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Contents

KOREAN LAW DEVELOPMENTS

ANTITRUST

Proposed amendment of antitrust law to relax restrictions on interlocking directorates, combinations with special purpose companies, and certain types of consolidations

Proposed legislation would amend the Monopoly Regulation and Fair Trade Act to lift antitrust restrictions for various situations involving interlocking directorates, special investment vehicles and certain group consolidating transactions. 2

Subcontracts statute amended to stiffen penalties for misappropriation of subcontractor's technology

A large company that "misappropriates" technology of a subcontractor will be liable for treble damages, under an amendment to the Fair Transactions in Subcontracting Act 2

Selected recent major enforcement decisions of Korea Fair Trade Commission 3

BANKING

Amendment to foreign exchange law will impose levy for non-deposit foreign currency obligations

Prompted by persisting concerns of instability due to sudden in- and outflows of foreign capital, new legislation will allow regulators to impose on banks, and possibly additional financial institutions, a levy of up to 0.5% on the amount of non-deposit foreign currency liabilities. 4

CORPORATE LAW

Korea passes major amendments to company law

Far-reaching amendments of the Commercial Code of Korea were promulgated on April 14, 2011, and will take effect on April 15, 2012. The changes to Korea's company law will expand in several ways the options available to corporations in terms of equity and debt structuring, dividends and consolidation. Other important provisions clarify directors' duties 5

TECHNOLOGY

New Industrial Convergence Promotion Act to expedite government clearances and provide stimulus for category-crossing innovations such as smartphones

The "Industrial Convergence Promotion Act", passed in the National Assembly on March 10, 2011 and promulgated on April 5, 2011, includes several measures aiming to bolster development and commercialization of hybrid or "convergence" products, such as smartphones. 9

TELECOMMUNICATIONS, MEDIA & TECHNOLOGY

Comprehensive personal data protection law enacted

Korea has passed a comprehensive law for protection of personal information, extending confidentiality requirements across a broad spectrum of information handling. The long-awaited Personal Information Protection Act was promulgated on March 29, 2011. 10

RECENT BKL WORK AND FIRM NEWS 12

- BKL handles sale of construction giant Hyundai E&C to Hyundai Motors for US$4.5 billion
- BKL advises in first Korean expansion into Japan homeshopping sector
- LG CNS forms IT services joint venture in Japan with SBI Group
- BKL named "Korean Law Firm of the Year" by Chambers
- Arbitration "Win of the Year", global Top 30 ranking for BKL team
- BKL awarded Asia-Pacific "M&A Transaction of the Year" by Global Competition Review

ANTITRUST

Proposed amendment of antitrust law to relax restrictions on interlocking directorates, combinations with special purpose companies, and certain types of consolidations

Proposed legislation would amend the Monopoly Regulation and Fair Trade Act (**MRFTA**) to lift antitrust restrictions for various situations involving interlocking directorates, special investment vehicles and certain group consolidating transactions. The bill was submitted to the National Assembly on March 14, 2011 and is under review. At present, key provisions are as follows.

Under current law, appointment of a single director in common to two companies will trigger antitrust review, with the required filing of a business combination report. If amended as now proposed, however, the MRFTA will exempt from this requirement a situation in which the shared directors amount to less than one-third of the total number of board members in the target company.

Generally exempted from the filing requirement, under the amendment, will be any sort of business combination with a special purpose company set up for investment in a specific sector, such as an asset-backed securitization company or overseas resource development company. Thus, in the case of such investment vehicles, the bill would allow an acquisition, company formation or interlocking directorate, for example, without an antitrust filing.

Currently, affiliates of a large business group are subject to a prohibition on cross-shareholdings, and limits on a holding company's stake in affiliates of direct and indirect subsidiaries. Under the pending bill, the MRFTA would, for a limited period, offer an exception from these restrictions, in the case of cross-shareholdings arising from comprehensive stock swaps and stock transfers.

The pending amendments would also modify some features of the MRFTA administrative and enforcement apparatus. Among other things, it includes a statutory basis for imposing enhanced penalties on companies whose directors and executive officers are involved in MRFTA violations. At the same time, it permits the antitrust agency to evaluate company self-compliance programs, and to mitigate penalties for companies that have been superior in that regard. The bill also would extend, from 60 to 90 days, the maximum mediation period for fair trade disputes submitted to the Korea Fair Mediation Agency.

