a commercial invoice that states "The exporter of the products covered by this document (customs authorized No…) declares that, except where otherwise clearly indicated these products are of (country) preferential origin" as an origins declaration.

Under the Korea-EU FTA, however, approved exporters are only eligible to make out an invoice declaration with respect to EU-bound exports of goods in excess of 6,000 euros (Article 16-1 of the Origin Protocols of Korea-EU FTA) and if an exporter intends to make out an invoice declaration to export goods in excess of 6,000 euros, it must have its origins control ability authorized by the customs authority of the exporting country. As such, Korean exporters need to be granted approved exporter status from the KCO to benefit from preferential treatment as prescribed in the Korea-EU FTA.

Accordingly, although the Korea-EU FTA has not come into force yet, the Ministry of Strategy and Finance, on March 2, 2010, revised the Enforcement Rules of the FTA Special Customs Act to allow exporters to obtain approved exporter status by company or item, rather than by model (specification) prior to such revision. Reflecting such revision beginning from April 1, 2010, the KCO granted some companies approved exporter status by company.

To obtain approved exporter status by item from the KCO Administrator or a local customs office director, an applicant must:

- export goods which meet the origins criteria;
- keep and maintain books for certificates of origin;
- appoint an origins controller (or an outside expert as the case may be);
- have no record of rejection of an origin investigation in the past two years; and
- have no record of breach of an exporter's obligation to keep relevant documents within the past five years.

To obtain approved exporter status by company, the following requirements must be met in addition to the above five requirements. An applicant must:

- have a computer system or the ability to prove that exported (manufactured) goods meet the origins criteria;
- have no record of punishment pursuant to the FTA Customs Special Act or the Customs Act in the past two years;
- have no record of improper application for an origins certificate in the past two years; and
- have no record of rejection of an application for an origins certificate more than five times in the past two years.

Any exporter who meets the above requirements can submit an application for approved exporter status, an explanation of origin by item, a commitment letter, and a corporate introduction letter to the KCO Administrator or a local customs office director who, in turn, evaluates such documents and grants the exporter approved exporter status by delivering an approved exporter certificate within 20 days from the date of application.

<Verification of proofs of origin>

Verification of proofs of origin is carried out when the customs authorities of the importing country have reasonable doubts as to the authenticity of the origin declared by an importer. The Korea-EU FTA provides that "To ensure the proper application of the Origin Protocols of Korea-EU FTA, Korea and the EU shall support customs authorities' procedures to verify the authenticity of proofs of origin and the accuracy of information contained in the document submitted, and the verification of proofs of origin shall be carried out at random or whenever the customs authorities of the importing country have reasonable doubts as to the authenticity of documents, the originating status of the products concerned or fulfillment of the other requirements of this Protocol." (Article 27 of the Origin Protocols of Korea-EU FTA)

Under the Korea-EU FTA, the verification of proofs of origin is carried out by the customs authorities of the exporting country upon the request of the customs authorities of the importing country, but public officials of the importing country may participate in the verification of proofs of origin with the consent of the customs authorities of the exporting country.

Out of 22 cases, requested between January 2006 and March 2010, for the verification of proofs of origin on garments/ mannequins, vehicles, valve parts, sensor lamps, and ropes for ships, the KCO has completed verifications for 19 cases and uncovered violations of the rules of origin in 6 cases for reasons such as failure to meet the origins criteria, non-submission of evidencing documents, and forged documents by local importers.

The proofs of origin are highly likely to be verified on such items (i) which stand to benefit substantially from preferential treatment when the Korea-EU FTA takes effect, (ii) whose import and export volumes would soar after the effective date of the Korea-EU FTA, (iii) which are subject to relatively complicated origins criteria, (iv) which are exported items by suppliers without their own manufacturing facilities, or (v) which are likely to be circumvented via China. In particular, exporters of fabrics/ garments, vehicles, and chemicals are more likely than others to be subject to verifications of proofs of origin.

< Investigation and sanctions for issuance of false origin certificate>

Where EU customs authorities have reasonable doubts as to the authenticity of the origin declarations of certain goods exported from Korea submitted for preferential treatment as set forth in the Korea-EU FTA and request the KCO to verify them, the KCO investigates their authenticity and notifies the EU customs authorities of the investigation results. If such goods are found to fail the origin criteria, the EU customs authorities may exclude the EU importer from preferential treatment.

In this case, though customs duties are imposed on the EU importer, the Korean exporter may (i) face up to KRW 20 million in fines for fraud regarding the documents evidencing origin or their preparation and issuance in other illegal ways pursuant to the FTA Special Customs Act; (ii) no longer be able to obtain preferential treatment for his/her exported goods from the customs authorities of the importing country as his/her approved exporter status could be cancelled; and/or (iii) be sentenced to imprisonment or fines for violation of prohibitions against disguising foreign goods as domestic goods or for violations of country of origin labeling rules as stipulated in the Foreign Trade Act.

Where the KCO has reasonable doubts that an importer may benefit from preferential treatment based on false certificates of origin, it may request customs authorities of the exporting country to verify the authenticity of proofs of origin through a documentational or local investigation. The KCO may suspend the granting of preferential treatment to the goods concerned while awaiting the results of the verification. If the results of the verification are not notified, do not contain necessary information, or if the KCO find that the goods in question fail the origins criteria, the KCO may refuse entitlement to the preferences. (Article 16 of the FTA Special Customs Act)

< Countermeasures for verification of proofs of origin>

Verifications of proofs of origin are significant in that their results can affect not only preferential treatment under the Korea-EU FTA but also price competitiveness and corporate reputation, but companies may find it difficult to collect relevant materials during verification procedures to prove the authenticity of proofs of origin so they need to make advance preparations for any potential verifications of proofs of origin.

To begin with, companies need to identify the origins criteria of their major imports or exports and any data to prove the origins of such goods in accordance with such criteria.

In order to determine the origins of goods in accordance with the Change in Tariff Classification Criteria, a party must confirm whether any processing is actually undergone which causes "substantial transformation" between the goods and their raw materials such that there is no problem with any change in tariff classification between them. When applying, the Value Contents Criterion, raw material list, BOM (Bill of Materials), origins certificates of suppliers' raw materials for export, and other data with respect to the goods need to be collected and reviewed to verify if they meet the Value Contents Criteria as prescribed in the Korea-EU FTA.

In addition, since the determination for the origins of imports requires an enormous amount of origin-related information on all the processes ranging from purchase and manufacturing to sales, companies need to keep the following data and put in place a self-verification program for systematic and efficient control of documents evidencing origin:

- Books for origins certificates;
- Detailed statements of processing by main item (process and added value, etc.);
- Statements of import and purchase (either from overseas or domestic markets) of raw materials;
- Additional domestic processing after the import of raw materials or goods;
- Confirmation of ratio (cost) of raw material input per unit (certificate of materials requirements, or statement of parts requirements and manufacturing costs, etc.);
- Statements of ratios of domestic to foreign parts in finished goods (detailed statements of raw material costs, overseas and domestic processing costs, transportation costs, and any other incidental costs); and
- Evidencing documents for compliance with origins criteria, including manufacturers' notice of origin or written statements.

For the reasons above, companies need to obtain and maintain documents evidencing origin, produced in the manufacturing process, on a steady basis rather than on a one-time basis.

[Media Contents]
- Sang-Hyeok Im and Joon-Bum Cheon

U.S. Court Decision on Responsibility of OSP (Google v.Viacom Legal Battle)

The U.S. district court rendered summary judgment on illegal video clips posted on YouTube

The closely-watched legal battle between Viacom and Google, which had been regarded as a fight between copyright holders and Internet companies, came to an end last year. Viacom (owner of ABC-TV and Paramount) sued YouTube's parent company Google, accusing the wildly popular video-sharing site of copyright infringement of movies and dramas, and on June 24, 2010, the U.S. District Court for the Southern District of New York rendered summary judgment for Google which effectively dropped the lawsuit. In the U.S. law of torts, summary judgment is a determination made by a court without a full hearing on the facts, which may be issued as to the merits of an entire case or of specific issues in that case. Summary judgment which is issued as to the merits of a main issue can effectively determine the outcome of the case. In this case, Google (YouTube) moved for summary judgment on all of Viacom's claims, asserting that it is shielded from liability under the safe harbor provisions of the Digital Millennium Copyright Act (the "DMCA") and the court granted Google's motion.

