# The Environment and Climate Change Law Review

Editor
Theodore L Garrett

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Theodore L Garrett

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# EDITOR'S PREFACE

Environmental law is global in its reach. Multinational companies make business plans based on the laws and regulations of the countries in which they are headquartered and have manufacturing facilities as well as the countries in which they distribute and sell their products. Moreover, multinational companies have global environmental, health and safety goals and practices that tend to be worldwide in their scope for reasons of policy and operational consistency.

For these and other reasons, this first edition of *The Environment and Climate Change Law Review* is timely and significant. This book offers a review, by leading environmental lawyers, of significant environmental laws and issues in their respective countries around the world.

Climate change continues to dominate international environmental efforts, and we have also witnessed efforts to promote sustainability. Many countries are making efforts to promote conservation and renewable or green energy. Changes in reliance on coal and nuclear energy have impacts on the demand for other energy sources. All of these changes have impacts on efforts to reduce greenhouse gases.

Environmental law continues to change and evolve, as new regulations are adopted and existing rules are amended or challenged in courts or interpreted by agencies. In the United States, 2017 will witness a new President and an administration that is expected to have different priorities in the related areas of environment and energy. Future editions of this book will focus on changes and developments.

This book presents an overview and of necessity omits many details. The book thus should be viewed as a starting point rather than a comprehensive guide. Each chapter of this book, including mine, represents the views of the author in his or her individual capacity, and does not necessarily reflect the views of the authors' firms or clients, or the authors of other chapters, or my views as the editor. This book does not provide legal advice, which should be obtained from the reader's own lawyers.

I wish to thank the many authors who contributed their time and expertise to the preparation of the various chapters to this book. I also wish to thank the editors at Law Business Research for conceiving of this project and seeing it through. We hope this book helps you to gain a better understanding of environmental law in various countries around the globe.

**Theodore L Garrett**
Covington & Burling LLP
Washington, DC
January 2017

# Chapter 9

# KOREA

*Hyun Ah Kim and Rak Kyun Im*[1]

## I INTRODUCTION

Korea has experienced many serious environmental issues due to its dramatic economic growth since the 1960s and, particularly, the public awareness of the need for environmental regulations for public safety has been heightened following a recent incident involving deadly humidifier disinfectants and Volkswagen's manipulation of diesel vehicle emissions. Following the former administration's implementation of 'low-carbon green growth' as one of its main policies, the current government has established many new laws and regulations to strengthen environmental regulation.

Under the Framework Act on Environmental Policy (the Environmental Policy Act), the government needs to establish a comprehensive national plan for environmental protection to present long-term visions and strategies for national environmental policies (the Comprehensive Environmental Plan). Under the fourth Comprehensive Environmental Plan for the period from 2016 to 2035, the government declared 'sustainable advancement of the country' as its long-term vision, with implementation targets of (1) preservation and sustainable management of the natural environment, (2) protection of the public from environmental risks posed by climatic anomalies and use of harmful substances, among others, and (3) international collaboration via the establishment of a low-carbon economy and presentation of a new sustainable model.[2]

1 Hyun Ah Kim is partner and Rak Kyun Im is an associate at Shin & Kim. Other Shin & Kim associates, Jessika Kim, Han Kyul Nam, Minyoung Lee, Haelee Park and Yuri Choe assisted with the research.

2 P. 50 of the Fourth Comprehensive Environmental Plan, Ministry of the Environment, 2015.

## II LEGISLATIVE FRAMEWORK

Article 35 of the Constitution of Korea prescribes the right to a healthy and pleasant environment as a basic constitutional right of citizens and provides that details about the environmental right and the exercise of the right are reserved for determination by laws.

The Environmental Policy Act sets forth the general framework of individual environmental laws. Specifically, the Environmental Policy Act provides the purpose and basic principles for national environmental policies, including the 'polluter pays' principle, precautionary principle, and strict liability for environmental damages. Furthermore, it prescribes basic obligations of the government for environmental protection such as establishment and maintenance of environmental standards and development of the Comprehensive Environmental Plan.

Also, there are more than 50 laws and regulations by the type of pollution, and important new laws and regulations are being enacted every year, including the 2014 Act on Liability for Environmental Damage and Relief Thereof, the 2015 Framework Act on Resource Circulation, and the 2015 Act on Comprehensive Management of Environmental Pollution Facilities.

