

December 20, 2023

## RECENT DEVELOPMENTS ON ENFORCEMENT OF SERIOUS ACCIDENTS PUNISHMENT ACT (SAPA)

### Trial Court Decision in the First SAPA Indictment Case: Representative Director of an Electronics Manufacturer Receives Suspended Sentence

On November 3, 2023, the Changwon District Court (the **"Trial Court"**) rendered a decision in the first indictment case for a violation of the Serious Accidents Punishment Act (the **"SAPA"**), sentencing the representative director (the **"Defendant"**) of an electronics manufacturer (the **"Electronics Manufacturer"**) to one year of imprisonment and three years of suspension where workers suffered injuries from toxic hepatitis due to inhaling of the hazardous substance trichloromethane (the **"Accident"**) (Changwon District Court Decision 2022GoDan1429 dated November 3, 2023, the **"Court Decision"**). This case regarding Electronics Manufacturer is the first SAPA indictment and is the first case decided by the court regarding 'serious industrial accidents due to occupational diseases'.

The Court Decision provides detailed standards on (i) the procedures to identify and remedy hazards and risk factors (which are set forth in Article 4, Subparagraph 3 of the Enforcement Decree of the SAPA, the **"Enforcement Decree"**) (the **"Hazards/Risks Identification and Remedy Procedures"**) and (ii) the evaluation criteria for the person responsible for the safety and health management (the **"Safety and Health Responsible Person"**) (which are set forth in Article 4 Subparagraph 5 Item (b) of the Enforcement Decree) (the **"Evaluation Criteria for the Safety and Health Responsible Person"**).

In addition, the Electronics Manufacturer filed a motion to request for review the constitutionality of Article 6(2) and Article 4(1)1 of the SAPA contending that the statutes go against the principles of legality, proportionality, and equality. The Changwon District Court, however, dismissed such motion (Changwon District Court Decision 2022ChoGi1795 Decision dated November 3, 2023, the **"Dismissal"**). The Dismissal is noteworthy as it is the first court ruling regarding the constitutionality of the SAPA.

### I. COURT DECISION

#### A. Factual Background

##### 1. Overview of Accident

The Electronics Manufacturer purchases trichloromethane-containing detergent, a toxic chemical substance, from another chemical manufacturer. The Defendant serves as the representative director of the Electronics Manufacturer and another company (**"Company C"**) and manages both companies from the same place. The Defendant, without installing any local ventilation equipment in the workplace, instructed the workers of the Electronics Manufacturer and Company C to degrease compartment products with the detergent. As a result, ten employees of the Electronics

Manufacturer and six employees of Company C inhaled trichloromethane, a toxic substance, and suffered serious industrial injuries leading to toxic hepatitis that requires treatment for over two months.<sup>1</sup>

## 2. Summary of Indicted Facts

The prosecutor filed an indictment against the Defendant with a violation of the **SAPA (industrial accident by negligence)** on grounds that the Defendant as the Responsible Management Party ("RMP") **failed to establish safety and health management system considering the nature of workplace which caused toxic hepatitis to the victims**, specifically citing the failure to establish (1) the Hazards/Risks Identification and Remedy Procedures and (2) the Evaluation Criteria for the Safety and Health Responsible Person.

Furthermore, the Defendant, who is also the **Safety and Health Responsible Person**, was indicted for violation of its 'duty regarding health measures' under the Korean Occupational Safety and Health Act (the "**OSHA**"), including failing to either install equipment to seal the source of emission of the detergent with toxic substance or install local ventilation equipment when handling such detergent with toxic substance and failing to provide workers with the name and information on the physical and chemical natures of the toxic substances. Additionally, the indictment included charges under the Chemical Substances Control Act, the Clean Air Conservation Act, the Malodor Prevention Act, and the Water Environment Conservation Act.