The safe harbor provisions of the DMCA, which Google (YouTube) claimed to be entitled to in this case, exempts online service providers (OSP), such as Google (YouTube), from liability for copyright infringement by any third party when the following conditions are met:

(A) (i) the OSP should have no actual knowledge of infringing material on the website, (ii) the OSP should not be aware of facts or circumstances that there is infringing material on the website, or (iii) the OSP should expeditiously delete or block access to infringing material when it has actual knowledge or awareness of the infringing material;

(B) the OSP should not obtain any direct monetary gains from infringing material if it is able and authorized to control it; and

(C) When notified of any alleged infringing material, the OSP should expeditiously delete or block access to the material acknowledged as, or suspected of being, infringing material. (The method and requirement for notifications are separately prescribed)

Provided, however, that the OSP should appoint a designated agent who makes notice of any alleged infringing material if it is to be protected by the safe harbor provisions.

Mere knowledge of the prevalence of copyright infringement in general is not enough to hold an OSP responsible for infringement

Viacom asserted that "YouTube had actual knowledge of copyright infringement as hundreds of millions of users have clicked the copyrighted works which were stolen from Viacom and posted on YouTube and didn't take any measures even when it was aware of facts or circumstances that copyright infringement had been going on. Google (YouTube) counterclaimed that it appointed a designated agent as set forth in the DMCA and has handled postings with due care.

Based on the arguments of both sides, the court stated that "Mere knowledge of prevalence of such activity in general is not enough." It ruled that copyrights are properly protected under the DMCA, citing as an example that the next business day after Viacom called for YouTube to delete 100,000 clips on February 2, 2007 which were claimed to infringe its copyrights, YouTube deleted them from the website.

The efforts and costs to prevent copyright infringement over the web should be borne by copyright holders

The delicate balance between the protection of copyrighters' rights and IT firms' operating activities has been much debated, and prior to the Viacom v. Google case, there had been a number of precedents with similar issues. Though a higher court ruling should be awaited, this court decision means that an OSP has no obligation to do more than take measures for copyright protection as stipulated by law and ensure that Internet firms' demands are actively accepted.

The problem, however, is that this court decision does not solve everything. As the contents industry has developed, more and more copyright issues have been raised. Copyright issues will ultimately boil down to the law and economics matter of who is to bear the risks and costs arising from copyright infringement. In addition, in the continuously developing Internet environment, an OSP's obligations to prevent copyright infringement will be increasingly segmented by service type and any related lawsuits will turn on proof of whether any policy to prevent copyright infringement reflecting state-of-the-art technology was put in place and implemented.

This court decision was rendered on the assumption that the efforts and costs for such policy should be, in principle, borne by copyright holders, and such assumption was also made by a domestic court in a case over an e-commerce company's responsibility to prevent trademark infringement. On May 10, 2010, the Seoul High Court rendered the following ruling in a case over whether an open-market online shopping mall is liable for sales of knockoffs:

"If a shopping mall operator is obliged to review and verify the authenticity of each and every product before they are registered with the shopping mall in order to prevent knockoffs from being distributed, it would increase transaction costs, which in turn would be passed to transaction parties in the shopping mall. It is unfair to pass the costs incurred to protect trademarks, to such transaction parties who are not related to such trademarks. The open market operator, if it must take responsibility for distribution of fakes, may find it difficult to normally operate the open market itself. Accordingly, the shopping mall operator is not deemed to have any obligation to take aggressive actions to nip in the bud a trademark infringement in a general and comprehensive manner, including performing a comprehensive and all-encompassing verification of authenticity of products, monitoring the registration of any counterfeit products, filtering any fakes through a comprehensive, preemptive, and automatic screening, and strictly checking the identity of sellers."

Such domestic court ruling was based on the assumption that any responsibility to prevent and remove copyright infringement over the Internet should belong to copyright holders, and online service providers, through which copyright infringement is committed, have no more than the obligation to accept demands from copyright holders in a legitimate manner. Prudential care is required on a case-by-case basis, however, as certain types of online service providers such as P2P file sharing websites as defined in Article 104 of the Copyright Act need to take strict 'technological measures.' On the other hand, a court ruled that with respect to Web Hard which has recently become a new sharing website for moving images, the operator is deemed to have aided and abetted copyright infringement (Daegu District Court 2009 Go 953 Decision on May 8, 2009).

[China] - Byoung Seon Choe and Dae Hoon Jang

Strict Supervision of Illegal Acts related to Contracts

The State Administration of Industry and Commerce of China (the “SAIC”) issued “Measures for Monitoring and Dealing with Illegal Acts related to Contracts” (No. 51 Rule of the State Administration of Industry and Commerce) (the “Measures”) on October 13, 2010, which came into force on November 13, 2010.

The SAIC is the public authority whose duty includes monitoring and dealing with contract-related illegal acts, which originally performed administrative supervision mainly pursuant to the “Rule of Investigation of Illegal Acts Using Contracts” >. Although the abolishment of such rule in 2008 left the SAIC with nothing to rely on in conducting supervision, the Measures re-confirmed the SAIC’s authority of administrative supervision.

The Measures define contract-related unlawful acts as (1) fraudulent acts related to contracts, (2) abuses of contracts detrimental to state and public interests, and (3) abuses of standard clauses by business operators, and they provide for administrative liability for such illegal acts.

Fraudulent acts related to contracts include (i) falsely presenting oneself as a contract party; (ii) fabricating information on cargo delivery and sales channels; (iii) causing the other party to make a wrong decision by using false information or hiding important facts; (iv) causing a counterparty to execute and perform contracts even though one is unable to fully perform himself by performing only a part of an agreement involving a small sum of money at first or part of them.

Abuses of contracts detrimental to state and public interests include (i) executing and performing a contract using bribery, threat, malice, or conspiracy, thereby jeopardizing state and public interests, and (ii) transacting on items which are restricted or prohibited by the state from sales or purchases.

Abuses of standard clauses by business operators, whose methods are specifically defined in the Measures, include (i) exempting themselves from their liabilities in standard clauses, (ii) increasing the liabilities of consumers, or (iii) denying consumers their rights in standard clauses.

Any contracting party who commits a contract-related illegal act may be punished in accordance with applicable laws, or otherwise may be subject to a warning or fine up to RMB 30,000 as stipulated in the Measures if they are challenged by the SAIC.

Any person who helps a contracting party commit “fraudulent acts related to contracts” or “abuses of contracts detrimental to the state and public interests,” including providing his/her seal or bank account may face administrative sanctions as described above.

The Measures represent the SAIC’s intention to strengthen administrative supervision and control over contract-related illegal acts. However, as the Measures are neither a law (legislated by the National People’s Congress and the Standing Committee) nor a decree (legislated by the State Council) but an internal rule issued by a department under the State Council, any contract-related illegal act in violation of the Measures is not automatically invalidated but is likely to be subject to administrative sanctions by the SAIC.

Therefore, business operators need to be careful to avoid any breach of the Measures in executing and performing a contract, and in particular, when using standard clauses for consumers (e.g. sale and purchase contracts, travel service contracts, and remuneration contracts), business operators need to modify the contents in accordance with the Measures.

[Litigation Cases]

- Byung-Il Im and Sung-Deok Nam

Civil Precedents

Effect of Obligation Set-off by One of Unfaithful Joint Obligors = Absolute Effect (Supreme Court 2008 Da 97218 Decision on September 16, 2010)

The Supreme Court ruled that when an employer should be held jointly liable for any unlawful act conducted by his employee (and the employer and employee are deemed as unfaithful joint obligors) but the employee's obligations are set off by his receivables from the victim of such unlawful act, the effect of extinguishing the obligations should be applied to the employer as well.

Requirement for Entitlement to Benefits of Leniency and Calculation Method of Penalty (Supreme Court Du 2548 Decision on September 9, 2010)

The Supreme Court ruled that in order to be entitled to a reduced penalty for collusive acts under a Leniency Program, a company must independently apply for leniency. The penalty is calculated based on 'average sales of the immediately preceding three business years' from the closing date of such collusive acts, not from the date of order of penalty payment.

