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## COMPREHENSIVE AMENDMENT TO THE ACT ON PRIVATE INTERNATIONAL LAW ON INTERNATIONAL JURISDICTION

The proposed comprehensive amendment to the Private International Law (the “**amended PIL**”) was approved by the plenary session of the National Assembly on December 9, 2021 and is effective from July 5, 2022. As a result of this comprehensive amendment, the amended PIL has 35 new provisions relating to international jurisdiction in the general provisions and the respective provisions, providing detailed rules compared to the previous PIL which provided only a single article setting out the principle. Seven provisions out of the existing 62 provisions have been amended as well. Due to the amendment, enhanced prediction regarding international jurisdiction has become possible, and a new system is now in place to ensure propriety in specific cases relating to international jurisdiction.

The amended PIL includes the following newly added provisions: i) a “General Principle” provision presenting the concrete criteria of “equity between parties and adequate, prompt or economic trial,” as offered by court precedents, regarding the meaning of “substantively related”, which is in principle the standard for international jurisdiction; ii) a separate “International Jurisdiction” section, which contains the provisions corresponding to the jurisdiction provisions under the Civil Procedure Act, including general jurisdiction, jurisdiction in relevant cases, jurisdiction over counterclaim, jurisdiction by agreement, jurisdiction by pleading, exclusive jurisdiction and others; iii) new provisions relating to international parallel proceedings, non-exercise of international jurisdiction for reasonable allocation of international jurisdiction, and jurisdiction over preservative measure; and iv) in the respective provisions, new provisions relating to jurisdiction over lawsuits on intellectual property right contracts or infringements, lawsuits regarding contract or tort, and consumer contracts.

### Changhyun Lee

Partner

T 82.2.3404.0467

E [changhyun.lee@bkl.co.kr](mailto:changhyun.lee@bkl.co.kr)

### Woojae Kim

Partner

T 82.2.3404.6589

E [woojae.kim@bkl.co.kr](mailto:woojae.kim@bkl.co.kr)

### Sodam Kim

Associate

T 82.2.3404.7648

E [sodam.kim@bkl.co.kr](mailto:sodam.kim@bkl.co.kr)

### I. Presenting Concrete Criteria for Determining International Jurisdiction (Article 2)

The amended PIL sets forth in Article 2(1) the criteria for determining international jurisdiction as provided by the relevant court precedents. Further, in the limited circumstances that Private International Law or other statutes or treaties are silent as regards international jurisdiction, the amended PIL permits a court to determine international jurisdiction by taking into consideration the jurisdiction provisions of the relevant domestic laws and considering the unique nature of

international jurisdiction.<sup>1</sup>

## **II. New Detailed Provisions on International Jurisdiction Corresponding to Jurisdiction Provisions in the Civil Procedure Act**

### **A. General jurisdiction (Article 3)**

The amended PIL provides for general jurisdiction in Article 3 by expressly stating that a Korean court has jurisdiction over a lawsuit filed against any person having habitual residence in Korea, or any corporation having a principal office, a place of business or a base under the articles of incorporation or a principal center of management in Korea, or a corporation or entity incorporated in accordance with Korean law.

### **B. Special jurisdiction (Articles 3 through 10)**

#### **1. Special jurisdiction based on the location of office or a place of office or business activity (Article 4)**

Article 4(1) of the amended PIL states that a Korean court has international jurisdiction over a lawsuit against any person, corporation or entity having an office or a place of business in Korea in the event that the lawsuit is "related to the business" of such office or a place of business in Korea. In addition, Article 4(2) states that a lawsuit can be filed against a person, corporation or entity carrying out a "continuous and organized business or business activity" "toward" Korea in relation to such business or business activity. This provision would have significant implications on e-commerce.

#### **2. Special jurisdiction based on the location of property (Article 5)**

If the subject matter of a lawsuit is property or the defendant's property subject to attachment is located in Korea, a lawsuit can be filed with the local Korean court in the area in which the property in question is located. However, even where the property subject to attachment is located in Korea, special jurisdiction fails if the subject matter in dispute has no or little relevance with Korea or the value of such property is *de minimis*.

#### **3. International jurisdiction over multiple relevant claims (Article 6)**

If a Korean court has international jurisdiction over one of multiple claims that are closely related to one another, such multiple claims can be consolidated to be heard by the Korean court. The aforementioned "closely related" requirement applies even where there are two or more defendants, and if a Korean court has general jurisdiction over one of the co-defendants under Article 3 of the amended PIL, lawsuits against the co-defendants can be filed as a single lawsuit with the Korean court only if it is necessary to avoid contradictory proceedings because claims against the first defendant are closely related to claims against the other co-defendants.