Subcontracts statute amended to stiffen penalties for misappropriation of subcontractor's technology

A large company that "misappropriates" technology of a subcontractor will be liable for treble damages, under an amendment to the Fair Transactions in Subcontracting Act (**Subcontracts Law**). The Subcontracts Law already provided (under a previous amendment) for a surcharge of twice the subcontract amount where a contractor "takes" their technology. The latest amendment, passed on March 11, 2011, provides for damages to subcontractors, dividing "taking" into "demanding" technology and "misappropriating" technology. Damages, at 1X their full amount, apply in cases of "demanding" technology, but treble damages will apply to cases of "misappropriating" technology. The amendment will take effect on June 29, 2011.

This latest development continues a recent trend of reinforced sanctions under the Subcontracts Law. Following the prior amendment, effective from mid-2010, that adopted surcharges for "taking" subcontractor technology, the Korea Fair Trade Commission also revised its enforcement standards at the end of 2010, to allow for certain augmented penalties for violation of statute.

Selected recent major enforcement decisions of Korea Fair Trade Commission

- **Penalties for collusion in non-DRM music distribution:** The Fair Trade Commission (**FTC**) has imposed KRW 18.8 billion (about US$17 million) in fines, as well as imposing a corrective order and filing a criminal complaint, against a group of 15 companies handling online music service and other music distribution, for collusion in their prices and other terms in relation to non-DRM music (music not covered by digital rights management). As the FTC concluded in its announcement of March 1, 2011, the collusion followed a 2008 decision, among musicians' and musical producers' associations, to modify the music copyright license structure so as to broadly permit use of non-DRM music. The colluding companies agreed, among other things, to not offer an option of a flat monthly charge for unlimited non-DRM access, and to abide by designated prices and lists of offered items.

  The case is the first instance of a major FTC order in the online music industry.

- **KRW 56.5 billion fine for collusion in electrical cable industry:** The FTC has imposed KRW 56.5 billion (about US$50 million) in fines on 13 companies in the electrical cable industry, for price collusion in their sales and collusion in procurement contract bidding. The fines, decided in February 2011, included KRW 15.8 billion for collusion in bidding for Korea Telecom cable procurement. Additionally, the FTC imposed corrective orders and lodged criminal complaints against the colluding firms. The broad FTC investigation, which has revealed pervasive collusion in the industry, appears likely to expand further, to cover similar products as well. bkl

- by Sanghoon Shin (sanghoon.shin@bkl.co.kr)

BANKING

Amendment to foreign exchange law will impose levy for non-deposit foreign currency obligations

Prompted by persisting concerns of instability due to sudden in- and outflows of foreign capital, new legislation passed on April 5, 2011 will allow regulators to impose on banks, and possibly additional financial institutions, a levy of up to 0.5% on the amount of non-deposit foreign currency liabilities (or total foreign currency-denominated debt exclusive of foreign currency-denominated deposits), with the proceeds of the levy to go to a separate sub-account within the nation's foreign exchange equalization fund.

The amendment is expected to be promulgated in May 2011, and will take effect 6 months later, i.e. probably in October 2011. Various details, including the scope of financial institutions affected, will be determined in a further administrative decree, likely to issue during this summer.

Under the rules, the "foreign exchange prudential stability levy" will be payable in U.S. dollars. Regulators will be able to impose the levy at different rates, generally within the limit of 0.5%, varying with debt maturities and favoring longer ones. However, the rate may be raised to 1.0% on incremental portions of foreign currency obligations, for a period of up to 6 months, when the government believes international financial market instability and abrupt foreign currency inflows will do significant damage to the domestic market and economy.

The amended law represents another in a series of initiatives by the government intended to address foreign exchange concerns, including a "policy to ease capital in/outflow volatility," promulgated in June 2010, which imposes limits on banks' aggregate foreign currency derivatives position as a percentage of their equity capital, and the late-2010 repeal of tax breaks for foreign investment in Korean sovereign bonds and currency stabilization securities. bkl

- by Eui Jong (EJ) Chung (ej.chung@bkl.co.kr)

CORPORATE LAW

Korea passes major amendments to company law

Far-reaching amendments of the Commercial Code of Korea (**KCC**) were promulgated on April 14, 2011, and will take effect on April 15, 2012.[1] The changes to Korea's company law will expand in several ways the options available to corporations in terms of equity and debt structuring, dividends and consolidation. The changes will for example: permit special non- or limited-voting classes of shares; generally permit stock buybacks, from dividendable earnings; eliminate the current net assets-geared limit on bonds; allow dividends to be decided at the board rather than shareholders level; and permit a 95% shareholder to "squeeze-out" minority investors, while also giving the latter a put right.