When Unfair Competition Acts Become Illegal and When Injunction Against them can be Sought (Supreme Court 2008 Ma 1541 Decision on August 25, 2010)

The Supreme Court ruled that the defendant's use of a program that replaced the plaintiff's ads or inserted the defendant's ads when online users who installed such program visited Naver constituted an unauthorized use of the work created by the plaintiff's effort and investment against business ethics or fair competition. The defendant was deemed to have made illicit gains and undermined the plaintiff's interest as protected by law. Furthermore, when any monetary compensation alone for the continued unauthorized use is insufficient relief for the plaintiff and an injunction against such unauthorized use is deemed to deliver more advantage to the plaintiff compared to disadvantage to the defendant, an injunction against, or prevention of, such unauthorized use can be sought.

Any Defect in the Approval Order for Establishment of Original Union cannot be Remedied by Consent on Establishment of New Union (Supreme Court 2010Du 2579 Decision on August 26, 2010)

The Supreme Court ruled that the illegality of any administrative order is determined based on laws and facts at the time of issuance of such administrative order. It is not affected by any revision or abolishment of laws or any change in facts after such administrative order is issued; such remedy of any faulty administrative action is, in principle, not permitted from the perspective of the nature of administrative actions or constitutionalism. Even when it is permitted to prevent any recurrence of the faulty administrative action and ensure the right application of laws, it should be implemented under specific circumstances and for justifiable purposes to the extent that it does not jeopardize the rights or interests of the public. Based on this logic, the Court decided that even if more than 3/4 of the land owners in a housing redevelopment area consented to the establishment of a new union, any defect in the approval order for establishment of the original union could be remedied.

Cause of Termination of Continuous Contract (Supreme Court 2010 Du 4971 Decision on August 19, 2010)

The Supreme Court ruled that as a continuous contract is based on a trust relationship between the parties to such contract, it may be terminated on the ground of destruction of the trust relationship but that such termination requires one party's violation of obligations which causes the trust relationship to be destroyed so much that it is difficult to maintain the contract. As such, the contract cannot be terminated by one party just because the trust relationship is destroyed if it is not destroyed to the extent that it is difficult to maintain the contract. Based on this logic, in a case of dismissal of an auditor of a national university hospital when he was found to have unjustly made claim to and had been paid approximately KRW 1.4 million for personal expenses under the name of specific business expenses, the Court decided that the dismissal was invalidated since the trust relationship between the auditor and the hospital was not destroyed so much so that it would be difficult to maintain the employment agreement.

Agreement to Provide Witness with Consideration in Exchange for Testimony is Invalid (Supreme Court 2009 Da 56283 Decision on July 29, 2010)

The Supreme Court ruled that an agreement in which a witness receives a consideration beyond a generally acceptable level in return for testimony at a trial for another person's lawsuit (e.g. when a small sum of money including transportation costs to be paid to a witness is not sufficient to cover any damage from his/her court appearance, such difference may be additionally paid) is invalid, since it constitutes an act against public policy which links the public participation in judicial activities to payment and undermines the principle that judicial functions cannot be purchased or performed for monetary gains.

Profit Guarantee Agreement Between Individuals cannot be Deemed as Invalidated based on Principle of Prohibition of Profit Guarantee under Former Securities Exchange Act (Supreme Court 2009 Da 40547 July 22, 2010)

The Supreme Court ruled that any profit guarantee agreement between individuals cannot be deemed as invalidated based on the principle of prohibition of profit guarantees under the former Securities Exchange Act.

Compensation should be Made for Illegal Decision on Official Land Value by Public Officials (Supreme Court 2010 Da 13527 Decision on July 22, 2010)

The Supreme Court ruled that when public officials caused the official land value to be determined unreasonably in violation of their business obligations, thereby infringing the property rights of individuals, the local government to which such public officials belong should be liable to compensate for any damage arising from such violation to the extent that such violation and the resultant damage have significant causation. Since the official land value may not be equal to an actual transaction price or the collateral value in conducting a land transaction or receiving the land as a collateral, the public officials' violation and any damage derived from the extra supply of products in the belief that the land to be secured had sufficient collateral value to do so based on the official land value were not deemed to have significant causation.

Standard to Acknowledge Direct Employment Relations (Supreme Court 2008 Du 4367 Decision on July 22, 2010)

When dispatched workers, as defined in Article2 (1) of the former Act of the Protection, etc. of Temporary Agency Workers (the "APTAW"), work for their employer for more than two years, a direct employment relations as stipulated in Article 6-3 of the APTAW occurs between the dispatched workers and their employer from the moment that two years passes. Accordingly, the Supreme Court ruled that any interpretation that the above clause is applied to "legitimate dispatched workers" only is deemed groundless in light of the letter and spirit of the APTAW.

[Litigation Cases]

- Yong-Sung Lee and Sung-Deok Nam

Criminal Precedents

The Use of Contributions Directed for School Development Fund for Any Other Purpose Constitutes Embezzlement (Supreme Court 2007 Do 4713 Decision on July 22, 2010)

The Supreme Court ruled that given the fact that the financing, use, and accounting of a school development fund are strictly regulated, using the contribution to the school development fund for a purpose other than the originally pre-determined purpose constitutes an embezzlement unless the contribution is acknowledged to have been made for a specific purpose for the public interest which is essential for school administration, other than for the purposes as strictly limited by law, taking into account the background, purpose, circumstances, and amount of the contribution.

Standard to Determine Infringement of Third-party Information under the Former Act on Promotion of Information and Communications Network (Supreme Court 2009 Do 14619 Decision on July 22, 2010)

The Supreme Court ruled that whether a certain act is deemed to be an infringement of third-party information under the former Act on Promotion of Information and Communications Network depends on whom the information belongs to, which is in turn determined by whom the IT service provider granted or permitted the access to the information. Based on that logic, the Court held that when a person who consented to the assignment of his account for the 'Lineage' game changed his password for the account, it was not deemed as an infringement of third-party information.

Definition of 'any Property that should be Returned to Korea' under the Act on the Aggravated Punishment, etc. of Specific Economic Crimes (Supreme Court 2007 Do 3681 Decision on September 9, 2010)

Article 4(1) of the Act on the Aggravated Punishment, etc. of Specific Economic Crimes is deemed to be violated when a person hoards any property that should be returned to Korea by concealing or disposing of it in a foreign country, and 'any property that should be returned to Korea' in this clause means any property belonging to Korea or to any national of Korea that is obligated to be returned to Korea. Based on this definition, the Supreme Court ruled that the wording ‘any property that should be returned to Korea’ should be interpreted to mean any property that is planned to be returned to Korea irrespective of whether the obligation for such return exists.

Illegal Request should not be necessarily Explicit (Supreme Court 2009 Do 7568 Decision on September 9, 2010)

The Supreme Court ruled that with respect to the breach of trust in return for personal gains on the illegal request of others, an illegal request means a request which goes against social order and fiduciary duty, which should be determined by taking into account the content of the request, the amount and type of personal gains in exchange of the request accepted, and integrity of the transactions involved; provided, that the request should not be necessarily explicit. Based on such logic, the Court ruled against a producer in the entertainment department of a broadcasting station who was given an opportunity from an entertainment management company to purchase stocks (for the purposes of selling and making a huge profit), with an implicit illegal understanding that the producer would have certain entertainers from the entertainment management company appear on the producer’s shows or play their music videos.

Definition of Road in Accordance with the Road Traffic Act (Supreme Court Do 6579 Decision on September 9, 2010)

The Supreme Court decided that given that i) the driveways inside the apartment complex of the defendant are directly linked to the four-lane road outside it, there is no restriction on non-residents’ access to the apartment complex, and ii) since the apartment complex has no parking superintendent, the driveways are deemed to be a public place open to many and unspecified persons and vehicles, over which the traffic police can exert authority to maintain traffic, and as such, they are deemed to be ‘roads’ as defined in Article 2(1) of the Road Traffic Act. Accordingly, the Court held the defendant guilty of drunk driving on such roads.

[Recent Major Achievements]

Prosecution's Decision for Non-indictment with Respect to National Tax Service's Report of Violation of Value-Added Tax Act by Pharmaceutical Company

The defendants, the current and former executives and employees of a pharmaceutical company, were accused of having false tax invoices issued in the amounts ranging from KRW 36 million to about KRW 2 billion by individual defendant, without actually purchasing goods or services from promotion business associates, in violation of the Value-Added Tax Act in order to cover cash rebates given to hospitals and clinics which have the right to choose medicine from various pharmaceutical companies.