## 3. Court Ruling

In line with the precedents, the Trial Court concurred with the prosecutor's identification of the Defendant as the RMP under the SAPA. The Court found a causal relationship between the RMP's violation of SAPA's safety and health obligations and the failure to comply with specific safety and health measures required by the OSHA and that this negligence led to a serious industrial accident. The summary of the Trial Court's decision is as follows:

Provision	Violations of SAPA Obligations	Violations of OSHA Obligations	Causation
<b>Article 4 Subparagraph 3 of the Enforcement Decree</b>	The Hazards/Risks Identification and Remedy Procedures were not established.	In a workplace where detergents with toxic substance are used, the RMP and person in charge of health management failed to (1) install local ventilation equipment and (2) provide information to workers on the substances and toxicity of detergents.	RMP's failure to establish proper safety and health management system considering the nature of workplace caused serious industrial accident resulting in workers injuries.
<b>Article 4 Subparagraph 5 of the Enforcement Decree</b>	The Evaluation Criteria for the Safety and Health Responsible Person were not established.		

<sup>1</sup> Meanwhile, in the case of Company B, where 13 workers suffered from a serious industrial accident due to occupational diseases while using a similar detergent around the same period, the case was not prosecuted for violation of the SAPA, on the ground that safety and health management system was established pursuant to the same Act.

## **B. Analysis and Implication of the Court Decision**

The Court Decision **provided detailed standards on** the Hazards/Risks Identification and Remedy Procedures and on the Evaluation Criteria for the Safety and Health Responsible Person, both of which are common issues brought up by the investigative agencies.

### **(1) Hazards/Risks Identification and Remedy Procedures (Article 4 Subparagraph 3 of the Enforcement Decree)**

The Electronics Manufacturer claimed to have established the Hazards/Risks Identification and Remedy Procedures considering the characteristics of the workplace. However, the Trial Court ruled that the RMP should, in addition to establishing systematic procedural measures, establish internal regulations to ensure that periodic inspection and verification procedures are effectively operational at each workplace.

This reflects the court's intention to further strengthen the safety and health obligations under SAPA, emphasizing the requirement to explicitly incorporate periodic inspection and verification procedures into internal regulations.

Furthermore, the Trial Court specified that the 'identification' process for hazards and risk factors should include a 'mechanism allowing anyone to freely discover and report workplace hazards' and a 'procedure involving the consultation of workers engaged in harmful and hazardous tasks.' Similarly, recent amendments to the Guidelines on Workplace Hazard Assessment (enforced on May 22, 2023) also specified the requirement to involve employees engaged in specific tasks when conducting hazard assessments.

Additionally, the court ruled that the 'remedy' process for hazards and risk factors involves systematically categorizing and managing identified hazards and risk factors and removing, replacing, or controlling each hazards and risk factor. In order to satisfy the 'obligation pursuant to Article 4 Subparagraph 3 of the Enforcement Decree' with the establishment of the Hazards/Risks Identification and Remedy Procedures, such procedures should reflect the unique nature of the workplace so that any hazards and risk factors in such workplace can be identified, assessed, managed, and remedied.

On the basis of the abovementioned legal principles, the Trial Court concluded that procedures for identifying and improving hazardous or risk factors were not established since (1) the Electronics Manufacturer's 'safety and health management rules' and 'risk assessment manual' merely contained general matters specified in the industrial safety laws, without consideration of unique nature of its own workplace, (2) when a toxic substance of methylene chloride was used as a detergent, an local ventilation equipment was not installed in the workplace and the risk assessment report did not mention any of it, and (3) the ESH work manual was merely a measure for its main contractor to inspect and assess the Electronics Manufacturer.

