



Amendment to the Industrial Technology Divulgence Prevention Act and the Enactment of the Notification on National High-Tech Industry Act

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On April 4, 2023, the amendment to the Act on Prevention of Divulgence and Protection of Industrial Technology (the “Industrial Technology Divulgence Prevention Act”) came into effect. This amendment, enacted on January 3, 2023, introduces several important changes. Of particular interest are the amended provisions of Article 14, titled “Prohibition on Divulgence of, and Acts of Infringement of, Industrial Technology.”

Under the pre-amended Industrial Technology Divulgence Prevention Act, Article 14, Subparagraph 2 imposed a prohibition on a person who has a duty to maintain the confidentiality of industrial technology from divulging the industrial technology for the purpose of gaining unjust profit or causing harm to the holder of the industrial technology. Additionally, Subparagraphs 6 and 6-2 of the same article prohibited a person from engaging in cross-border acquisitions, mergers and other transactions without obtaining approval or filing a report as required by law, or with such approval obtained, or such report filed, by improper means, for the purpose of using national core technology in a foreign country or of causing national core technology to be used in a foreign country.

As described above, the pre-amended Industrial Technology Divulgence Prevention Act required the actor’s “purpose” in relation to the prohibited acts. However, the amended Act now only requires a mere “intention” (meaning “knowledge”) instead of a “purpose.”

In other words, under the pre-amended Industrial Technology Divulgence Prevention Act, the aforementioned prohibited acts were classified as “purposeful crimes” and as a result, the prosecution had to demonstrate not only the actor’s intent, but also the actor’s specific purpose to penalize such actor. However, in response to the recent surge in technology divulgence crimes and recognizing the significance of safeguarding advanced technology, the standard for proving an act of industrial technology infringement has been substantially relaxed, and consequently, these are now classified as “intentional crimes” that require merely the proof of the actor’s awareness to warrant punishment.

The Korean Supreme Court has previously held that it shall not be presumed that an actor had the “purpose of using

industrial technology, or causing it to be used, in a foreign country” or the “purpose of gaining unjust profit or causing harm” merely because such actor was aware that the technology in question was industrial technology and engaged in divulgence of that industrial technology. The Supreme Court has further ruled that the foregoing purposes shall be reasonably determined in light of social conventions and in consideration of the actor’s occupation, experience, acts, motives, circumstances, means, methods, and the relationship between the company holding that industrial technology and the third party acquiring it. With this amendment to the Industrial Technology Divulgence Prevention Act, it is now possible to punish an actor based solely on the fact that such actor was aware that the technology in question was industrial technology and committed any of the acts prohibited by the Industrial Technology Divulgence Prevention Act.

Considering that the “occurrence of harm” to the holder of industrial technology could be inferred merely from the divulgence of such industrial technology, there is an increased possibility of disputes arising in connection with employee transfers and subcontracting. Therefore, it is critical for both companies and employees to proactively prepare for these circumstances. In particular, when engaging in cross-border M&As, investments, sales of technology or licensing with foreign entities, companies should thoroughly investigate whether there is a risk of transferring national core technology to such foreign entities.

Meanwhile, in relation to the Act on Special Measures for Strengthening and Protection of Competitiveness of National High-Tech Strategic Industries (the “National High-Tech Strategic Industries Act,” enacted on February 3, 2022, and became effective from August 4, 2022), the Notification on Designation of National High-Tech Strategic Technologies (the “Notification”) was enacted and published on June 2, 2023, coming into force on the same day.

The Notification sets out specific tiers of national high-tech strategic technologies in attached tables. The tables include 8 semiconductor technologies, 4 display technologies, 3 secondary cell technologies, and 2 bio technologies and further stipulates that “technologies that are specialized in each of the [foregoing] technologies and developed for mass production or used for mass production” qualify as “national high-tech strategic technologies” (Articles 3 and 4). In a meeting held on May 26, 2023, the National High-Tech Strategic Industry Committee designated the bio sector as national high-tech strategic technology, supplementing the existing semiconductor, display and secondary cell technologies. Further, the Committee plans to review the potential inclusion of future vehicles, robots, defense technologies, and nuclear power plant technologies, among others.

The Notification also stipulates the materials required for the application to determine whether a technology qualifies as a national high-tech strategic technology (Article 5), the materials for preliminary review of cross-border acquisitions and mergers (Article 6), and the procedures for determining national high-tech strategic technologies (Article 7).

According to the 1st Basic Plan for Fostering National High-Tech Strategic Industries, there are plans to invest KRW 550 trillion or more in private sectors and to promote numerous initiatives, such as the establishment of a national industrial complex in support of high-tech industrial sites, the enactment of the tentative Special Act on Human Resources Innovation in High-Tech Industries to nurture excellent manpower, the establishment of stringent sentencing standards for technology divulgence, and the designation of specialized graduate schools by sector.

Amid strengthening economic security worldwide, Korea enacted the National High-Tech Strategic Industries Act last year, Japan enacted the Economic Security Promotion Act in 2022, and the United States also implemented new export controls on semiconductor and software items under the Export Control Reform Act of 2022. In line with these global trends, Korean companies should closely look into whether transactions involving industrial technologies, national core

technologies, or national high-tech strategic technologies fall under the regulations prescribed by the Industrial Technology Divulgence Prevention Act and the National High-Tech Strategic Industries Act. Furthermore, companies should assess whether these transactions are subject to regulations imposed by foreign nations, such as the ones mentioned above.

[\[Korean version\]](#) 산업기술유출방지법의 개정 및 국가첨단산업법 관련 고시 제정

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