Other important provisions clarify directors' duties and potential liability, systematize the position of "executive officer" and, for listed companies, newly require a compliance officer. The amended KCC will introduce a system for electronic registration of shares and bonds, including transfers and pledges.

There will also be two new types of business entity, one a "partnership association" and the other a partnership-like "limited liability company".

Following is a summary of the new provisions under the amended KCC.

A. EQUITY STRUCTURE OF CORPORATIONS

Under the amended KCC, a corporation (*chusik hoesa*) will have significantly greater flexibility in shaping its capital structure. Note that, in order for a corporation to implement such new features, in most cases this will involve an amendment of its articles of incorporation, requiring a supermajority shareholder approval.

Features of shares; special classes of shares:

- Corporations will be newly able to issue non-voting common shares, as well as non-voting preferred shares. The amended KCC will permit classes of shares with certain types of special features. For example, shares may have voting rights restricted to specified kinds of matters. (Conceivably, voting rights might for example be limited to proposed M&A transactions, but as yet there is no specific guidance on the permissible scope of the limitations.)

- Convertible shares may allow for conversion at the election of the issuer, and not only at the election of the holder.

- Corporations will be able to issue shares without par value. Naturally, no-par shares will not be subject to restrictions on issuing shares at below par. However, 50% or more of the proceeds of a no-par issue must go to paid-in capital.

- Redeemable shares may be defined as redeemable in assets rather than only in cash.

Stock repurchases (share buybacks): Currently, stock repurchases are permitted only in limited situations. Under the amended KCC, however, a corporation will be generally free to repurchase stock from shareholders on a pro rata basis, or in the open market such as on the Korea Exchange, provided that the funds spent must be within the amount of earnings that would be available for distribution as dividends.

Payment for shares by setoff: The amended KCC will newly allow such payment for newly issued shares by setoff of claims, with the issuer's consent. This will probably, among other things, make it easier for corporations to convert debt into equity.

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1 For a fuller summary of the amendments, please see BKL Legal Update of March 29, 2011, "Korea Passes Major Amendments to Company Law".

B. BONDS

No KCC ceiling on bond issuances: Currently a corporation cannot issue bonds exceeding, in aggregate principal amount, four times its net assets as of the latest fiscal year. The amended KCC will eliminate this constraint.

Exchangeable, participating and other types of bonds: The amended KCC will permit unlisted corporations, as well as listed ones, to issue exchangeable bonds and participating bonds, and also certain types of derivative-linked bonds.

C. DIVIDENDS AND RESERVES

Approval of financial statements and dividends: Under current law, annual financial statements, including the proposed annual dividend, require approval at a general shareholders meeting. The amended KCC will allow the Board (if so provided in the articles of incorporation) to finally approve audited financial statements, including the dividends, so long as the financials have an unqualified opinion of the independent auditor and also are approved by the company's Board-level statutory auditors.

In-kind dividends: The KCC will newly permit dividends in the form of distribution of assets, where the articles of incorporation so provide, rather than only in a cash or stock dividend. This would appear to allow for, among other things, a distribution of securities owned by the corporation.

Mandatory reserves: The amended KCC relaxes the existing reserve requirements.

D. CONSOLIDATION

Squeeze-out and sell-out rights: Under the current KCC, generally it is infeasible for a majority shareholder to "squeeze out" minority shareholders, other than by a transaction that yields fractional shares. Under the amended KCC, however, a shareholder owning 95% or more of the outstanding stock will be entitled to buy out the shares of minority shareholders. At the same time, each minority shareholder in this situation will be entitled to put its shares to the majority shareholder. Unless agreed between the parties, the sale price for the shares is to be determined by a court, based on fair value.

Cash-out merger; triangular merger: In a merger, the amended KCC will generally permit the surviving company to give cash or other assets, and not only shares in itself, as the merger consideration, and also to give shares issued by a parent company. Basically, this will permit a cash-out merger, and also make possible a triangular merger (with shareholders of the extinguishing company taking shares in the surviving company's parent).

E. ELECTRONIC REGISTRATION OF SECURITIES

The amendments newly introduce a system for voluntary electronic registration of corporate shares and bonds. Particulars of the system remain to be further decided, and will follow in separate legislation. Resort to electronic registration will obviate the need for physical certificates, including for purposes of transfer and pledge.