## III THE REGULATORS

The Ministry of Environment (MOE) is mainly in charge of enforcing individual environmental laws, but many laws and regulations vest the authority to issue permits or impose sanctions in the local governments. In case of some laws, different ministries such as the Ministry of Land, Transport and Maritime Affairs, the Ministry of Trade, Industry and Energy and the Ministry for Food, Agriculture, Forestry and Fisheries have jurisdiction, causing criticism that such division undermines effective enforcement of the laws.

## IV ENFORCEMENT

For violations of individual environmental laws, possible administrative sanctions include cancellation of the permit and an order to pay a fine or recall the relevant product. In addition, environmental crime is regulated by the individual environmental laws as well as the Act on the Control and Aggravated Punishment of Environmental Offences (the Environmental Offences Act). While the individual environmental laws may impose sanctions for simply having a certain level of environmental pollution, the Environmental Offences Act imposes a sanction only when there is damage to the life or body of a person. Individual environmental laws and the Environmental Offences Act have a joint penal provision, specifying that both the actor and the company shall be jointly punished in case of a violation.

However, Korea's individual environmental laws do not have a systematical device for the relief of damages from environmental pollution. Thus, pursuant to Article 750 of the Civil Code, courts have recognised the liability of a polluter to compensate for the victim's damages. In addition, Article 44 of the Environmental Policy Act provides for strict liability for damages from environmental pollution. Also, the victim of environmental pollution may claim damages against the government, and may file an administrative suit in order to cancel the government decision that caused the environmental pollution.

## V ENVIRONMENTAL PROTECTION

### i Air quality

The Clean Air Conservation Act (CACA) is the framework act on air quality in Korea. The CACA provides that a business operator installing facilities, etc. that emit air pollutants[3] shall obtain authorisation for such facilities from or report such facilities to the Mayors or Province Governors and install air pollution preventive facilities. Air pollutants emitted from air pollutant-emitting facilities shall not exceed the permissible emission levels. As the CACA determines such levels based on density, there is criticism that the regulation should be based on the total quantity.[4] Furthermore, a business operator emitting dust or sulphur oxides shall pay emission charges even when the permissible emission levels are not exceeded and pay extra emission charges when such levels are exceeded.

Cement-related or metal manufacturing business operators that generate fugitive dust[5] shall report such fact to the competent authorities and take measures to reduce the generation of fugitive dust even when air pollutants are not generated.

The CACA also regulates exhaust gases from motor vehicles. A person who manufactures or imports motor vehicles is required to obtain in advance certification of the relevant permissible emission levels determined by the MOE and may be subject to surcharge when such levels are exceeded. The permissible emission levels for motor vehicles include those related to greenhouse gases as well as those for air pollutants.

Because of the special characteristics of the metropolitan area, businesses in the metropolitan area are governed by the Special Act on the Improvement of Air Quality in Seoul Metropolitan Area (IAQSMA). While the permissible emission levels under the CACA constitute merely a follow-up management system based on density, the IAQSMA provides for the regulation of total quantity.

There are other air quality-related laws, including the Act on the Control, etc. of Manufacture of Specific Substances for the Protection of the Ozone Layer and the Indoor Air Quality Control in Public Use Facilities, etc. Act. The former was established to enforce the Montreal Protocol on Substances that Deplete the Ozone Layer, and the latter regulates the management of indoor air quality in public use facilities or newly constructed houses.

Korea's air pollution levels are among the highest in OECD countries, and its fine-dust density is almost double the OECD average. In response, the MOE will designate areas that emit many air pollutants as special management zones and impose permissible emission levels on such zones that are more stringent.[6] The government plans to take various measures to control fine dust, including encouraging disuse of old motor vehicles via reduction of diesel motor vehicles, and to increase cooperation with neighbouring countries, including China and Japan, to reduce fine dust from 2017.[7]

3 The MOE categorises granular matters, bromine, aluminum, steel, etc. as air pollutants.

4 Page 323 of Environment Act, Hong-Gyun Kim, Hongmusa, 2014.

5 Dust directly emitted to the air not through any prescribed vent.

6 Page 62 of the 2nd Comprehensive Plan for Air Quality Improvement (2016-2025), MOE, 2015.

7 Id. at 70.

### ii Water quality

The Water Quality and Aquatic Ecosystem Conservation Act (WQAECA) is the framework act on water quality in Korea. The WQAECA provides that a business operator intending to install a wastewater discharge facility as a point pollution source shall obtain authorisation from, or report to, the MOE.[8] If a wastewater discharge facility may cause grave harm to residents or animals and plants in adjacent areas, the MOE may restrict the installation of such facility after consulting with the heads of competent administrative agencies. A person who installed a wastewater discharge facility shall install a water pollution prevention facility.