The pharmaceutical company was already accused by the Korea Food & Drug Administration (the "KFDA") of rebates in violation of the Pharmaceutical Affairs Act and its CEO was fined by way of a summary order. The company was also subject to approximately KRW 1.5 billion in value-added tax for evasion of value-added tax, as a result of a stringent tax investigation by the National Tax Service.

On behalf of the pharmaceutical company, Shin & Kim asserted that the company committed such illegal practice to meet unavoidable marketing needs in the cut-throat competitive field with hundreds of pharmaceutical companies; the defendants who are the branch managers or responsible persons of each branch used all the amounts covered by the false tax invoices for the sake of their company, not personal enrichment, and confessed to their illegal practice; further, the company had been in financial distress, recording losses of approximately KRW 4 to 5 billion in the past three years. Our law firm also successfully argued that the whistleblower of this case also tipped off the illegal practice to the KFDA and the KFTC; the KFDA booked the pharmaceutical company and its CEO for violation of the Pharmaceutical Affairs Act; the KFTC is performing an investigation and is likely to impose a huge sum of penalties on the company; and the National Tax Service levied a total of KRW 4.7 billion in income tax and value-added tax, which was already fully paid by the company.

As a result, the prosecution accepted the arguments and subjected the pharmaceutical company and its CEO to a relatively light punishment of fines, with the remaining 14 defendants being suspended of indictment. This case shows that the companies and their executives and employees who are engaged in tax evasion for rebates provision, the long-held business practice of the pharmaceutical industry, can face criminal liabilities at any time and that it is important to retain a law firm specializing in tax and criminal cases, from the early investigation stage by the National Tax Service or the prosecution, to aggressively respond to such investigation.

* Dong-Seong Myung, Choon Cho, Yong-Sung Lee, and Hyun-Jung Lee

Daewoo Securities' Victory in Litigation over Redemption of Beneficiary Certificates of Non-Daewoo Bonds

On October 14, 2010, the Supreme Court put an end to the decade-long legal battle over the redemption of beneficiary certificates of non-Daewoo bonds worth hundreds of billions of dollars, ruling in favor of Daewoo Securities Co., Ltd. ("Daewoo Securities"), who was represented by Shin & Kim.

This case dates back to August 12, 1999, when the Financial Supervisory Service (the "FSS") decided to implement the redemption postponement regime for Daewoo bonds as the relief package delivered by the creditors to Daewoo Group late July of 1999 caused a huge number of investors to request for redemption of the funds which included Daewoo bonds. Due to such postponement, however, not only Daewoo bonds which were approved by the FSS for the redemption postponement, but also beneficiary certificates incorporating Daewoo call loans (call loans provided to Daewoo affiliates through Daewoo Capital which was a financial intermediary within Daewoo Group) and any other ailing assets (SG Corporation and Shinhan Bank debentures and CP, etc.) (collectively, "Non-Daewoo Bonds") could not be properly redeemed. Most of the Non-Daewoo Bonds were sold by Daewoo Securities. Accordingly, institutional investors including Shinhan Bank, Busan Bank, the Ministry of Information and Communication, Community Credit Cooperatives, Kyobo Life Insurance Co., Ltd., Korea Coal Corporation, and National Federation of Fisheries Cooperatives rushed to request the redemption of Non-Daewoo Bonds after January 2000 and filed a series of lawsuits against Daewoo Securities, seeking to recover the redemption amount of Non-Daewoo Bonds in the aggregate amount of KRW 590 billion, calculated based on the original pre-adjusted reference price (the "Relevant Lawsuits"). In response, Daewoo Securities countered that the redemption of Non-Daewoo Bonds was legitimately postponed under the former Securities Investment Trust Business Act and as such is obligated to pay the redemption amount calculated based on the reference price subject to write-off over time from June 2000. However, the Supreme Court finally rejected all the claims from such institutional investors and acknowledged that the redemption of Non-Daewoo Bonds was legitimately postponed.

With respect to the FSS redemption postponement regime in this case, the Supreme Court had already clarified the meaning of the redemption postponement regime under the former Securities Investment Trust Business Act, and acknowledged the legitimacy of redemption postponement of Daewoo bonds and securities sales companies' obligation, in principle, to redeem their own assets under the former Securities Investment Trust Business Act. At issue, however, was the legitimacy of redemption postponement of Non-Daewoo Bonds which were not subject to the FSS redemption postponement regime and were not approved by the FSS for the redemption postponement. The lower courts having jurisdiction with respect to the Relevant Lawsuits rendered different rulings on whether the causes for the redemption postponement of Non-Daewoo Bonds existed and an FSS approval was a precondition to effect such redemption postponement, etc. and thus, the Supreme Court's final ruling was much anticipated.

Particularly, in the lawsuit filed by Korea Coal Corporation only out of seven pending lawsuits at the Supreme Court, the trial court had ruled that Daewoo Securities should pay Korea Coal Corporation the redemption amount of its share of Non-Daewoo Bonds calculated based on the then-reference price, on the ground that Non-Daewoo Bonds were not granted an FSS approval, the precondition to effect the redemption postponement, and that the redemption was not postponed in an objective and uniform manner. The Supreme Court, however, reversed the lower court's ruling, accepting Shin & Kim's assertion that if the causes for the redemption postponement of Non-Daewoo Bonds are acknowledged, the redemption postponement can be deemed as legitimate irrespective of the FSS approval or the implementation of the redemption postponement in an objective and uniform manner.

On the same day, in respect of the lawsuits filed by Shinhan Bank and Busan Bank, the Supreme Court affirmed the lower court's ruling and dismissed the plaintiffs' appeals, by the same logic applied to the case of Korea Coal Corporation (2008 Da 85727 Decision and 2008 Da 90682 Decision, respectively). The Court also dismissed the plaintiffs' appeals in the remaining three lawsuits on October 28, 2010, resulting in a final victory for Daewoo Securities.

Shin & Kim was able to successfully persuade the courts to accept its assertion by thoroughly reviewing and analyzing the former Securities Investment Trust Business Act and the legal principles of redemption of beneficiary certificates, submitting to the courts any supporting materials for the arguments by Daewoo Securities, including legislations in foreign countries, academic papers and opinions, and giving presentations on related issues, in cooperation with the working-level team at Daewoo Securities for the past decade. In fact, there have been controversies in the investment trust industry as well as legal and academic circles, over whether the redemption postponement of Non-Daewoo Bonds which were not subject to the FSS redemption postponement regime can be acknowledged as legitimate. However, the Supreme Court decision confirmed that the basic legal principles for redemption postponement are the same under the former and current Securities Investment Trust Business Act. This victory scored in its 40th anniversary of foundation lifts Daewoo Securities out of the huge burden from the decade-long legal battle, paving the way for the securities firm to make a leap forward.

* Sang-Hyun Hwang, Woong-Soon Song, Sinseob Kang, Jong-Han Oh, and Min¬-Kyung Kim

Scope of Asset Management Companies' Obligation for Investor Protection with respect to Fund of Funds

Bernard L. Madoff, a former chairman of the NASDAQ stock exchange, started his investment firm Madoff Securities in 1960 and attracted many investors by advertising high investment returns; however, in reality, Mr. Madoff did not make any investment and instead paid returns to certain investors out of the principal received from other different investors, widely known as a "Ponzi scheme." The two decade-long Ponzi scheme finally came to an end in December 2008, with an investigation launched by the Federal Bureau of Investigation. The amount of losses is estimated at USD 5 billion worldwide and at USD 95 million for domestic institutional investors. Particularly, it was surprising that the victims of this Ponzi scheme were international financial institutions and global celebrities.

With respect to the Ponzi scheme, class action lawsuits against Madoff, custodians, and accounting firms, etc. are under way in the U.S., but separately from such lawsuits, compensation claims began to be made in Korea by fund of funds investors against asset management companies for their negative investment returns. Eventually, a ruling was rendered for one out of such claims which seeks KRW 13 billion compensation.

On behalf of Korea's leading asset management companies, Shin & Kim clarified, based on facts and legal principles, that they faithfully fulfilled their obligations to protect investors including fiduciary duty and obligation for explanation. Specifically, our law firm pointed out that the asset management companies implemented sufficient risk control measures and did not neglect performance reporting; they trusted accounting firms' audit results that there was no accounting problem with a fund of funds; the investments in some funds of funds were made on the recommendation of investors; the asset management companies did not even imagine Madoff committing a Ponzi scheme; the fund of funds in question received good ratings from fund rating agencies; investors sometimes earned investment returns from fund of funds. As a consequence, the Seoul Central District Court rejected all the claims made by the plaintiffs, or the investors.