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<sup>1</sup> Article 2 (General Principle)

(1) In case a party or a case in dispute is substantively related to the Republic of Korea, a court of the Republic of Korea (hereinafter referred to as a "court") shall have international jurisdiction. In this case, in determining the existence of "substantive relatedness," the court shall follow reasonable principles that are compatible to the ideology of the allocation of international jurisdiction that equity between parties and adequate, prompt or economic trial should be sought.

(2) If this Act, other statutes of the Republic of Korea or treaties are silent as regards international jurisdiction, a court shall judge whether or not it has international jurisdiction in light of jurisdictional provisions of domestic laws and shall fully consider the unique nature of international jurisdiction in light of the purport of the provision of paragraph (1).

4. International jurisdiction over a counterclaim (Article 7)

A defendant can file a counterclaim with the court where the principal lawsuit is pending, only if i) the court has international jurisdiction over the principal lawsuit; ii) the filing of the counterclaim would not significantly delay the proceedings; and iii) the counterclaim is closely related, in terms of the manner in which the claim is being asserted or defended, with the principal lawsuit.

5. Jurisdiction by agreement (Article 8)

While Article 8(1) of the amended PIL allows parties to agree on international jurisdiction, the amended PIL invalidates such agreement on international jurisdiction: a) if the agreement is ineffective in accordance with the laws of the country that has international jurisdiction on the basis of the agreement; b) if either party to the agreement had no capacity to enter into an agreement; c) if, under Korean law or a treaty, a country other than the country agreed by the parties have exclusive international jurisdiction over the lawsuit; or d) if accepting the agreement is evidently contrary to good morals and public policy in the country where the lawsuit is pending.

An agreement on international jurisdiction must be made in writing, including by email or other electronic means of communication. If such agreement takes the form of an article in a contract between the parties, the invalidity of any of the other provisions during the term of the contract will not affect the provision on the agreement on international jurisdiction (Article 8(2) & (4)).

Jurisdiction by agreement is presumed to be exclusive (Article 8(3)). If there exists an agreement on exclusive jurisdiction of a choice of court, a Korean court is required to reject a lawsuit filed with the Korean court, unless: a) the agreement is ineffective under Paragraph (1); b) the court has jurisdiction to hear the case in accordance with Article 9; c) a court of the country having international jurisdiction as per the parties' agreement decides not to hear the case; or d) there exists clear circumstances that prevent the agreement from being properly enforced (Article 8(5)). Here, a foreign court that is determined to be the court having jurisdiction as per the parties' agreement is no longer required to be "reasonably related" to the case, as required by court precedents.

6. Jurisdiction by pleading (Article 9)

If a defendant pleads as to the merits of a case before a Korean court without asserting the lack of international jurisdiction, or pleads at the pre-hearing meeting, the Korean court is to have international jurisdiction over the case.

7. Exclusive jurisdiction (Article 10)

Any lawsuit is required to be filed with a Korean court if it is related to: a) registration in official books of Korea (except for a lawsuit for the transfer or other disposal under an agreement between parties where the registration is sought); b) invalidity of incorporation of, dissolution of, or validity or invalidity of a resolution of, a corporation or an entity incorporated in accordance with Korean laws and regulations; c) real rights in a real estate located in Korea or any right intended for the use of a real estate and registered in official books; d) the presence, validity or expiry of any intellectual property right created by registration or entrustment, if previously registered or currently applied for

registration in Korea; or e) the enforcement of a proceeding, if intended to be enforced in Korea.

### **III. New Articles Relating to International Parallel Proceedings, Non-exercise of International Jurisdiction, and Preservative Measure**

#### **A. International parallel proceedings (Article 11)**

With respect to international parallel proceedings, the amended PIL takes a stance that is a combination of the priority theory respecting previous proceedings, the approval prediction rule, and the "*forum non conveniens*" doctrine. That is, in the event that the parties are disputing a certain subject matter before a foreign court and the same parties file a lawsuit before the Korean court involving the same subject matter, the court can decide to stay the proceedings *ex officio* or upon either party's request (Article 11(1)). This will not apply, however, if the Korean court has international jurisdiction in accordance with an agreement on exclusive international jurisdiction between the parties or if it is unquestionably more appropriate for the case to be tried by a Korean court than by a foreign court.

During the stay of proceedings, if the foreign court fails to take any necessary actions to try the merits, or fails or is expected to fail to commence a trial on the merits within a reasonable period of time, a Korean court can resume, upon request from either party, the proceedings that have been suspended, as provided in Article 11(1) (Article 11(4)).