A company operating a wastewater discharge facility shall ensure the permissible discharge limits are not exceeded, and if such limits are exceeded, the MOE may issue an improvement order, order the suspension of operation, or cancel the authorisation of such company. Permissible discharge limits in Korea are based on density and vary only depending on the locations of business places, not the nature of the business.[9]

A company intending to install a wastewater discharge facility as a non-point pollution source shall report the installation of a non-point pollution source, install a facility reducing non-point source pollution, and adequately manage a non-point pollution facility. The company may be subject to fines if it breaches any such obligations above. Non-point pollution sources include construction and manufacturing of wood, chemical and plastic products.

The WQAECA also provides that the MOE shall constantly measure water pollution levels of public waters and waterways, including rivers and harbours. Also, the Act prohibits substances harmful to water quality being discharged into such public waters without justification and provides that any company violating such provision shall be subject to criminal punishment.

There are other various laws related to water quality including the Sewerage Act and the Act on the Management and Use of Livestock Excreta, the River Act, the Groundwater Act, the Water Supply and Waterworks Installation Act, and the Drinking Water Management Act. Therefore, applicable laws may vary depending on the relevant industrial sector and the location of the business. Such multiple water-management systems make water-management policies less efficient to a certain extent. As such, the MOE announced that it will establish the Framework Act on Water Management integrating water quality-related laws into one law and revise the current permissible discharge limit system under the WQAECA that fails to reflect the nature of industrial wastewater of each business category. The MOE will then apply procedures differentiated by business category until 2025.[10]

8 As discharge facilities subject to authorisation are those discharging specific substances harmful to water quality (copper, arsenic, lead, etc.) or located in prescribed areas, including water-source protection areas, and the other discharge facilities are subject to the report system as an exception, the discharge facilities above are substantially governed by the report system (Page 406 of the Environment Act, Hong-Gyun Kim, Hongmusa, 2014).

9 Vol. 257, Management of Discharge of Industrial Wastewater and Improvement Plans, National Assembly Research Service Report, Gyeong-Min Kim, 2015.

10 Page 49 of the 2nd Master Plans for Water Quality Management, MOE, 2016.

### iii Chemicals

The Act on Registration, Evaluation, Etc. of Chemicals (K-REACH) and the Chemicals Control Act (CCA) are the primary laws regulating chemicals. Matters previously governed by the Toxic Chemicals Control Act are subject to K-REACH and the CCA, which were established in 2013 and enforced in 2015. K-REACH regulates the manufacturing, import, and distribution of chemicals, while the CCA regulates the management of chemicals and prevention of accidents.

The purpose of K-REACH is to review and assess the hazards and risks of chemicals and products containing them in advance and to designate and manage hazardous chemicals. It was established under the influence of the EU REACH's 'no data, no market' principle. While only new chemicals were subject to registration as hazardous chemicals in the past, K-REACH provides that existing chemicals are also subject to such registration.

K-REACH provides that any person intending to manufacture or import a new chemical or at least one ton of an existing chemical per year shall apply for registration thereof in advance by submitting specified information and test data[11] and report the usage, quantity, etc. of such substance to the MOE each year. The MOE is required to designate and announce existing chemicals subject to registration every three years and grant a registration grace period of three years. Under K-REACH, registration procedures for new chemicals manufactured or imported in a small quantity of less than one ton per year are simplified, and chemicals meeting specified requirements, including chemicals for R&D purposes, low-concern high-polymer compounds, and non-isolated intermediates, are exempted from registration. Joint registration of certain data by a consortium of importers or manufacturers of the same chemical is required. The MOE may order manufacturers or importers of chemicals without the required registration thereof to take necessary measures, including the suspension of manufacturing, importation, sale or withdrawal of such substance, and such person may be subject to criminal punishment.

Information on registered chemicals shall be shared within the entire supply chain, including with downstream users. Manufacturers or importers of chemicals shall provide information on such substances for downstream users or sellers, who shall, in turn, provide such manufacturer or importer with information required for the registration of such substances, including their usage. However, information constituting a trade secret under the Unfair Competition Prevention and Trade Secret Protection Act may not be disclosed.