Given that other investors who suffered losses from Ponzi scheme are known to have proceeded with or prepared for lawsuits against asset management companies, this first ruling is viewed as meaningful for other similar cases.

* Choon Cho, Yong Ho Kim, Hyeon-Jin Kim and Jin Ho Ahn

Victory in Litigation to Revoke Heavy Taxation of Acquisition Tax for Movement of Headquarters within the Same Congestion Restraint Zone

The plaintiff which is headquartered in Joong-Gu, Seoul constructed a building in Joongwon-Gu, Sungnam-Si around August 2005 and reported and paid the acquisition tax and special tax for rural development, both of which were calculated applying general tax rates. Then, the plaintiff moved some departments of the headquarters to the new building around June 20, 2006. With respect to such movement, however, the Governor of Joongwon-Gu Office levied on the plaintiff the acquisition tax which was calculated applying a heavy tax rate equal to three times the general tax rate in accordance with Article 112(3) and 112-2(1) of the Local Tax Act, in the belief that the plaintiff acquired a building within the Congestion Restraint Zone and used it as its headquarters within five years from the date of acquisition.

Accordingly, Shin & Kim asserted on behalf of the plaintiff that it was a temporary movement of headquarters within the same Congestion Restraint Zone; the application of a heavy tax rate for this kind of movement goes against both the Supreme Court precedent (99 Du 5269 Decision) and the decision by the Constitutional Court (98 Heonba 104 Decision); and the provision for heavy taxation of acquisition tax was legislated to prevent population inflow or concentration of economic power, both of which, however, did not occur in this case. The court accepted all the assertions and invalidated the heavy taxation of acquisition tax. This case is significant in that any movement of headquarters within the same Congestion Restraint Zone, or from one Congestion Restraint Zone to another, is not subject to the heavy taxation of acquisition tax as prescribed in Article 112(3) of the Local Tax Act if it did not cause any effective population inflow or concentration of economic power and that the scope of application of the provision for heavy taxation of acquisition tax was limited by the court interpretation.

* Choon Cho and Hyung-Soo Kim

Victory in Litigation for Contract Amount Refund for Wi-City in Siksa-Dong, Goyang-Si

With the real estate industry in the doldrums, an increasing number of construction companies are postponing real states presales or construction plans. Even in already pre-sold real estate projects, presale unit purchasers are delaying their move-in, canceling or revoking their presale contracts, or claiming compensation for their contracts.

In cooperation with GS E&C, Byucksan Engineering & Construction Co., Ltd. ("Byucksan") constructed and successfully pre-sold a 4,683-unit apartment complex in Siksa-Dong, Goyang-Si, and considered the construction project as a success. However, some presale unit purchasers sued Byucksan and the project operator, seeking to return their contract amounts or pay compensation, asserting that there were deceptions or mistakes, or unlawful acts involved in executing the presale contracts. Accordingly, Byucksan was at risk of returning the contract amounts to both the presale unit purchasers who filed the lawsuit as well as those who did not, depending on the trial result.

However, Shin & Kim, with its leading practice in the real estate and construction fields, effectively argued over facts and conflicting issues at trial on behalf of Byucksan. As a result, the court ruled in favor of Byucksan, denying the presale unit purchasers the contract amount refund and compensation. The decision is deemed to positively affect GS E&C which supplied the Wi-City apartment complex in Siksa-Dong together with Byucksan and to have implications for the resolution of rapidly increasing conflicts over apartment unit presales.

* Jae-Doo Shim and Seung Soo Lee

Victory in Litigation over Improper Sale of Musical Private Equity Fund

Recently, the Securities & Investment Trusts Team at Shin & Kim successfully represented investors in litigations over improper sales of private equity funds such as musical and drama funds.

Investors (the "plaintiffs") invested into a musical private equity fund managed by an asset management company (the "defendant") but could not recover any of their investments as the musical business operator failed to obtain the public performance rights to the musical and lease the proper performance venue, resulting in the musical project to be cancelled altogether. Accordingly, the plaintiffs claimed compensation against the defendant for violation of its explanation obligation in the prospectus. The defendant had set up a private equity fund in which investors invested in the units of the project for the musical scheduled to be performed in 2008 and were to be paid profits from the musical. While offering the plaintiffs the fund through distributors, however, the defendant had provided them with the prospectus which stated to the effect that the date and place of the musical was fixed and the public performance rights for the musical was obtained for the year 2008, causing the plaintiffs to make an investment decision based on such misleading information.

Accordingly, Shin & Kim conducted a thorough evidence investigation on behalf of the plaintiffs and proved that the defendant breached its explanation obligation during investment solicitation, by discovering that the license agreement on the public performance rights to the musical expired on December 31, 2007 and was not extended; further, although the musical business operator had not yet applied to lease out the Seoul Arts Center or the National Theater of Korea for the 2008 performance, the prospectus stated that the venue of the musical was determined.

Since private equity funds are invested by a few professional investors, the applicable laws are less protective of private equity fund investors than public offering fund investors, making it difficult for the former to receive compensation from asset management companies for breach of their obligation for investor protection. Nevertheless, most of the plaintiffs were ruled to be paid back 80% of their investments with the remaining 20% offset for their own negligence. This is viewed as a meaningful result in compensation claims with respect to private equity funds.

* Yong-Ho Kim, Ho-Seog Hwang, Young-Kon Song, Byung-Chang Lee, Si-Young Jang, Yong-Kyu Yu, Mu-Young Yu, Hye-Young Kim

New Water Users' Succession of Unpaid Water and Sewage Bills

Most city water ordinances of the local governments include the provision that "in the case of assignment of a building or a land, the water-supply system in it is also deemed to have been assigned. The assignee of the building or the land shall succeed any obligation occurred prior to such assignment." Accordingly, in the case of assignment of buildings and the like where the water-supply system is installed, the local governments had imposed any water bill unpaid by the assigner on the assignee in accordance with these water ordinances. The Supreme Court, however, put an end to such practice by ruling that although the city water ordinances provide for succession of rights and obligations for the water-supply system, acquiring ownership of a building does not mean that the assignee will be deemed as succeeding the existing owner's obligation to pay unpaid water bills as well (Supreme Court 192 Nu 17211 Decision on May 11, 1993).

In response, some local governments added a clause to their previous city water ordinances, stating that "in the event of any change in rights and obligations for the water-supply system, new and existing city water users shall be responsible for the city water expenses." Despite the Supreme Court precedent, the local governments had forced new city water users to pay for any water bills unpaid by the existing city water users, based on the city water ordinances, which are also reflected in the sewage ordinances.

With respect to this unfair practice, Shin & Kim succeeded in securing a court ruling that such city water and sewage ordinances which impose obligations on local residents arbitrarily was invalid. This case serves as a warning to the local governments' practice that forces local residents to succeed water and sewage bills based on unlawful ordinances.

* Yong-Ho Kim and Chang-Hwa Kim

Scope of Debt Extinguishment in Debt-to-Equity Swap

Debt-equity swap is a widely used means of offering newly issued stock (equity) in exchange for existing debt in a rehabilitation plan for a company for which a rehabilitation proceeding is commenced. Debt-equity swap is advantageous for both creditors and debtors. Creditors can receive stock that can be cashed in at some point without having their bonds or receivables cancelled while debtors can prevent capital outflow for debt repayment and do not need to include a gain on exemption of debt in gross revenue immediately, deferring the payment of income tax.

In the event of a debt-equity swap in a rehabilitation plan, the effect of the debt-equity swap on other joint debtors can be at issue. Given that Article 240-2 of the old Corporate Reorganization Act provides that a reorganization plan does not affect creditors' rights toward other joint debtors, in the case of a debt-equity swap by a debtor in a debt relationship among multiple parties, the creditors are entitled to claim debt repayment against other joint debtors to a certain extent. For this reason, an in-depth discussion over a combination of reorganization plans and debt relationships among multiple parties as prescribed in the Civil Code was needed.