F. DUTIES AND LIABILITIES OF DIRECTORS

The amendments will reinforce and supplement fiduciary-type restrictions upon directors of corporations, while accommodating a monetary cap on liability.

Restrictions on self-dealing: The amendments expand the scope of director "self-dealing"—generally limited, under the current KCC, to company transactions with the director—to transactions with family members of a certain scope, and companies 50% or more owned by the group of relatives. Also, to authorize such transactions, the KCC will newly require approval by a supermajority of 2/3 of the incumbent directors.

Usurping of business opportunity: Filling a gap in the current KCC, the amended KCC will specifically forbid a director from usurping a corporate business opportunity, except upon Board approval by 2/3 of incumbent directors.

Limitation or release of liability: Under the current KCC, directors' civil liability to the corporation may be limited, or released, but only upon unanimous consent of all the shareholders. The amended KCC will permit a corporation to limit the liability to the amount of six times the director's annual remuneration, except in case of gross negligence or worse. The limitation would, however, need to be set out in the articles of incorporation, requiring supermajority shareholder approval.

G. EXECUTIVE AND COMPLIANCE OFFICERS

Executive officers: The amended KCC will permit appointment of "executive officers", rather than the familiar "representative director", to be in charge of company management.

Compliance requirements: Listed companies, falling within criteria to be decided, will be required to adopt internal compliance regulations and appoint a qualified legal compliance officer.

H. NEW TYPES OF BUSINESS ENTITY; CHANGES TO LIMITED COMPANY

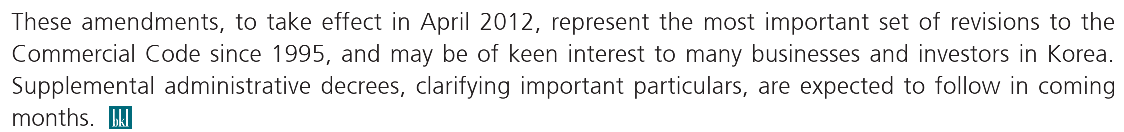
Two new entities:

The amended KCC provides for two new types of business entity, on top of the existing ones. Currently there are the following entities under the KCC: (i) the *chusik hoesa* or corporation; (ii) the *yuhan hoesa* or limited company; (iii) the *hapmyung hoesa* (often "general partnership"); and (iv) the *hapja hoesa* (often "limited partnership"). Also recognized, under the Korean Civil Code (rather than Commercial Code) and tax laws, is a *johap* or "association", which is a contractual group rather than a juridical entity. The amended KCC introduces the following two types of entity:

1. The *yuhan chaekim hoesa*, literally "limited liability company" or LLC, is based on the American limited liability company and the Japanese *godo kaisha*. In internal matters such as formation, governance, and investors' entry and exit, the new LLC resembles a limited partnership (*hapja hoesa*). However, the LLC may be subject to two-tier taxation (like the *yuhan hoesa* or limited company): At present there is no sign that tax laws will be revised to accord it the pass-through treatment of a partnership. The LLC will have a manager, who may be an investor or "member", and who may be a corporation or other juridical entity.
2. The new *hapja johap* or "partnership association", inspired by the American limited partnership, is somewhat similar to the *hapja hoesa* or limited partnership. However, like the Civil Code *johap* or association, the *hapja johap* is not a juridical entity. Further, the partnership association's limited partners may participate in management, if the charter says so, and they (like general partners) may make their contribution in credit or labor, in lieu of cash or tangible assets. It seems probable that the partnership association, like the existing *johap*, will allow pass-through tax treatment for its members, but this would depend on amendment of the tax laws.

Limited company (*yuhan hoesa*) requirements revised: The amended KCC relaxes constraints upon the existing limited company (*yuhan hoesa*), with the effect of rendering it more like a corporation. The current ceiling on the number of members or "unitholders", 50, will be eliminated, and the units will be freely transferrable, without requiring approval at a unitholders' meeting. It will also be easier to convert a limited company into a corporation: Under the amended KCC, the company's charter may permit conversion with only a 2/3 supermajority unitholders' approval, rather than the current requirement of unanimous approval.

CONCLUSION



These amendments, to take effect in April 2012, represent the most important set of revisions to the Commercial Code since 1995, and may be of keen interest to many businesses and investors in Korea. Supplemental administrative decrees, clarifying important particulars, are expected to follow in coming months.