### **(2) Evaluation Criteria for the Safety and Health Responsible Person (Article 4 Item 5(b) of the Enforcement Decree)**

The Electronics Manufacturer claimed to have established the evaluation criteria to assess whether the Safety and Health Responsible Person faithfully performs his/her duties. However, the Trial Court decided that the evaluation criteria should (i) include to evaluate performance and faithfulness in fulfilling obligations pursuant to the OSHA and (ii) be specific and detailed enough for effective assessment. Thus, the Trial Court determined that the evaluation criteria for the Safety and Health Responsible Person was not established on the grounds that (1) the 'HR Assessment Plan and Results' of the Electronics Manufacturer was merely a general human resources evaluation report for managerial staff, and (2) 'contactless questionnaire for person in charge of health management' was just a routine human resources evaluation form where the evaluated employees directly input their performance and achievements.

### **(3) Causation**

The Electronics Manufacturer argued that there is no causal relationship between the violation of obligations under the SAPA and the Accident, since the non-compliance was not severe and the Accident occurred due to falsely prepared material safety data sheets (MSDS).

However, the Trial Court concluded that if the representative director of the Electronics Manufacturer had properly fulfilled its obligation to establish a safety and health management system, local ventilation equipment and other such installations would likely have been implemented at the workplace using controlled toxic substances. The Trial Court clearly stated that while the absence of local ventilation equipment was not the sole cause of the accident, it had a substantial impact on the occurrence of the Accident. Consequently, the Trial Court concluded that there was a significant causal relationship between the non-fulfillment of obligations by the representative director of the Electronics Manufacturer and the Accident.

Consistent with the precedents, the Trial Court reviewed and determined a causation based on the following analysis: (1) first, whether there is violation of safety and health obligations pursuant to the SAPA, (2) second, whether there is violation of specific obligations to take safety and health measures pursuant to the OSHA and (3) finally, if there exists a violation under the SAPA and the OSHA, determine that there is a causal relationship between such violation and the accident, without providing specific grounds.

### **(4) Conclusion – Implication**

In light of the Court Decision, the workplaces subject to the SAPA are advised to reevaluate the extent of their safety and health management systems and ensure that the obligation to secure safety and health is managed and fulfilled in a more practical and detailed manner.

In particular, it is necessary to establish internal regulations to periodically inspect and confirm whether the Hazards/Risks Identification and Remedy Procedures are operating effectively at each workplace.

Moreover, the process of 'identifying' hazards and risk factors requires a 'mechanism allowing anyone to freely discover and report workplace hazards.' Therefore, it is essential to establish procedures that involve employees engaged in specific tasks when conducting hazard assessments, enabling their active participation and the gathering of their insights. Hazards and

risk factors that have been identified through this process should then be remedied.

Furthermore, the evaluation criteria for the Safety and Health Responsible Person should include such person's performance and faithfulness in fulfilling obligations pursuant to the OSHA, and the evaluation criteria should be specific and detailed. (Article 4 Subparagraph 5 of the Enforcement Decree)

## II. DISMISSAL

### A. Key Points and Analysis of Dismissal

On October 13, 2022, the Electronics Manufacturer filed a motion to request adjudication on the constitutionality of statutes on the grounds that Article 6(2) of the SAPA (i.e., punishment clause for the RMP on serious industrial accidents) and Article 4(1)(1) of the same Act (i.e., clause for RMP's obligation to ensure safety and health) go against the principles of legality, proportionality, and equality.

The specific purposes of the motion are (1) that **the requirement of definiteness of the 'no penalty without law' principle is not satisfied**, as the concepts of 'a business or place of business that is actually controlled, operated, or managed' and 'measures concerning the establishment and implementation of a safety and health management system, such as human resources and budget necessary to prevent accidents' in Article 4(1)1 of the SAPA are unclear and unpredictable in terms of its application, and (2) that **the principle of proportionality is violated**, as Article 6(2) of the SAPA sets forth an abstract and unclear duty on employers and RMPs to ensure safety and health, while imposing excessive punishment of up to seven years in prison in the event of a serious industrial accident, infringing the freedom of occupation, and (3) that **the principle of equality is violated**, as it undermines legitimacy and balance of the penal system when compared to the Act on Special Cases Concerning the Settlement of Traffic Accidents.