There had been conflicting theories on this matter, including such theories that (i) debts are not extinguished until the shares of stock issued in a debt-equity swap are cashed in subject to the intent of Article 240-2 of the old Corporate Reorganization Act; (ii) the amount of debts equivalent to the issue value of the shares is extinguished as of the effective date of the debt-equity swap in a reorganization plan, as the debt-equity swap is deemed as a type of investment in kind; and (iii) the amount of debts equivalent to the market value of the shares as of the effective date of the debt-equity swap in the reorganization plan is extinguished. With respect to these theories, the Supreme Court decided that the amount of debts equivalent to the market value of the shares as of the effective date of the debt-equity swap is extinguished, which is the opinion that the Court has stuck to even before the ruling on this case (Supreme Court 2002Da 12703 Decision on January 10, 2003, Supreme Court 2001Da 64073 Decision on August 22, 2003, and Supreme Court 2008Da18376 Decision on July 24, 2008, etc.). This is viewed as a decision that considers the interests of both creditors and debtors, given the fact that the market price of newly issued shares per share for a company subject to reorganization proceeding is usually below the issue price per share.

However, in this case, the issue price per share that was determined in the rehabilitation plan for Korea Express Co., Ltd. ("Korea Express") was KRW25,000 while the market price per share as of June 1, 2006, the effective date of debt-equity swap, was KRW72,000, creating an extraordinary situation that the market price per share for a company subject to reorganization proceeding is higher than the issue price per share. For this reason, if the Supreme Court decision is automatically applied, the extinguished debts of joint debtor Dongah Construction that does not undertake debt-equity swap become larger than the extinguished debts of Korea Express that undertake a debt-equity swap, further undermining the rights of creditors.

Accordingly, on behalf of Seoul Guarantee Insurance Co., Ltd., a creditor of Dongah Construction, Shin & Kim developed and argued for the legal principle that the Supreme Court precedent cannot be directly applied to such extraordinary situation and instead, the debts equivalent to the issue value of the shares in a rehabilitation plan should be extinguished. Shin & Kim took the initiative in developing such legal principle, in cooperation with other law firms representing the other creditors who filed separate lawsuits against Dongah Construction. With respect to this case and the separate other cases, the lower courts had ruled against the creditors in accordance with the Supreme Court precedent, but the Supreme Court reversed the lower courts' ruling based on the legal principle developed by Shin & Kim (Supreme Court2009Da 47739 Decision on November 12, 2009).

This case is meaningful in that even though the Supreme Court precedent worked as a disadvantage to the plaintiff, the Supreme Court remanded to a lower court the case on which all the rulings were rendered against the plaintiff at the trials by the bankruptcy court, the trial court, and the court of second instance. It was chosen in 2009 by a legal journal as one of ten precedents relating to insolvency law and has been cited as a major precedent in lectures and seminars on insolvency law. In addition, it showed the great capability of the Insolvency & Corporate Restructuring Team at Shin & Kim.

* Young-Ku Lee, Byung-Joo Lee and Hyo-Jong Choi

Couple Cleared out of False Fraud Charges

To bequeath his real estate worth hundreds of millions of Wons within Korea (the "Real Estate") to his cousin's granddaughter and her husband, a wealthy Korean-Japanese registered the transfer of the title to the Real Estate to the couple through an automatic victory resulting from non-defense in civil litigation. After his death, however, the prosecution accused the couple (the "Defendants") of defrauding the late Korean-Japanese (the "Deceased") of the Real Estate using forged private documents and fraudulent litigation, believing only what the lessee of the Real Estate (the "Plaintiffs") told the prosecution. Shin & Kim represented the Defendants from the trial court proceeding, and helped them clear themselves out of false charges at the court of second instance, with a ruling of innocence on most charges.

During the trial court proceeding, the Defendants presented a number of documents to prove their innocence, including the power of attorney dated May 25, 1996 written by the Deceased and a certificate of corporate seal for Soonbong Industrial LLC attached to it, but the prosecution further charged the Defendants with forging of these documents.

Despite such objective evidence proving the Defendants' innocence and the fact that even though the Deceased and his heirs including his daughter knew such registration of title transfer, they did not take any legal action for two years before his death on the part of the former, and for about seven years on the part of the latter, the trial court ruled against the Defendants on most charges based on the statements made by the daughter and the Plaintiffs. By refuting all the doubts against the Defendants raised by the trial court, however, Shin & Kim succeeded in securing a ruling of innocence on the majority charges at the court of second instance.

However, the court of second instance remanded a part of this case which involves an alleged forging of the performance note for sale and purchase, out of all evidence presented. However, the performance note was not related to bequeathing of the Real Estate, but was written in the name of the Deceased to the effect that the Defendants would assume the lease deposit liability of the Real Estate in order to prevent the tax office from unfairly considering the lease deposit as a constructive bonus. Shin & Kim is currently working to ensure that the Supreme Court reverses the ruling on the forging of the performance note.

* Hong-Cheol Lee, Yong-Ho Moon, Seong-Ki Park, Hui-Choon Moon and Seong-Hyuk Kim

Controversy over IT Project for 2012 Yeosu Expo is Settled

The organizing committee of the 2012 Yeosu Expo (the "Organizing Committee") selected SK C&C as the preferred bidder, through bidding, for the project to construct the integrated information system and IT infrastructure and enclosed a service agreement with it. On March 29, 2010, however, Samsung SDS, the second preferred bidder, asserted that the bidding conducted by the Organizing Committee should be invalidated, and applied for a preliminary injunction against the Organizing Committee seeking to discontinue the bidding process with SK C&C and to acknowledge Samsung SDS as the preferred bidder.

However, the court dropped the application on July 26, 2010, accepting the arguments made by Shin & Kim on behalf of SK C&C. The court ruled that the Organizing Committee's bidding can be invalidated under such special circumstances that any defects of the bidding process are material enough to significantly undermine the public interest and fairness of the bidding process and the selection of, and execution of an agreement with, the winning bidder is against good moral and social order so that unless invalidated, the intent of the bidding can become meaningless. The court deemed neither the alleged defects of the Organizing Committee's bidding process as defects at all, nor the public interest and fairness of the bidding process as being undermined significantly. Given the short period of time left for 2012 Yeosu Expo, any change in the bidding result and the resultant execution of the agreement through a lawsuit is not expected.

Shin & Kim succeeded in denying the preliminary injunction, with its effective defense strategy, putting an end to the legal battle in respect of selection of a company responsible for the project and ensuring that SK C&C successfully completes its project in relation to the 2012 Yeosu Expo without any further legal hindrances.

* Yong-Ho Moon, Hui-Young Cho, Hyun-Jeong Kang and Sung-Wook Hwang

Victory in Litigation over Confirmation of Existence of Presale Right

A ruling was rendered that one cannot make a claim to the operator that he has the status of a presale unit purchaser on the ground that he was assigned the presale right without the consent from the operator.

While working as a constructor for the construction project of an apartment complex in Sungjung-dong, Cheonan-Si, a company (the "defendant") was assigned the business right for the project from the operator which was in financial distress, and completed the project as a constructor and an operator.

However, prior to the assignment of the business right to the defendant, the original operator borrowed money from a creditor (the "Creditor"), unbeknownst to the defendant, providing the Creditor with the presale instruments for the apartment complex as collateral, and a party (the "plaintiff") asserted that he was assigned from the Creditor the status as a presale unit purchaser and sued the defendant seeking the confirmation of existence of the presale right.

Accordingly, Shin & Kim argued on behalf of the defendant that the presale instruments provided for collateral are not sufficient to confirm the existence of the presale right and that the defendant did not acquire liabilities payable to the Creditor when acquiring the business right from the original operator. In addition, our law firm asserted that only when the defendant consented or approved the assignment of the presale unit purchaser status from the Creditor to the plaintiff can the plaintiff make a claim to the defendant that he has the presale right, or otherwise the plaintiff cannot seek the confirmation of existence of the presale right, claiming that he has the presale unit purchaser status.

The trial court agreed with the assertions made by Shin & Kim and dropped all the claims by the plaintiff, stating that the assignment of the status as a contracting party requires a contract among the three parties, or a contract between the two parties with the consent or approval from the remaining party, and as such, the plaintiff cannot sue the defendant to seek the confirmation of existence of the presale right unless the plaintiff is deemed to have obtained consent or approval from the defendant for the assignment of the presale unit purchaser status.

The trial court decision clarified that the status of presale unit purchaser can be assigned only with the consent or approval from the operator and that the operator has no presale obligation to the assignees of the presale unit purchaser status which was assigned unbeknownst to the operator. In this regard, this case has been referred to as a precedent in similar cases.