- by Jun Kul Yoo (junkul.yoo@bkl.co.kr)
Hyomin Kim (hyomin.kim@bkl.co.kr)

TECHNOLOGY

New Industrial Convergence Promotion Act to expedite government clearances and provide stimulus for category-crossing innovations such as smartphones

The "Industrial Convergence Promotion Act", passed in the National Assembly on March 10, 2011 and promulgated on April 5, 2011, includes several measures aiming to bolster development and commercialization of hybrid or "convergence" products, such as smartphones, printer/fax/copiers and other mixed category devices, by among other things providing a fallback path for obtaining government clearance in case of problems with existing category-based rules, and a program of government subsidies and other support for R&D.

The Act will take effect on October 6, 2011. Further rules will issue later this year, in the executive enforcement decree and ensuing regulations. A high level committee will be appointed to draft and implement further plans in this direction.

The legislation was driven largely by perceived flaws in the existing system for product standards and approvals. In a recent case, approvals for a truck-forklift hybrid were held up on grounds of uncertainty as to whether to classify it as a truck or as a forklift, resulting in significant lost sales, both in Korea and overseas. In another case, a company was poised to commercialize a "wing ship" design (an airplane-like marine vessel) but was stalled by the lack of pertinent safety standards. The new statute aims in part to avoid such hitches.

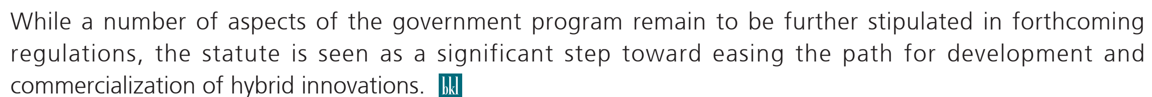
The program under the statute has roughly three main parts:

- First, it calls for the government to come up with successive 5-year plans, and annual implementation plans, to promote "industrial convergence" (defined basically as the productive combination of existing technologies or industries) and, in particular, to stimulate R&D as well as commercialization. A development committee, including various agency heads, is to administer these plans, including budget matters and relevant standards and certifications. There will also be an ombudsman's office.

- In potentially the key provisions in the near term, the statute designates a new, fallback avenue for obtaining product clearance: The maker of a new convergence product may apply to the relevant government agency for a certification of compatibility with applicable standards, to be determined for this purpose, where such standards are not already in place or are inapt; the agency must then procure review by the suitable institute of standards, and determine compatibility, within 6 months after the application. The agency may attach conditions to better ensure safety, or require insurance to be taken out. Once certified, the convergence product will be deemed to have received any clearances under relevant product regulations. The precise mechanism for this certification process will depend on further rules, expected to issue in the 4th quarter of 2011.

- The statute contains general provisions authorizing (but not requiring) the government to pursue various forms of training, IT support, subsidies and other assistance for nascent convergence industries.

While a number of aspects of the government program remain to be further stipulated in forthcoming regulations, the statute is seen as a significant step toward easing the path for development and commercialization of hybrid innovations.



–by Wook Yoo (yoo.wook@bkl.co.kr)
Sung Ho Kim (sungho.kim@bkl.co.kr)

Note: Bae, Kim & Lee LLC advised the Ministry of Knowledge Economy throughout preparation and drafting, since February 2010, of the bill that was passed as the Industrial Convergence Promotion Act. Currently, BKL is involved in preparation of the administrative enforcement decree and related regulations. The BKL team includes partners Yang Ho Oh, Wook Yoo, Han Gil Joo and Sung Ho Kim.

TELECOMMUNICATIONS, MEDIA & TECHNOLOGY

Comprehensive personal data protection law enacted

Korea has passed a comprehensive law for protection of personal information, extending confidentiality requirements across a broad spectrum of information handling. The long-awaited Personal Information Protection Act (**PIPA**) was promulgated on March 29, 2011. Whereas existing data protection statutes are limited in the entities and types of information they cover, the new law will broadly restrict collection and handling of any private information, by any person, company or government agency. Generally the individual's informed consent will be required for any collection, use or disclosure of personal information. The new law also puts limits on the degree to which individuals may be requested for personal data, and limits on the use of CCTV; provides for internal controls; and provides for class action mediation and litigation of data protection disputes.

PIPA will take effect 6 months from that date, i.e. on **September 30, 2011**, with the exception of certain provisions as noted below. PIPA will overlap the two main existing data protection statutes, which, however, will for the most part continue in force, namely the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. (**IC Network Act**), which applies to telecom service providers, and the Use and Protection of Credit Information Act (**Credit Information Act**), which applies to banks and other persons handling credit information. Generally, in situations where PIPA rules vary from these existing laws, the restrictions more protective of personal information should apply. (PIPA will, however, render obsolete a related law on data protection by government agencies.)