The unconstitutionality of the SAPA has been the subject of much controversy and attention since its enactment, and whether the court would grant the motion for adjudication on the constitutionality of statutes drew a lot of attention, but ultimately the court rejected the motion.

Regarding the specific contents of the decision, the court held that (1) **for the principle of definiteness**, in light of lexical meaning of operative words and the legislative intent of the SAPA, Article 4(1)1 of the SAPA does not violate the principle of definiteness, since the meaning of the relevant clauses are fully understandable and Article 4 of the Enforcement Decree sets forth specific matters.

In addition, the court decided that (2) **for the principle of proportionality**, as the purpose of the punishment clauses was legitimate and the clauses was applied only to certain types of industrial accident, and the punishment required proving intent to violate the obligation to ensure safety and health, the relevant the clauses may not be deemed as infringing on the essence of the defendants' freedom of occupation, and the clauses met the requirements of adequacy of means, minimal harm, and balance of legal interests.

Moreover, the court held that (3) **for the principle of equality**, proving intent was required to punish

RMP, etc., whereas the Act on Special Cases Concerning the Settlement of Traffic Accidents punishes negligent violators, and the statutory sentence (imprisonment for not more than 7 years) was not excessively harsh in light of the nature of offense and the obligation of the perpetrator, nor was it inconsistent with the principle of equality under the Constitution.

## B. Implication

This is the first case in which a court has ruled on the unconstitutionality of SAPA, an issue that has been receiving a lot of attention from the legal, business, and labor circles, and it is significant in that the decision confirms the court's position on the legislative intent and content of the SAPA.

However, there may be a motion to request adjudication on the constitutionality of the SAPA in other cases, and a constitutional appeal may be filed directly with the Constitutional Court. Therefore, it is necessary to keep an eye out for future developments regarding the issue of unconstitutionality of the SAPA.

## III. RECENT TRENDS AND IMPLICATIONS OF COURT DECISION ON VIOLATION OF SAPA

Ref No. (Case No.)	Sentencing	Violation of Law	Remarks
<b>No. 1</b> <b>(Goyang Branch</b> <b>of Uijeongbu</b> <b>District Court</b> <b>2022GoDan3254)</b>	<b>(Contractor)</b> <b>Representative director:</b> Imprisonment for one year and six months, suspended imprisonment sentence for three years <b>(Contractor) Corporate</b> <b>entity:</b> Fine of 30 million won	<ul style="list-style-type: none"> <li>Establishment of the Hazards/Risks Identification and Remedy Procedures (Subparagraph 3) ("<b>Subparagraph 3 Violation</b>")</li> <li>Establishment of the Evaluation Criteria for the Safety and Health Responsible Person (Subparagraph 5) ("<b>Subparagraph 5 Violation</b>")</li> <li>Preparation and inspection of a manual for occurrence of a serious industrial accident (Subparagraph 8) ("<b>Subparagraph 8 Violation</b>")</li> </ul>	
<b>No. 2</b> <b>(Masan Branch</b> <b>of Changwon</b> <b>District Court</b> <b>2022GoHap95;</b> <b>Dismissal of</b> <b>Appeal)</b>	<b>(Contractor)</b> <b>Representative director:</b> Imprisonment for one year (without suspended imprisonment sentence) <b>(Contractor) Corporate</b> <b>entity:</b> Fine of 100 million won	<ul style="list-style-type: none"> <li>Subparagraph 5 Violation</li> <li>Establishment and inspection of standards and procedures for contract with a third party (Subparagraph 9) ("<b>Subparagraph 9 Violation</b>")</li> </ul>	<ul style="list-style-type: none"> <li>The only sentencing without suspended imprisonment sentence as of now</li> <li>The representative director, as RMP and a person in general charge of safety and health, shall be responsible for double duties; considered the existence of multiple criminal records of a similar kind</li> </ul>

