



Shin & Kim assists aircraft maker in obtaining a 90% reduction of liquidated damages imposed by DAPA

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The Republic of Korea (acting through its Defense Acquisition Program Administration, “DAPA”) entered into an agreement for the purchase of a military aircraft and certain related components (the “Purchase Agreement”) with ‘AAA’, a European aircraft maker. Pursuant to the Purchase Agreement, AAA delivered the components to Korea in more than 30 instalments; unfortunately, some of the components were delivered after the contractually agreed delivery dates. On the ground that such deliveries could not be viewed as the partial shipments permitted by the Purchase Agreement, DAPA determined that all such deliveries were late and imposed on AAA liquidated damages of approximately €34 million (equivalent to KRW 46.6 billion).

Shin & Kim advised AAA for the filing of its request for a “waiver” (i.e., cancellation) of the liquidated damages, an administrative procedure internal to DAPA. Shin & Kim argued that DAPA erred in calculating the number of days of delay for the imposition of liquidated damages and that the calculation should take into account that some of the delay was not attributable to AAA. More precisely, (i) Shin & Kim explained that, because the Purchase Agreement permits partial deliveries, liquidated damages should not apply to the value of all components but instead should exclusively apply to the components that were actually delayed and only for the number of days of delay of each such component; (ii) Shin & Kim emphasized that AAA should not be held liable for the delay due to DAPA’s inaction after AAA notified it of its readiness to deliver the components; and (iii) Shin & Kim successfully demonstrated, based on the analysis of emails between AAA and local carriers chosen by DAPA, that the transportation of the components was delayed for causes which could not be attributable to AAA.

Throughout the procedure of request for waiver of liquidated damages, while actively deploying the above legal arguments, Shin & Kim met with DAPA officials and explained the factual and legal errors made by their DAPA colleagues who imposed the liquidated damages. Shin & Kim answered the many questions raised by DAPA officials, submitting additional materials required by DAPA to clarify the issues concerned.

As a result of such efforts, DAPA admitted most of AAA’s arguments, and waived €31,500,000 (about KRW 43.3 billion) out of the original total of €34,000,000 (about KRW 46.6 billion) of liquidated damages; in other words, DAPA accepted to waive more than 92% of the initial amount of liquidated damages.

This case demonstrates how Shin & Kim's Military Procurement & Defense Industry Team, thanks to its unrivaled expertise and experience in the field of defense procurement, managed to convince DAPA to waive tens of billions of won in liquidated damages through its systematic interpretation and logical argumentation of an international contract for the sale of military equipment. The case is particularly meaningful because DAPA waived substantially all of the liquidated damages, moreover in the early stage of the administrative process, without having to resort to a lawsuit.

Shin & Kim's Military Procurement & Defense Industry Team consists of legal experts and practitioners, who collectively have accumulated a wealth of experience related to military procurement projects and facility construction while serving at the Ministry of National Defense, Korea's armed forces, and DAPA. This team is Korea's best group of experts in the field of military procurement, and provides optimal solutions for all legal issues, including bidding for procurement markets, performance of contract, imposition of liquidated damages, and sanctions against illegal acts.

[\[Korean version\]](#) 글로벌 항공기 제작사에 부과된 지체상금에 대해 90% 이상의 면제를 이끌어 낸 사례

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