A number of the data protection practices required under PIPA are already in widespread use among Korean businesses, largely due to the penumbral influence of the IC Network Act and Credit Information Act. Nevertheless, PIPA is a landmark piece of legislation, in encoding such privacy rules for virtually all segments of Korean business.

The main provisions of PIPA are in summary as follows.

First, PIPA applies broadly to "personal information" and any "handler of personal information". "Personal information" means any information from which, by itself or combined with other information, an individual can be identified, whether from his name, citizen's I.D. number, image or other attributes. A "handler of personal information" (**data handler**) means any person any government entity, company, individual or other person that (directly or through a third party) "handles personal information in order to manage personal information files for work purposes." PIPA applies to both electronically and manually recorded information—online and soft data as well as offline and paper.

Broadly, in order for any data handler to collect or use personal information, or to disclose any such information to a third party, the data handler must get the subject's consent, after informing him/her of the purposes of collection or use of the information, the types of information sought, the period of retention and use, and other details. There are some exceptions, in special circumstances. (Disclosure of information overseas, as opposed to in-country, may be subject to special conditions, to be considered by the Ministry of Public Administration and Security.) Handling of sensitive information, such as concerning one's beliefs, and uniquely personal information such as one's I.D. number, will require specific consent, or else a law or regulation authorizing the same.

Further, apart from certain types of companies and institutions (such as banks), data handlers will have to furnish a way for people to sign up on their websites other than by entering their I.D. numbers. (This particular provision, and related provisions for fines in case of violation, come into effect on March 30, 2012.)

PIPA at last gives clear rules on video images: CCTVs, and any other video recording and transmission devices, may be installed and operated only to the extent necessary for crime prevention, and other limited purposes. Sound recording is banned.

Data handlers are required to draw up and publish a personal information handling policy, including such particulars as period for retention of information. They must also designate an individual who will be generally in charge of handling of the information and responsible for the protection of it. In case of a leak of personal information, the individuals involved must be notified without delay of the details and circumstances, and the remedial steps planned. (Similar rules already apply in the telecom and financial sector, under the existing statutes.)

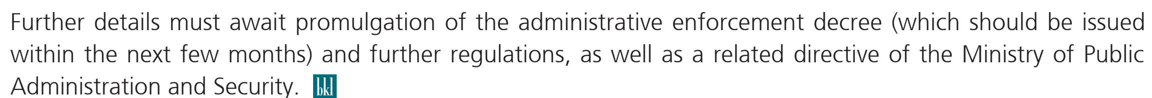
Individuals may sue data handlers for damages resulting from their breach of PIPA provisions. Significantly, the PIPA places an evidentiary burden on the data handler, to prove there was no negligence on its part in handling information; otherwise, it cannot avoid liability, of some degree. At the same time, in case of loss due to information theft, leakage etc., the data handler can reduce its liability by showing it was not remiss in observing and monitoring its PIPA compliance.

PIPA provides for the setup of a committee to handle mediation of personal information disputes. (This will supersede and replace the analogous committee set up under the IC Network Act.)

Collective mediation or class action litigation

In a personal information-related dispute where multiple individuals incur injuries, or violations of rights, that are similar in kind, an application for mediation may be submitted to the committee by the individuals concerned or the data handler, or by a government body, or relevant consumer group or NGO. The committee is to publicly announce whether it will mediate the dispute.

In the event the data handler refuses to go along with mediation, or to respect the committee's conclusions, PIPA allows consumer groups or other interested parties to pursue a collective or class action lawsuit, for injunctive relief against any activities of the data handler that are complained of. This special avenue under PIPA is only for injunctive relief. For money damages, individuals may resort to litigation under the general Civil Procedure Act.



Further details must await promulgation of the administrative enforcement decree (which should be issued within the next few months) and further regulations, as well as a related directive of the Ministry of Public Administration and Security.

–by Kwang Hyun Ryoo (kh.ryoo@bkl.co.kr)

RECENT BKL WORK AND FIRM NEWS

BKL handles sale of construction giant Hyundai E&C to Hyundai Motors for US$4.5 billion

Bae, Kim & Lee LLC advised Korea Exchange Bank and eight other financial institutions in their joint sale of a controlling 34.88% stake in Hyundai Engineering & Construction (Hyundai E&C), Korea's largest construction firm, to the Hyundai Motors Group for KRW 4.96 trillion (about US$4.5 billion). The final payment and closing of the transaction on April 1, 2011 culminates an auction process started in June 2010 that turned into a fierce contest for Hyundai E&C between the Hyundai Motors Group (which also includes Kia Motors) and the Hyundai Group (which includes Hyundai Merchant Marine), rival successors of the former Hyundai conglomerate.