* Keun-Woong Lee, Joo-Han Han and Jin-Ho Ahn

Consultation on Acquisition of NASDAQ-Listed PV Manufacturer by Hanwha Chemical

On August 3, 2010, Hanwha Chemical Corporation ("Hanwha Chemical") purchased a 49.9% stake, for approximately KRW 430 billion, in Solarfun Power Holdings Co., Ltd, a Chinese manufacturer of photovoltaic (PV) products which went public on the NASDAQ ("Solarfun Power").

This was the first acquisition of a foreign PV company by a domestic company; Solarfun Power at the time was the fourth largest PV manufacturer in the world. This acquisition laid the foundation for Hanwha Chemical to enter the PV market, a new growth engine, as well as to preempt the Chinese market with a huge growth potential.

This unusual acquisition of a NASDAQ-listed company by a domestic company was generally managed by Shin & Kim in performing due diligences and negotiating and executing contracts, with the cooperation from the U.S., British, and Cayman law firms. The deal was managed by Attorney Sung Geun Kim, who has ample experience in energy M&A deals, Foreign Legal Consultant Myong Hyon Ryu who is seasoned in large-scale M&A deals, including Lotte Shopping Co., Ltd.'s acquisition of China's Times, and Attorney Ju Bong Jang who has diverse experience in international transactions, as well as Attorney Ei Jin Yun and Hae-Seong Ahn. In addition, Attorney Yong Won Choi and Cheon Ju Jung performed due diligences on the Chinese companies.

Having been incorporated in Cayman, Solarfun Power conducts business through its subsidiary in China and was listed on the NASDAQ so that the interests of various stakeholders were intertwined with respect to this deal, which was thus handled by not only Shin & Kim but also nine other law firms, including five U.S. law firms, two Cayman law firms, and the two British law firms.

Shin & Kim is also working on business combination report in Korea and Germany, which is led by Attorney Hwan Jeong and Min Ho Lee from our firm's Antitrust & Competition Team.

In addition to this second largest acquisition of a Chinese company by a domestic company, Shin & Kim had successfully completed the largest acquisition, namely, Lotte Shopping Co., Ltd.'s acquisition of China's Times.

* Attorney Sung Geun Kim and Ju Bong Jang and Foreign Legal Consultant Myong Hyon Ryu

Listing of Samsung Life Insurance on Korea Exchange

Samsung Life Insurance, which holds the largest amount of assets among domestic life insurers, raised approximately KRW 5 trillion in an IPO on the Korea Exchange on May 12, 2010, pricing at KRW 110,000 per share (KRW 500 in book value) its sale of about 4,438 shares, or 22.2% of the total number of shares issued and outstanding. Such offering amount made it the biggest in Korean IPO history.

The IPO Team at Shin & Kim, a team with ample experience in diverse securities issuances and listings under the Capital Market Practice Group, provided domestic and foreign underwriters with legal consultation on this listing. In 2007, the team had consulted Samsung Card about its dual-tranche IPO (in which ordinary shares are offered in the Korean tranche while depository receipts are offered in the international tranche), the first of its kind in Korea, and since then, has participated in the majority of dual-tranche IPOs, including IPO deals for SK C&C, Tong Yang Life Insurance, and Mando Corp.

* Attorney Sang Man Kim, Tae-Yong Seo, and Jeong Hoon Lee

[News]

[Lawtimes] International Arbitration and Dispute Resolution Practice Group at Shin & Kim

Recruitment of Foreign Talent…Enthusiasm about Training to Nurture Experts

On August 2, 2010, Shin & Kim was selected as a leading Korean law firm in the arbitration and conflict resolution field in the Asian Legal Business (ABL) survey.

The survey was conducted by way of having telephone or face-to-face interviews with in-house lawyers and business leaders in Asia for two months from April 30 to July 1, 2010. The respondents expressed their opinion on leading Asian law firms and lawyers in the arbitration and conflict resolution field

Before then, Global Arbitration Review (GAR), the world's leading arbitration law journal, had included the International Arbitration and Dispute Resolution Practice Group at Shin & Kim (the "International Arbitration Practice Group") in the global top 100 international arbitration team list.

◇ Shin & Kim's push for recruitment and training of arbitration experts = Such great evaluations in the surveys conducted by ALB and GAR were made possible mainly by Benjamin Hughes who had joined Shin & Kim from Shearman & Sterling, a U.S. law firm, in November of last year.

The International Arbitration Practice Group consists of four attorneys including Attorney Beomsu Kim and four foreign legal consultants from the U.S. and Canada, etc. As the international arbitration field is emerging as a new growth engine for major domestic law firms, Shin & Kim is aggressively investing in the field, including revamping the International Arbitration Practice Group and fostering arbitration experts through training.

Shin & Kim recruited, and gave the position of a co-team leader, Benjamin Hughes who had been previously in charge of Asian legal issues in the Singapore branch of Shearman & Sterling. He is the first foreign lawyer who became a team leader in a Korean law firm. The other co-team leader is Attorney Beomsu Kim who had been an M&A team leader at Shin & Kim. He is now devoted to strengthening the International Arbitration Practice Group. Moreover, Managing Partner Doo-Sik Kim is sparing no support for the International Arbitration Practice Group, as an expert in this field himself.

◇ Recruitment of arbitration experts with English skills linked to competitiveness = International arbitration, for which English is the only language used, requires a good command of English, as fluent as arbitration lawyers in Britain or U.S. A law firm and its international arbitration team, therefore, can have a competitive edge over others and post a quantitative growth only when they have as many as talented arbitration lawyers with good English skills, which means it is that much important to secure talent. In fact, after Benjamin Hughes joined Shin & Kim, GAR ranked Shin & Kim as the top third in the nation in the international arbitration field following the teams of Bae- Kim & Lee and Kim & Chang.

In the international arbitration market of Korea, Bae- Kim & Lee and Kim & Chang have been the front runners but Lee & Ko and Shin & Kim are recently narrowing the distance from them at a rapid pace. The International Arbitration Team at Kim & Chang, led by Attorney Byung Cheol Yun and Eun Young Park, consists of twenty arbitration experts, ten of which are from the U.S. or Britain. The International Arbitration Team at Bae- Kim & Lee, led by Attorney Gap Yu Kim with diverse international experience, was significantly bolstered with the active recruitment of arbitration experts. Not to be outdone, the International Arbitration Team at Lee & Ko, led by Attorney Sung Woo Im, also recently scouted U.S. Attorney Min Ho Lee who was a federal court assistant judge in the U.S. and has various hands-on experience as a litigation and arbitration lawyer, and as a result of such effort to reinforce the team, has generated remarkable performances in the international arbitration market.

Three to four years ago foreign lawyers specializing in arbitration were something of a rarity even in large law firms such as Kim & Chang, Bae- Kim & Lee, Lee & Ko and Yulchon. As domestic law firms have accumulated capabilities in international arbitration, however, they recently began to attract arbitration experts.

◇ Speedy and efficient dispute solution for clients = The International Arbitration Practice Group at Shin & Kim is comprised of lawyers specializing in arbitration, who enjoy arbitration itself. Its best value is to cope with clients' disputes in a speedy and efficient manner. If it identifies any effective solution advantageous to its clients, it persuades the clients and the counterparties to reach an agreement at any time, even in the middle of arbitration process, thereby substantially reducing the time and costs for the clients and getting them out of the disputes as soon as possible, which we believe are in their best interest.

Attorney Beomsu Kim emphasized that clients should come first before anything else in resolving disputes, saying "It is deplorable when I see a law firm putting its interest before clients' interest. The International Arbitration Practice Group at Shin & Kim cautions most against this kind of situation."

* Reporter Sangwon Yun, dated August 7, 2010

[SHIN&KIM NEWS]

Seminar on 'Patent Infringement Litigation in the U.S. and Korea

Shin & Kim and Dorsey & Whitney LLP held a luncheon seminar on 'Patent Infringement Litigation in the U.S. and Korea' in the conference room of Shin & Kim on October 7, 2010. At the seminar, patent infringement litigation in the U.S. and Korea was compared and related diverse experiences were shared with IP lawyers.

With IHCF Korea in-house lawyers and IP lawyers present at the seminar, Partner Yong-Ho Moon from Shin & Kim and Lawyer Paul T. Meiklejohn from Dorsey & Whitney LLP gave a presentation on "Patent Infringement Litigation: Trial" and "US Patent Infringement Litigation: Pre-filing Considerations," respectively.