The MOE is required to conduct hazard[12] assessment of registered chemicals. If the results thereof show that a risk[13] review is required or if the manufactured or imported quantity is 10 tons or more per year, the MOE shall also conduct the risk assessment. The MOE shall designate a chemical found hazardous based on the hazard assessment as a toxic substance, a chemical found likely to pose a risk based on the results of the hazard and risk assessment as a substance requiring permission, and a chemical deemed to pose a risk as a prohibited or restricted substance. While the manufacturing, importation, sale, keeping,

11 Regarding information that constitutes a trade secret, information protection may be requested to the MOE.

12 The inherent properties of any chemical that causes adverse effects to human health or the environment, including the toxicity thereof.

13 The degree of damage to human health or the environment caused by exposure to a hazardous chemical.

storage, transportation or use of the prohibited substance is prohibited for all purposes, the restricted substance is deemed to pose a risk if used for a specified purpose, and the manufacturing, importation, sale, keeping, storage, transportation or use thereof is prohibited for such purpose.

If a person manufactures or imports a product containing hazardous chemicals with the total quantity of each substance exceeding 1 ton per year, such person is required to report such manufacturing or importation to the MOE. In an effort to prevent another incident similar to the deaths and injuries caused by humidifier disinfectants, risk assessment of products shall be conducted to prevent risks that may be posed by hazardous chemicals contained in such products to human health or the environment, and safety or labelling standards for products of risk concern shall be determined depending on the results of such assessment. Products not meeting such safety standards shall not be sold or donated, and the MOE may order necessary measures, including the suspension of sale, or withdrawal or destruction, of such substance, and any person in violation of the provision above may be subject to criminal punishment.

The purpose of the CCA is to protect public health and the environment through systematic management of chemicals and prevention of chemical accidents. The CCA provides for criteria for handling hazardous chemicals, and all persons handling hazardous chemicals shall meet such criteria. If a person handling hazardous chemicals intends to display or store hazardous chemicals in excess of a specified quantity, the person needs to prepare a plan for display or storage and obtain advanced confirmation from the MOE.

Where the MOE decides that a hazardous chemical poses or is likely to pose serious risks to human health or the environment, the MOE may order suspension of the manufacturing, importation, sale, keeping, storage, transportation, or use of such chemical. The CCA also provides for the installation and operation of hazardous chemical handling facilities. A person intending to install and/or operate a hazardous chemical handling facility shall prepare an external impact evaluation[14] and submit it to the MOE, which shall review such evaluation and notify such person of the degree of hazard to such facility and whether it is adequate.

To prepare for and respond to chemical accidents, the CCA provides that substances requiring preparation for accidents shall be designated and that a standard for control of substances requiring preparation for accidents shall be established and observed. Anyone handling substances requiring preparation for accidents in excess of a specified quantity shall prepare a hazard control programme every five years and submit it to the MOE so that necessary emergency measures can be immediately taken under such programme upon the occurrence of a chemical accident. In particular, the MOE shall conduct an impact investigation to identify the cause of the chemical accident, minimise and recover the damage, and order a business operator who caused the accident to take specified measures.

### iv Solid and hazardous waste

The Waste Control Act (WCA) is the framework act on waste in Korea. If a material is considered to be 'waste' under the WCA, it is subject to various waste-related laws, including the WCA. The WCA defines waste only as 'materials such as garbage, burnt refuse, sludge,

14 It means an evaluation of impacts of an accident involving hazardous chemicals on people or the environment, etc. adjacent to the business place.

waste oil/acid/alkali and animal carcasses that are no longer useful for human life or business activities'. The failure to clarify to whom such materials are no longer useful and in what sense has led to various disputes over the interpretation of the definition. The MOE has presented relevant criteria that a product or material constitutes waste if it no longer has value to its producer, and that even if such material is useful to a third party and sold without charge or at a low price, it constitutes waste if it is required to be adequately controlled under the WCA.[15]

Under the WCA, different regulations on the method of treatment apply to different types of waste. Specifically, waste generated from business places is categorised as 'commercial waste' and the other waste is categorised as 'household waste'. Commercial waste is further categorised as 'general commercial waste', 'construction waste' and 'controlled waste', which is commercial waste such as waste oil or acid that may contaminate its surroundings or medical refuse that may harm human bodies. General commercial waste is further categorised as 'discharging facility waste' generated from discharging facilities and 'commercial household waste' generated from sources other than discharging facilities. 'Medical refuse', among controlled waste, is regulated separately.