BKL advised the sellers group throughout the planning and conduct of the auction and sale. In addition, BKL handled the sellers' pivotal defense against a suit instituted in mid-process by the Hyundai Group, which, having been first picked as preferred bidder and then rejected, sought to block negotiation of the deal with Hyundai Motors.

The deal closing on April 1 concludes a noteworthy chapter in Korean business annals. A cornerstone of the Hyundai conglomerate that started dispersing in the 1997-1998 Asian Financial Crisis, Hyundai E&C had been controlled by its lenders since 2001, when it entered a creditors' workout process. (BKL were also the creditors' main counsel in the workout, till its conclusion in 2006.) A debt-equity swap gave creditors originally an 80% stake, of which there remained the 34.88% portion, ample for control. Bidders for the stake soon narrowed to the Hyundai Motors Group and the Hyundai Group, led by rival factions of Hyundai's founding family. Hyundai E&C was widely seen to have special symbolic value for each side, and certainly it held significance for the Hyundai Group given Hyundai E&C's 8% stake in group flagship Hyundai Merchant Marine.

At first the Hyundai Group outbid the larger and widely favored Hyundai Motors Group, with a KRW 5.51 trillion offer (about US$5 billion), and signed an MOU with the sellers. As questions about financing for the bid persisted, the sellers terminated that MOU in December 2010, and signed a new one with Hyundai Motors. In December 2010, the Hyundai Group filed suit to block these steps. The sellers prevailed, however, with BKL successfully arguing the case at the initial trial and on the appeal by the Hyundai Group. The appellate decision, issued on February 15, 2011, cleared the way for the Hyundai Motors Group.

The BKL advisory team on the deal was led by partners Dong Woo Seo and Sky Yang, and included Kyu Sang Chung, Young Chan Yeo and Eun Joo Kang, of our M&A and Securities practice groups. For the litigation opposite the Hyundai Group, the BKL team included Young Bo Noh, Wee Soo Han, Dong Wook Kang and Kyu Ho Lee.

BKL advises in first Korean expansion into Japan homeshopping sector

BKL advised CJ O Shopping, the TV shopping arm of leading Korean consumer products group CJ, in its negotiated acquisition of a 62.6% stake in Prime Shopping, a homeshopping network in Japan. The buyout of the controlling stake, which was completed in late January 2011, represents the first Korean expansion into TV shopping channels in Japan.

The deal follows on the CJ group's high-profile success in operating a homeshopping network in China (through joint ventures) since 2004, and the "Star CJ" channel in India since 2009. Prime Shopping, set up in 1995, is one of Japan's major TV shopping channels, on platforms including cable and satellite. Post-acquisition, the company will be known as CJ Prime Shopping.

The BKL team, led by partners Joonki Yi and Chin Pyo Park of BKL's M&A practice group, assisted CJ O Shopping throughout the negotiation and execution of the deal, which involves a shareholders' agreement in addition to the acquisition documents. The BKL team included associate Chol Min Kim, a Japanese attorney.

LG CNS forms IT services joint venture in Japan with SBI Group

BKL advised LG CNS, a leading information technology provider in Korea, in the successful formation of a joint venture company in Japan with the SBI Group as local partners. LG CNS's 51% stake in the new company, SBI-LG Systems, represents the first major strategic investment in Japan by a Korean IT firm. Set up in January 2011, the joint venture is targeted mainly to the financial services sector in Japan. Initial clientele will include banks and securities houses of the SBI conglomerate, which was previously affiliated with the SoftBank group. LG CNS, a part of the LG Group of Korea, is an integrated IT services provider.

BKL's extensive deal work, spanning negotiations, documentation and regulatory tasks, was led by partners Joonki Yi and Jun Kul Yoo of our Corporate Practice Group. Assisting on the deal were associates In Gi Min and Dae Hyun Baek, and foreign legal consultant Danny Hwang.

