



## Korean Supreme Court Applies Prohibition on Securities Fraud



In April 2006, the Korean Supreme Court ruled that Article 188-4(4) of the Securities and Exchange Act of Korea (the "SEA"), a catch-all provision prohibiting securities fraud and other forms of unfair securities trading, applies not only to listed securities but also to unlisted securities and face-to-face transactions conducted outside the securities market. The text of Article 188-4(4) reads as follows:

### Article 188-4 (Prohibition of Unfair Transactions such as Market Manipulation)

(4) With respect to purchases and sales or other transaction of securities, no person shall commit an act that falls under any of the following subparagraphs:  
1. Disseminating intentionally false quotations or untrue facts or other rumors or using a deceptive scheme for the purpose of gaining unjust benefits; and  
2. Intending to gain money or other benefits having property value by inducing misunderstanding by other persons through the false representation of any material fact or making use of documents in which necessary facts are omitted.

In its recent decision, the Court held that the scope of Article 188-4(4) is not by its terms restricted to listed securities or securities transactions conducted in the market. In so doing, the Court embraced the view of some Korean legal scholars that the general prohibition on unfair securities transactions should be interpreted as extending to unlisted securities and off-market transactions, in accordance with the literal meaning of Article 188-4(4).

In the past, Korean regulators have focused predominantly on preventing unfair trading in listed securities in transactions conducted in the securities markets. Indeed, the provisions of the SEA that prohibit insider trading and typical forms of price manipulation apply only to listed securities and securities transactions conducted in the securities markets. By contrast, the catch-all language of Article 188-4(4) has been applied very rarely in practice and courts had seldom attempted to define the proper scope of its application prior to the Supreme Court's recent decision.

Following the Court's decision, Korean regulators are expected to pay increased attention to monitoring and sanctioning unfair securities transactions that involve unlisted securities or that are conducted through face-to-face transactions outside of the securities markets. Accordingly, parties to the sale or purchase of unlisted securities and participants in private placements and other off-market securities transactions must now be careful to conduct their dealings in compliance with Article 188-4(4).

### Byung-Tae Kim, Senior Associate

Shin & Kim  
Ace Tower, 4th Floor  
1-170, Soonhwa-dong  
Chung-ku, Seoul  
Tel: +82 2 316-4114  
E-mail: [btkim@shinkim.com](mailto:btkim@shinkim.com)

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