Household waste shall be discharged and treated under ordinances of competent local municipalities. However, a person discharging commercial waste shall treat it independently or commission the treatment thereof to a person licensed to run a waste treatment business. If such a person chooses to commission the treatment thereof, he or she shall conclude a contract with the commissioned person after confirming his or her treatment capacity through a copy of his or her waste treatment business licence and report such discharge to competent local municipalities. A person discharging general commercial waste or controlled waste shall perform obligations of inputting electronic data on waste delivery and receipt, recording or preserving waste treatment documents, preparing and submitting reports on generation or treatment of waste and providing those in charge of waste treatment with a statutory education. A person discharging controlled waste among commercial waste is subject to additional regulations.

General commercial waste shall be stored in containers or warehouses made of corrosion-resistant or indestructible materials, separately from discharging facility waste, controlled waste, construction waste and household waste. Controlled waste shall be stored separately from other waste, and depending on the specific types thereof, measures under the WCA shall be taken for such waste, including double packaging, sealing and indication of marks.

The 'waste disposal business,' which specialises in the collection and transportation of waste of other persons, is classified into the collection and transportation business, the interim disposal business, the final disposal business, and the comprehensive disposal business. The WCA sets forth different approval and licence standards for the facilities, equipment and technical capabilities required for different waste disposal businesses. In case of any changes in the approved matters pursuant to the WCA, a waste disposal business operator shall obtain an approval of changes or submit a report of changes. A waste disposal business operator conducting a waste disposal business without the required approval under the WCA may be subject only not to administrative dispositions, but also to criminal punishment. Also, a waste disposal business operator shall obtain approval set forth in the WCA in installing,

15 Page 6 of Understanding of the WCA and Management of Waste, Environmental Management Division of Geum River Basin Environmental Office, 2015.

commencing, terminating the use of, and closing waste disposal facilities. A waste disposal business operator shall also periodically conduct inspections and submit reports during the operation of waste disposal facilities and perform *ex post facto* management in respect of landfills.

Meanwhile, the Act on the Promotion of Saving and Recycling of Resources (APSRR) is enforced in Korea to curb occurrence of waste and to promote recycling of resources. Under the APSRR, waste charges are imposed on manufacturers or importers set forth therein, and recycling charges may be imposed in case of a violation of the APSRR by manufacturers, importers, or sellers of products, who are obliged to recycle.

In addition, Korea has the Act on the Transboundary Movement of Hazardous Waste and its Disposal, under which an approval by the MOE is required for any export and import of waste. Also, the recycling of construction waste, electric and electronic products, and automobiles is separately regulated by the Construction Waste Recycling Promotion Act and the Act on Resource Circulation of Electrical and Electronic Equipment and Vehicles.

### v Contaminated land

A Korean law regulating the contamination of land and remediation is the Soil Environment Conservation Act (the Soil Act), which designates 21 substances as soil contaminants. Depending on the concentrations of the substances in the soil, the Soil Act sets forth 'Worrisome Level of Soil Contamination' and 'Standards of Countermeasures against Soil Contamination'. Where there is soil contamination in excess of these standards, the MOE or the local government concerned must investigate the soil in question and establish measures for purification thereof. Also, facilities, equipment and buildings that are likely to contaminate soil due to production, transportation, storage, handling, processing, or treatment of soil contaminants are classified as facilities subject to control of soil contamination. Of these, facilities posing substantial risks of soil contamination are classified as specified facilities subject to the control of soil contamination, which must be reported and are managed at the government level.

The Soil Act recognises strict liability for damages resulting from soil contamination for any person who has caused the contamination. Under the Soil Act, the following people shall be responsible for purification:

*a* any person who causes soil contamination;

*b* the proprietor, occupant, or operator of a facility subject to the control of soil contamination constituting a cause for soil contamination as at the time soil contamination occurs; and

*c* any successor to the comprehensive rights and obligations of those corresponding to the foregoing item (a) or (b); and

*d* any person who previously owned or presently owns or occupies land on which soil contamination has occurred.

However, responsibility for purification do not apply in the following cases:

*a* where the person no longer owned the relevant land due to transfer or other reasons before the enactment of the Soil Act;

*b* where the person acquired the relevant land before the enactment of the Soil Act;

*c* where the person was in good faith and was not negligent in preventing soil contamination at the time he or she acquired the land on which soil contamination has occurred; and

*d* where soil contamination occurs while the person owns or occupies the relevant land and such soil contamination occurs due to reasons unattributable to him or her.