<b>No. 3</b> <b>(Incheon District Court 2023GoDan651)</b>	<b>(Contractor)</b> <b>Representative director:</b> Imprisonment for one-year, suspended imprisonment sentence for three years <b>(Contractor) Corporate entity:</b> Fine of 50 million won	<ul style="list-style-type: none"> <li>• Establishment of objectives and managerial policies on safety and health (Subparagraph 1) ("<b>Subparagraph 1 Violation</b>")</li> <li>• Subparagraph 3 Violation</li> <li>• Setting and spending a budget for safety and health (Subparagraph 4) ("<b>Subparagraph 4 Violation</b>")</li> <li>• The Subparagraph 5 Violation</li> <li>• Hearing worker's opinions and conducting an inspection (Subparagraph 7)</li> <li>• Subparagraph 8 Violation</li> </ul>	
<b>No. 4</b> <b>(Masan Branch of Changwon District Court 2023GoHap8)</b>	<b>(Contractor)</b> <b>Representative director:</b> Imprisonment for one-year, suspended imprisonment sentence for two years <b>(Contractor) Corporate entity:</b> Fine of 50 million won	<ul style="list-style-type: none"> <li>• Subparagraph 1 Violation</li> <li>• Subparagraph 4 Violation</li> <li>• Subparagraph 5 Violation</li> <li>• Subparagraph 9 Violation</li> </ul>	<ul style="list-style-type: none"> <li>• Based on criteria pursuant to Subparagraphs 1 and 4 of the Enforcement Decree (establishment of safety and health plan and setting a budget for industrial safety and health management were not acknowledged as fulfillment of obligations under Subparagraphs 1 and 4)</li> <li>• Decided based on detailed analysis of causation and intent</li> </ul>
<b>No. 5</b> <b>(Goyang Branch of Uijeongbu District Court 2022GoDan3255)</b>	<b>(Contractor)</b> <b>Representative director:</b> Imprisonment for one year and six months, suspended imprisonment sentence for three years <b>(Contractor) Corporate entity:</b> Fine of 20 million won	<ul style="list-style-type: none"> <li>• Subparagraph 3 Violation</li> <li>• Subparagraph 5 Violation</li> <li>• Subparagraph 9 Violation</li> </ul>	<ul style="list-style-type: none"> <li>• Based on criteria pursuant to Subparagraphs 3 and 5 (work procedures to identify and improve hazards and risk factors considering nature of the workplace, and methods and standards of assessment of work performance in construction sites should be established)</li> </ul>
<b>No. 6</b> <b>(Seoul Northern District Court 2023GoDan2537)</b>	<b>Representative director:</b> Imprisonment for eight months, suspended imprisonment sentence for two years <b>Corporate entity:</b> Fine of 30 million won	<ul style="list-style-type: none"> <li>• Subparagraph 1 Violation</li> <li>• Subparagraph 3 Violation</li> <li>• Subparagraph 5 Violation</li> <li>• Hearing worker's opinions and conducting an inspection (Subparagraph 7) ("<b>Subparagraph 7 Violation</b>")</li> </ul>	<ul style="list-style-type: none"> <li>• Considered unwell health condition of victims in sentencing</li> </ul>

<b>No. 7</b> <b>(Jeju District Court</b> <b>2023GoDan146)</b>	<b>(Contractor)</b> <b>Representative director:</b> Imprisonment for one year and two months, suspended imprisonment sentence for three years <b>(Contractor) Corporate entity:</b> Fine of 80 million won	<ul style="list-style-type: none"> <li>• Subparagraph 1 Violation</li> <li>• Subparagraph 3 Violation</li> <li>• Subparagraph 5 Violation</li> <li>• Subparagraph 7 Violation</li> <li>• Subparagraph 8 Violation</li> </ul>	
<b>No. 8</b> <b>(Changwon District Court</b> <b>2022GoDan1429)</b>	<b>Representative director:</b> Imprisonment for one-year, suspended imprisonment sentence for three years <b>Corporate entity:</b> Fine of 20 million won	<ul style="list-style-type: none"> <li>• Subparagraph 3 Violation</li> <li>• Subparagraph 5 Violation</li> </ul>	<ul style="list-style-type: none"> <li>• Based on criteria pursuant to Subparagraphs 3 and 5 of the Enforcement Decree (nature of particular workplace should be considered to identify, assess, control, and improve hazards or risk factors; specific and detailed criteria should be included in the check list to reflect work performance and faithfulness pursuant to the OSHA</li> </ul>