If a foreign trial is under way that meets the requirements for approval under Korean laws or a treaty, the court must reject a lawsuit that has been filed before the court by the same parties involving the same subject matter (Article 11(3)).

#### **B. Non-exercise of international jurisdiction (Article 12)**

The amended PIL adopts the *forum non conveniens* doctrine under Common law in a limited scope to allow a Korean court to decide to suspend proceedings until the first hearing date or the pre-hearing meeting date or reject a lawsuit even if i) the Korean court has international jurisdiction if ii) it is inappropriate for the Korean court to exercise its international jurisdiction, iii) if exceptional circumstances evidently indicate that it is more appropriate for a foreign court having international jurisdiction to hear the matter, iv) upon the defendant's request, and v) unless the court has international jurisdiction agreed between the parties (jurisdiction by agreement).

#### **C. Jurisdiction over preservative measure (Article 14)**

The Korean court has international jurisdiction over such preservative measure if i) a Korean court has international jurisdiction on the merits and ii) property subject to a preservative measure is located in Korea.

### **IV. New Provisions Regarding Special Jurisdiction Over Lawsuits Regarding Intellectual Property Right, Contract, Consumer Contract, and Tort**

#### **A. Special jurisdiction over lawsuit involving a contract regarding intellectual property right and infringement thereof (Articles 38 and 39)**

Under the amended PIL, a Korean court has international jurisdiction over any lawsuit relating to the assignment, establishment of a security interest, license or other contractual matters involving intellectual property right, if i) the intellectual property right is protected, used or exercised in Korea or ii) any right or interest in intellectual property right is registered in Korea.

Meanwhile, any lawsuit relating to intellectual property right infringement can be filed with a Korean court, if i) the infringement was committed in Korea, ii) Korea is where the damages have occurred, or iii) the infringement was committed toward Korea. In such case, the jurisdiction is limited to instances of injury occurring in Korea, but if the infringement occurred principally in Korea, a lawsuit can be filed with a Korean court even if it relates to all injury arising from the infringement, including any outcome occurring overseas.

**B. Special jurisdiction over lawsuit relating to a contract (Article 41)**

The amended PIL addresses jurisdiction over the place of performance, which has been controversial. That is, a lawsuit regarding a supply agreement can be filed with a Korean court, if the place where goods were delivered is Korea. As to a service agreement, a lawsuit can be filed before a Korean court if the place where the service was provided is Korea. In the event that the agreement involves multiple places of performance, a Korean court has jurisdiction if one of the places where a principal part of obligation was performed is Korea (Article 41(1)).

A lawsuit relating to an agreement other than a supply agreement or a service agreement can be filed with a Korean court if the place where the obligation which served as a basis for a claim was performed or the place where the parties to the agreement have agreed the obligation should be performed is located in Korea (Article 41(2)). Accordingly, contrary to the Supreme Court Judgment 72Da248 dated April 20, 1972, which accepted international jurisdiction on the basis of the place where an obligation was performed, a Korean court is now not deemed to have international jurisdiction simply because the place of performance pursuant to the contract is Korea, if the parties have not agreed to the place where the obligation should be performed for any agreement other than a supply agreement or a service agreement.

**C. Special jurisdiction over consumer contract (Articles 42 & 43)**

The amended PIL now sets forth special jurisdiction over consumer contracts and employment agreements (Articles 42 & 43).

**D. Special jurisdiction over lawsuit regarding tort (Article 44)**

Article 44 of the amended PIL permits a lawsuit regarding tort to be filed with a Korean court if the tort was committed in or toward Korea or if the damages have occurred in Korea, indicating that both the place of an action and the place of the injury can serve as a basis for jurisdiction. Even where the tort was committed toward Korea, a Korean court is deemed to have jurisdiction. However, a Korean court does not have international jurisdiction if it was not foreseeable that the damages would occur in Korea.

Meanwhile, like the provision dealing with the jurisdiction, the governing law over a tort is now the law of the place of an action or the place where the damages occurred (Article 52(1)).

**V. Implications and Prospects**

This comprehensive amendment to the Private International Law results in extensive changes, including 35 new articles relating to international jurisdiction, compared to a previous single provision that dealt with the same. As a result, the presence of the international jurisdiction, which has been difficult to predict until the court rendered its judgment, is now highly predictable, owing to the relatively detailed provisions that have been newly introduced. In addition, the limited incorporation of the forum non conveniens doctrine under Common law brings about propriety and soundness, and the new device is in place to prevent abuse of jurisdiction. It is necessary for any party to a lawsuit, either a plaintiff or a defendant, before a Korean court to be well aware the changes that have been enacted.

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For questions or inquiries on the amended Act on Private International Law and legal disputes involving foreign countries, please feel free to contact us.