If multiple persons are responsible for purification, the responsibility for purification shall be borne in the following order of priority:

*a* a person who directly caused the soil contamination and a person who comprehensively succeeded to the rights and obligations thereof (the successor);
*b* an occupant or an operator of facilities subject to the control of soil contamination and the successor;
*c* a possessor of facilities subject to the control of soil contamination and the successor;
*d* a person who currently possesses or occupies land where the soil contamination took place; and
*e* a person who has possessed land where the soil contamination took place.

However, an order for soil purification may be issued to any one of the persons responsible for purification with lower priority, ahead of a person with higher priority, in cases where the person with higher priority is unidentifiable or where the purification costs are excessive. The person who has been ordered to conduct soil purification and performed soil purification may claim reimbursement for the share of expenses to be borne by the other persons responsible for purification.

The government may subsidise all or part of the expenses incurred in conducting soil purification if certain requirements are satisfied, including (1) where the expenses required by a person responsible for soil purification to perform soil purification significantly exceed his or her share of expenses or (2) where the purification expenses significantly exceed the value of the relevant land.

The above clauses resulted from an amendment to the Soil Act on 24 March 2014. The purpose and object of the clauses as amended, and circumstances that led to the amendment are as follows.

Prior to the above amendment, with respect to soil contamination that occurred, the Soil Act imposed primary responsibility for purification thereof without fault on not only the direct contamination-causing person, but also on the owner, occupant, operator, and transferee of the soil contamination-causing facilities. The above clauses as amended reflect a decision rendered by the Constitutional Court, which declared that the clauses prior to the amendment violate property rights and rights to equality and therefore are unconstitutional (Constitutional Court Decision in Case No. 2010 Heonba167, dated 23 August 2012).[16]

According to the Soil Act, with respect to a transfer or lease of a piece of land on which a factory or other facilities subject to control of soil contamination existed or a piece of land likely to have soil contamination, such land and certain surrounding areas may be subject to an evaluation to be conducted for possible soil contamination by a soil environment evaluation institution (soil environment evaluation).

If contaminated land has been transferred several times, an issue may arise in terms of responsibility for purification thereof and liability for damage under private law. Recently, the Supreme Court ruled that the transferor of a site on which it operated an iron foundry for 20 years should be liable for tort damage with respect to the soil contamination purification

16 Reasons for Amendment [Partial Amendment as Law No. 12522 as of 24 March 2014].

expenses incurred by the current owner of the site, rather than the person to whom such transferor initially transferred the site (*en banc* judgment of the Supreme Court in Case No. 2008 Da66549, dated 19 May 2016). Prior to the Supreme Court judgment above, the case law was that an act of contamination by a person on a piece of land owned by it did not constitute a tortious act. In the case above, however, the Supreme Court reversed the judicial precedents and ruled that a tortious act occurs if a person who contaminated a piece of land owned by it offers such land for a transaction. With respect to the statute of limitations, the Supreme Court ruled that the 10-year statute of limitations period shall commence when damage actually arose as things reached a situation where soil contamination purification expenses were paid or had to be paid. Through this ruling, the Supreme Court recognised a virtually unlimited retroactive tort liability against the person who directly caused the soil contamination.

## VI CLIMATE CHANGE

The framework law on climate change including the regulations on the emission of greenhouse gases in Korea is the Framework Act on Low Carbon, Green Growth (the Green Growth Act).

According to the Green Growth Act, the Green Growth Committee has been established under the governance of the Prime Minister, and it is charged with examination of low-carbon or green-growth policies and basic planning to address climate change.

Under the Green Growth Act, the Korean government should establish and execute the basic plans for addressing climate change and basic energy plans every five years with a total planning period of 20 years in addition to setting forth medium and long-term and phase-by-phase goals for the mitigation of greenhouse gases and devising measures as may be necessary for the achievement of those goals. Following such basic plans, Korea initially aimed to reduce greenhouse gas emissions by 30 per cent compared to the business-as-usual scenario by 2020. The goal has been updated this year to reducing total nationwide greenhouse gas emissions by 37 per cent compared to the business-as-usual scenario by 2030.

The Act on the Allocation and Trading of Greenhouse-Gas Emission Allowances (the Emissions Trading Act) has been enacted under the Green Growth Act, and the allowance trading system is currently in operation accordingly.

