



Group Chairman of a Quarry Company Indicted as the "Responsible Managing Officer" in The First Case under the Serious Accidents Punishment Act Following Yangju Quarry Collapse

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1. Group Chairman Indicted in the First Case Under the Serious Accidents Punishment Act.

The indictment in the first case under the Serious Accidents Punishment Act ("SAPA") was filed by the Prosecution Service of Korea on March 3, 2023 following the collapse of a quarry in Yangju, Gyeonggi Province. The indictment was filed against the company group A's chairman, who was charged without detention for his violation of the SAPA. Alongside the chairman, six officers and employees of the group, including the CEO, were charged with violating the Occupational Safety and Health Act ("OSHA"). Additionally, the prosecution filed charges of summary offenses against four on-site workers, accusing them of the crime of death and injury due to occupational negligence.

The prosecution determined that Chairman C, instead of the CEO, exercised the actual and final management authority over the safety and health related matters at the company group A, and he fulfills the criteria of a "responsible managing officer" as defined under the SAPA on the following grounds:

1. Chairman C is an expert in quarrying with 30 years of industry experience and made final decisions regarding the set-up of the piling area for crushed rock fines where the accident occurred and the method to be used for quarrying.
2. Chairman C knew that continuing the quarrying at the accident site would steepen the slope and increase the instability of the slope due to repeated blasting vibrations.
3. Despite this knowledge, Chairman C actively exercised his decision-making authority by providing detailed instructions on safety and health matters to officers and employees, including the CEO of the company group A, as it pushed on with quarrying operations to meet production targets.
4. The company group A consists of affiliated companies engaged in quarrying as well as the production and sale of ready-mixed concrete. Given that the ready-mixed concrete business serves as the foundation of the group, there

was a great need for Chairman C to directly exercise his management rights, including those related to safety and health measures, and the Chairman C was indeed the one who exercised actual and final management authority over the company group A's safety and health related matters.

In contrast, the prosecution decided not to designate CEO B of Industry A as a "responsible managing officer." The prosecution found that CEO B neither exercised authority as the representative of the company group A nor exerted his supervisory power in the management of the business. His role was limited to assisting the Chairman C in the execution of management powers and complying with his directives. Under such findings, the prosecution decided that it would be a challenge to charge CEO B as a "responsible managing officer" and charged him instead with violations of the OSHA and the crime of occupational negligence, which led to death and injury.

2. The Parameters of "Responsible Managing Officer" as Defined by Article 2(9) of the SAPA and Implications from the Current Case

The SAPA provides that the duty of implementing safety and health measures is with the "responsible managing officer". As defined in Article 2(9)(a) of the SAPA, a "responsible managing officer" is a "person who represents the business and is authorized and accountable to exercise comprehensive supervision over the business, or a person who similarly manages safety and health affairs." This has been generally understood to mean the company representative (the representative director in the case of a joint-stock company) who oversees the company's management and holds ultimate decision-making authority.

Where a corporation has designated an officer, who is given the authority to represent, manage and oversee the affairs of the corporation and the responsibility for overseeing the safety and health matters (i.e., a director in charge of safety and health, or "CSO"), there has been a question as to whether such CSO should be regarded as the sole responsible managing officer and be prosecuted for violations of SAPA, or both the CEO and the CSO should face prosecution as "responsible managing officers" and be prosecuted for such violation.

By indicting the Chairman C in the current case, the Prosecution Service has demonstrated that an indictment can be filed against a company representative or the representative of a corporate group as the responsible managing officer under SAPA. This can happen even if that person is not the CEO, provided that they had actual and final authority over the company's safety and health measures. Conversely, if the head of a corporation (the CEO in the case of a joint-stock company) did not exercise the actual and final authority over the safety and health measures, they would not be considered a responsible managing officer under SAPA. It remains to be seen how the court will regard the position taken by the Prosecution Service on this matter.

In essence, the prosecution's stance in the current case highlights that safety and health measures under SAPA are not limited to being an issue solely for operating company within a corporate group, where safety accidents are most likely to occur. It underscores that the compliance with these measures is important for the entire company group, and the growing importance of clearly delineating who has the actual and final authority over safety and health measures at the company group.

[Korean version] 중대재해처벌법 1호 사건(양주채석장 붕괴사고) 기소 -법인의 대표이사가 아닌 그룹 회장을 “경영책임자”로 판단-

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