



Element of Plea Bargaining Introduced in the Criminal Investigation Procedure for Cartel Cases

2021.01.19

On December 10, 2020, the so-called “Guidelines for Reduction of Penalty in Cartel Cases and Investigation Procedures” (the “Criminal Leniency Guidelines”) became effective. As such, the Korean Prosecutors’ Office has formally introduced a criminal “leniency program” in cartel cases, allowing companies or individuals to voluntarily report their participation, and provide related information in exchange for a complete or partial reduction of criminal sanctions against the cartel.

In Korea, most cartel cases covered by the *Monopoly Regulation and The Fair Trade Act* (the “MRFTA”) are first discovered by the Korea Fair Trade Commission (the “KFTC”), and the criminal investigation launches after the KFTC formally refers the case to the Prosecutor’s Office. Unlike KFTC, which has long been operating its own leniency policy, Prosecutor’s Office did not have any formally recognized leniency program.

However, with the introduction of the Criminal Leniency Guidelines, companies or individuals who voluntarily report their participation may now expect leniency from both the KFTC and Prosecutor’s Office. Bid rigging in auction, which is a violation of the Criminal Act, can also receive lenient sanctions under the Criminal Leniency Guidelines.

Details of the Criminal Leniency Guidelines

For an individual or a company to be considered a first priority applicant for penalty reduction or immunity under the Criminal Leniency Guidelines, the following requirements must be met:

(a) If the prosecution has not yet initiated the investigation – a leniency application should be filed before the prosecution obtains any information related to any cartel activity or any other necessary evidence, and fully cooperate in the prosecutorial investigation and trial.

(b) If the prosecution has already commenced the investigation – while the prosecution has not secured sufficient evidence, it must be recognized that the leniency applicant has cooperated with the prosecutorial investigation and trial (see Art. 6(1) and 6(2) of the Criminal Leniency Guidelines).

The leniency applicant for penalty reduction or immunity must submit supporting information, such as horizontal or

vertical agreements between the parties involved in the cartel activity, meeting minutes, and/or any written statements by relevant company executives or employees. Should the company or the individual is recognized as a first priority applicant, a criminal charge will not be filed. If the company or the individual is recognized as a second priority applicant, the prosecutor will recommend half of the applicable sanction.

Significance & Implications

In U.S. criminal proceedings, leniency and plea bargaining are quite common (whereby a criminal defendant negotiates with the prosecution in exchange for a lighter sentence or to have their charges dropped). However, in Korean criminal proceedings, plea bargaining has not been recognized, because of concerns that “the prosecution's power could be abused” or that “the truth could be distorted”.

In effect, under the newly established Criminal Leniency Guidelines, this is the first time in Korea that an element of plea bargaining has been introduced to the criminal investigation process (as the decision to prosecute can be decided based on the accused's statement).

Companies with potential cartel exposure risk will need to be familiar with not only the KFTC's leniency policy, but also the prosecution's leniency program. Going forward, it is important to closely monitor the related developments and trends in the application of the Criminal Leniency Guidelines. Should there be any related developments or changes, we will provide an update, or if you have any related questions, please contact us.

About Shin & Kim's Criminal Defense Practice

Recently, Shin & Kim's Criminal Defense Practice Group has further strengthened the depth and breadth of our bench with top talent recruits, including: former Prosecutor General of Korea (Mr. [Jin-Tae KIM](#)); former Deputy Chief Prosecutor of the Seoul Central District Prosecutors' Office (Ms. [Noh-Kong LEE](#)); the former Head of the Second Investigation Division of the Seoul Central District Prosecutors' Office (Mr. [Ho-Chul SHIN](#)); and a former prosecutor from the Seoul Central District Prosecutors' Office.

In addition, the former Commissioner of the Seoul Metropolitan Police Agency (Mr. [Jung-Hoon KIM](#)) has joined us, as well as Mr. Joo-Hyeong KIM, who joined as partner, after serving as a police officer for over 16 years and after graduating from the prestigious Korean National Police University.

The team works closely with other subject matter and industry experts, including the market-leading Antitrust & Competition Practice

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