However, the allowance trading system is yet to be fully fledged in Korea. Considering the potential effects of the system over the industries, the entire planning period is divided into several phases, where the first phase is from 1 January 2015 to 31 December 2017, and the second phase is from 1 January 2018 to 31 December 2020. During the first phase, all permits shall be allocated based on the grandfathering method free of charge; during the second phase, 97 per cent of the permits shall be allocated free of charge; and from the third phase and thereafter, the free allocation portion shall be determined by the 'National Emission Allowance Allocation Plan' provided that it does not exceed 90 per cent of all allowances.

The government is required to establish the 'National Emission Allowance Allocation Plan', which will provide for, for each phase of the planning period, (1) total emissions permitted; (2) total quantity of allowances; (3) target recipients (sectors and industries) of allocations; and (4) criteria for allocation and allocation quantity by sector, industry and performance year, among others.

The competent authority for the emission trading system, at its inception, was the MOE. However, as of 1 June 2016, multiple ministries have become involved: the

overall management of the allowance trading system including the allocation plan and the allowance exchange is the responsibility of the Ministry of Strategy and Finance while the implementation of the emission trading system including actual allocation and adjustment or cancellation of allocation are to be handled by the respective relevant authorities (Ministries of Agriculture, Food and Rural Affairs; Trade, Industry and Energy; Environment; Land, Infrastructure and Transport; and Maritime Affairs and Fisheries).

The competent authority allocates the total quantity of allowances for the relevant phase of the planning period and the allowances for each performance year to target recipient companies according to the 'National Emission Allowance Allocation Plan'. Additional allocation or adjustment and cancellation of allowances for each performance year are possible. For specific details regarding the allocation, adjustment and cancellation of allowances, the government has introduced and implemented the 'Guidelines on Allocation, Adjustment and Cancellation of Greenhouse Gas Emission Allowances'.

Allocated allowances may be traded by way of purchase and sale or otherwise. Target recipient companies should submit allowances in an amount corresponding to the actually authorised emission quantities no later than six months from the end of each performance year. The allowances may be carried over into the next year or borrowed, subject to approval by the competent authority. Offsetting of trading allowances is also allowed as long as it conforms to the relevant international standards.

If a company emitted greenhouse gases in excess of the allowances allocated, the competent authority may impose, for such excess, a surcharge not more than three times the average market price of allowances for the relevant performance year within the extent not exceeding 100,000 won per ton of $CO_2$.

Upon the first allocation of allowances, a number of target recipient companies in the petrochemical and non-ferrous metal industries, among others, filed a lawsuit against the MOE seeking the cancellation of the National Emission Allowance Allocation Plan or of the allocation of allowances to the target recipient companies. This lawsuit is still pending.

## VII OUTLOOK AND CONCLUSIONS

As environmental pollution has recently caused considerable damage, the importance of compensation for environmental damage has grown in addition to the government's environmental regulations. The Act on Liability for Environmental Damage and Relief Thereof, established at the end of 2014 and enforced from 1 January 2016, recognises strict liability for environmental damage and requires owners, installers and operators of certain facilities causing environmental damage to take out environmental liability insurance. Such insurance is expected to serve as an important means of relief for environmental damage. The Act is criticised for its unclear provisions, liability cap on compensation of 200 billion won, and the maximum amount of indemnity payment under environmental liability insurance of 30 billion won per facility, that these provisions actually provide protection for business owners. However, as victims may make direct claims for insurance benefits to insurers thereunder, the Act is expected to contribute to ensuring prompt relief for victims.

## Appendix 1

# ABOUT THE AUTHORS

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Hyun Ah Kim is a partner at Shin & Kim. Her main areas of practice include environmental law and general corporate transactions. She has advised many multinational corporations as well as domestic companies in various environmental law issues including the new environmental regulations such as the Act on Registration, Evaluation, Authorisation and Restriction of Chemicals (K-REACH) and the Act on the Allocation and Trading of Greenhouse-Gas Emission Allowances. She also has worked closely with government agencies such as Ministry of Environment and Ministry of Trade Industry and Energy as environmental law expert. She graduated from Seoul National University (LLB, 1994) and NYU School of Law (LLM, 2005). She also completed PhD coursework in environmental law at Seoul National University in 2010. She is a member of the Korean Bar Association and New York Bar Association.

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