Seminar on Strategy for Korea-EU FTA

Shin & Kim and the Korea International Trade Association held a seminar on potential issues that may arise after the Korea-EU FTA takes effect on an industry basis, including electricity and electronics and automobiles, and the countermeasures for such issues, in the 51st floor conference room of COEX on September 19, 2010. At the seminar, Korean and EU lawyers dealt with potential issues related to the Korea-EU FTA and countermeasures as well as verification procedures of origin and related cautions.

Managing Partner Doo-Sik Kim at Shin & Kim gave a presentation on potential issues for the Korea-EU FTA and countermeasures, which included a detailed introduction of the Korea-EU FTA by chapter for better understanding of working-level staffs in the industries affected by the Korea-EU FTA. He also expressed his opinion on the need of legislation for the implementation of the Korea-EU FTA, in accordance with Article 6-1 of the Constitution that any treaty executed and promulgated pursuant to the Constitution and any generally approved international law shall have the same effect as any domestic law. Foreign Legal Consultant Young Jae Cho also gave a presentation on resolutions in each stage of the Korea-EU FTA disputes and their characteristics, and explained in detail the solutions to any overlapping jurisdictions by two or more dispute resolution forums, as well as mediation mechanism for non-tariff measures.

Foreign Arbitrator Training Program– Attorney Doo Hyung Do

Attorney Doo Hyung Do at Shin & Kim participated in a foreign arbitrator training program which took place in East China University of Politics and Law, Shanghai, China between October 18 and 22. The training program, co-organized by the China International Economic Trade Arbitration Commission and the China International Arbitration Law Society is aimed at educating foreign arbitrators on the Arbitration Law of China and arbitration-related practical matters. Among the three Korean participants, Attorney Doo Hyung Do was the only lawyer who attended the program, which was represented by approximately 30 international arbitrators from the U.S., Germany, Taiwan, Hong Kong, Singapore, Japan, and Korea.

On the occasion of the training program, Attorney Doo Hyung Do, who specializes in general corporate law, M&A, intellectual property, unfair transaction, international litigation and arbitration, had a good opportunity to learn about arbitration procedures in China and socialize with

Chinese and other foreign arbitrators.

Paju Bookcity Forum 2010 - Attorney Sang-Hyeok Im

At the Paju Bookcity Forum 2010, which was organized by the Bookcity Culture Foundation on October 29, 2010, Attorney Sang-Hyeok Im from Shin & Kim discussed 'Digital Shocks and Taiwanese Publishing Industry's Crisis and Countermeasures' with CEO Ying-Chun Chen of Owl Publishing and CEO Seong-Ryong Kim of Kyobo Book. Since its inception in 2006, the Paju Bookcity Forum has addressed the current issues and development of the publishing industry, and regularly inviting renowned experts in the publishing industry from all over the globe.

On September 9, 2010, he also gave a presentation on legal issues and examples under the theme of "Historical Persons in Drama and Defamation – Case of Drama 'Seoul 1945' – " in the Monthly Case Research Society by the Korean Entertainment Law Society.

Attorney Sang-Hyeok Im is actively engaged in diverse fields, focusing mainly on resolution of legal disputes related to media companies and contents business (broadcasting, Internet, game, entertainment, and sports, etc.)

Annual Conference of Korea International Law Society - Attorney Beomsu Kim

Attorney Beomsu Kim at Shin & Kim expressed his opinions as a panelist under the theme of 'Choice of Arbitration Venue and Arbitration Rules in International Commercial Arbitration' at the 2010 Annual Conference of Korea International Law Society – International Commercial Arbitration and International Law, which took place on October 29, 2010.

Mr. Kim is a team leader of the International Arbitration and Dispute Resolution Practice Group at Shin & Kim, who specializes in international arbitration and litigation. He was Executive Director of International Relations at the Korean Bar Association and is now serving as Director of the Korean Council of International Arbitration. He has also worked as an arbitrator/ main lawyer/ joint lawyer in arbitration proceedings at the International Chamber of Commerce, the Singapore Court of International Arbitration, the Korean Commercial Arbitration Board and the London Court of International Arbitration.

Academic Conference on Improvement of Taxation of Financial Instruments – Attorney Jong Chae Jung

At the Academic Conference on Improvement of Taxation of Financial Instruments organized by Korea Tax Law Society on October 29, 2010, Attorney Jong Chae Jung from Shin & Kim expressed his opinions as a panelist on improvement of taxation of financial income, value-added tax of financial transactions, and derivatives.

Mr. Jung has been engaged in a number of fair trade cases including cartel, business combination, abuse of market dominant position and tax-related cases including tax investigation, international tax, tax laws and regulations, and revision of rules. As a talented lawyer who also passed the higher Civil Service Examination, he has presented many papers on tax and fair trade and been actively engaged in presentations and discussions at various conferences.

Presentation on Proof of Cartel – Attorney Tak-Kyun Hong

Attorney Tak-Kyun Hong from Shin & Kim gave a presentation on "Proof of Cartel – Types of Indirect Evidence" at Administrative Decision Research Conference which was held by the Decision Management Dept. of the Korea Fair Trade Commission on September 13, 2010.

Mr. Hong dealt with civil, criminal and family cases for three years as a public service attorney (for Korea Legal Aid Corporation) and eventually moved into general criminal cases, public order-related cases, special cases, and trials as a prosecutor. He earned a PhD (on the Monopoly Regulation and Fair Trade Act) by researching the Monopoly Regulation and Fair Trade Act, the Corporate Act, and others at Sungkyunkwan University Graduate School of Law (Master of Law), and a master's degree by studying the Corporate Act, the Securities Exchange Act, Anti-Monopoly Act, and the Criminal Procedure Act at New York University School of Law (LL.M.)

Attorney Sinseob Kang and Bo Kyung Im and Foreign Legal Consultant Roger Chae Gave Presentation at "In-House Congress Seoul 2010"

In-House Congress Seoul 2010 took place on August 24, 2010, organized by Pacific Business Press and sponsored by Shin & Kim and other domestic and foreign law firms and advisory companies.

At the landmark event which was attended by more than 200 in-house lawyers and businessmen, Attorney Sinseob Kang and Bo Kyung Im and Foreign Legal Consultant Roger Chae gave a presentation under the title of "Is your Company Prepared for Product Liability Litigation?- Development and outlook of product liability law and issues in Korea."

Both Mr. Kang and Mr. Chae took the time to discuss the current condition of domestic PLA and corporate countermeasures, along with foreign PLA cases.

Recruitment of Attorney Dong-Shin Yeom, Former Assistant Prosecutor General at Busan Eastern District Prosecutor's Office

Attorney Dong-Shin Yeom, a former assistant prosecutor general at Busan Eastern District Prosecutor's Office, has recently joined Shin & Kim as a partner. During his distinguished two decade-long career as a prosecutor, Mr. Yeom had been engaged in overseeing many special and high-tech crimes, general criminal cases, public order-related cases, investigations, trials, and planning. He also brings to the firm many years of experience in investigating or commanding the investigations into economic, high-tech, white collar, and corruption crimes.

Recruitment of Chinese Legal Consultant Mi Ryung Kim

Chinese Legal Consultant Mi Ryung Kim has joined Shin & Kim. She specializes in consultation on Chinese matters including the Corporate Law and the Foreign Investment Law of China, M&As, IPOs, and holding company incorporation in China. Ms. Kim is a graduate of the Law Dept. of China University of Political Science and Law and Law School of Seoul National University.

Recruitment of Licensed Customs Consultant Seung-Yeol Lee and Patent and Trademark Attorney Young Sang Kim

Shin & Kim recently recruited Licensed Customs Consultant Seung-Yeol Lee and Patent and Trademark Attorney Young Sang Kim. Mr. Lee has accumulated a wealth of experience in import and export customs clearance (marine, air transportation, special delivery, and EMS), refund of customs duties, quarantine (food and livestock products, etc.), and verification of import and export requirements (cosmetics and steel products, etc.) by working for customs companies and customs offices. Particularly, Mr. Lee focused on ensuring that online purchasing agents were designated as companies subject to special customs clearance, as well as providing tax and foreign exchange consulting services. Mr. Kim specializes in application, judgment, and litigation with respect to patents of machinery, equipment, semiconductor device and metal, as well as consultation on intellectual property. He has been engaged in patent application and judgment for many years, and has represented numerous clients (both domestic and foreign) in related litigation matters.

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