BKL named "Korean Law Firm of the Year" by Chambers

BKL has been named the 2011 "Korean Law Firm of the Year" by Chambers & Partners, a leading source for evaluation of legal professionals worldwide. One of Chambers' annual Asia-Pacific Awards announced in Hong Kong on April 21, 2011, the Korean firm award rates BKL as pre-eminent among a field of distinguished firms in Seoul considered for the prize, based on scope and sophistication of work during the past year, excellence in client service, and growth and strategic development.

The award also reaffirms BKL's broad strengths in corporate/M&A and other practice areas, as recognized by its high rankings in the Chambers' Asia-Pacific 2011 guide announced earlier this year.

London-based Chambers prepares assessments of legal advisors around the world based on in-depth independent research, including interviews with clients. The rankings apply criteria such as technical skill, standards of service, commercial astuteness, promptness and efficiency, with particular weight given to clients' opinions

Arbitration “Win of the Year”, global Top 30 ranking for BKL team

BKL has received the “Arbitration Win of the Year” award for 2010, judged by the leading specialists’ journal Global Arbitration Review (GAR), for the victory on behalf of shipbuilder Hyundai Heavy Industries (HHI) in an arbitration against Abu Dhabi-owned International Petroleum Investment Company (IPIC). The arbitration resulted in HHI’s takeover of Hyundai Oilbank, one of Korea’s largest oil refiners, from IPIC at a discounted price totaling some US$2.3 billion. The judgment appears to be unprecedented in arbitration annals worldwide, in achieving enforcement of a punitive call option of this scale under a shareholders agreement. It is one of the largest arbitration awards ever in Korea, and among the largest awards under International Chamber of Commerce rules in recent years.

The BKL arbitration group, led by partner Kevin Kim, shared the Win of the Year with their co-counsel on the case, a Debevoise & Plimpton team led by partners David Rivkin and Christopher Tahbaz. The prize, one of the GAR’s annual honors announced on March 3, 2011, singled out the HHI victory amid an extraordinary field of high-profile arbitral judgments contending for the distinction this year, including for example Chevron’s win on claims against the nation of Ecuador, and victories against Russia by Yukos shareholders.

The Global Arbitration Review also named BKL to the “GAR 30”, the busiest 30 law firms worldwide in international arbitration, based on case work advancing to the key “merits” phase. BKL thus becomes the first and only Korean firm ever to enter the GAR 30, and one of only two Asian firms currently in the GAR 30. While assessed annually, the GAR 30 rankings are retrospective, covering in this case the period 2008 to 2010.

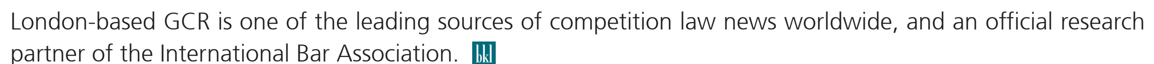
BKL awarded Asia-Pacific “M&A Transaction of the Year” by Global Competition Review

BKL won Global Competition Review’s “M&A Transaction of the Year” award (Asia-Pacific, Middle East and Africa) for BKL’s role in opposing the BHP Billiton/Rio Tinto joint venture. Announced in Miami on February 4, 2011, the award recognizes the scale and significance of the proposed collaboration of the Australian-British mining concerns—and BKL’s achievement in obtaining, for a group of Japanese steelmakers, a key antitrust finding in Korea adverse to the venture.

The award is among the annual law and consultancy honors given by the Global Competition Review for 2011, based on responses from over 1,500 antitrust counsel, economists and academics. The award is seen as particular credit to the BKL antitrust team led by Keum Seok Oh, Seong Un Yun and Sanghoon Shin.

Sharing in the award were several leading antitrust counsel and economic consultancies in Australia, Europe, Japan and the US, who joined with BKL in the coordinated multi-jurisdictional challenges to the BHP Billiton/Rio Tinto deal.

London-based GCR is one of the leading sources of competition law news worldwide, and an official research partner of the International Bar Association.



Seoul Office:
647-15 Yoksam, Kangnam, Seoul 135-723, Korea
T 82.2.3404.0000 **F** 82.2.3404.0001 **E** bkl@bkl.co.kr

Beijing Office:
Unit 06, 17F, Tower 2, China Central Place, No.79,
Jianguo Road, Chaoyang District, Beijing, China
T 86.10.5903.3500 **F** 86.10.5903.3510 **E** beijing@bkl.co.kr

Shanghai Office:
Unit 2503, 17F, Tower B, Dawning Center No.500,
Hongbaoshi Road, Changning District, Shanghai, China
T 86.21.6085.2900 **F** 86.21.6085.2929 **E** shanghai@bkl.co.kr