## A. Key Takeaways Relating to the Decisions

In cases involving serious industrial accident, the most common issues are related to the establishment of the Hazards/Risks Identification and Remedy Procedures (Subparagraph 3) and the Evaluation Criteria for the Safety and Health Responsible Person (Subparagraph 5). In respect of causation between violation of the obligation to ensure safety and health by RMP and occurrence of accidents, the court generally listed violations of the safety and health obligation and comprehensively constructed causation between the overall violation of safety and health obligation and the occurrence of serious accident to reach the indictment or decision.

In particular, since the violation of Subparagraph 5 of Enforcement Decree has been an issue in all the sentenced cases so far, it is necessary to establish standards for assessing whether the person in charge of safety and health management has been given the authority and budget to perform his/her duties pursuant to the OSHA and for evaluating faithfulness of work performance by the person in charge. In addition, inspecting whether assessment and management in accordance with such standards occur at least once in each half-year period is needed.

Furthermore, since the violation of the obligation to establish objectives and managerial policies on safety and health (Subparagraph 1 of the Enforcement Decree), in relation to which the general view was that it was difficult to establish causation with respect to occurrence of serious accidents, has been a common issue in a number of cases, it is necessary to check whether safety and health objectives and policies are established in accordance with standard forms in the industry, without considering the nature of a particular business and workplace, and whether such objectives and policies are established superficially, without the accompaniment of practical and detailed measures to secure safety and health requirements.

Meanwhile, the court has not yet made a specific decision on the meaning of 'RMP' and the interpretation of 'a person in charge of safety and health in accordance with the above'. It remains to be observed what standard the courts will use in cases where such matters are actively contested.

## **B. Determination of Punishment**

As shown in the table above, the court sentenced imprisonment to the RMP in all cases including Nos. 1 to 8. In the future, it is expected that imprisonment will be more likely than a fine in light of the high statutory sentence under the SAPA, and there is a possibility that a sentence of imprisonment without suspended imprisonment sentence may be imposed depending on whether there is a similar criminal record, as in case No. 2.

As for the reasons for sentencing, the bereaved family's expression that the victim would not want the offender to be punished by settlement was considered as the most important factor in favor of the defendant, and in addition, the defendant's remorse, the absence of the same kind of a criminal record, and the evidence of the victim's negligence were also considered. On the other hand, it is noteworthy that the need for severe punishment consistent with the legislative intent of the SAPA, as well as existence of a similar criminal record, were considered as factors against the defendant.

Bae, Kim & Lee has accumulated vast work experience and know-how by establishing and operating a special Task Force Team("TFT") dedicated to for industrial safety, which was the first of its kind in Korea. Also, BKL has excellent expertise and abundant practical experience in the field of industrial safety accident and compliance advice. BKL expanded and reorganized the existing industrial safety TFT into the TFT for serious accident prevention and response. By doing so, the team provides comprehensive legal services, including analysis of the SAPA and its effect on workplaces, inspection of compliance system and related future responses, and responses to investigation in case of occurrence of serious accident.

\* \* \*

For any additional information or questions concerning SAPA issues, please reach out to the BKL SAPA Response Team ([project.safety@bkl.co.kr](mailto:project.safety@bkl.co.kr)) or your BKL contact professional.

## **Related Professionals**

---

### **Mark M. Cho**

Senior Foreign Attorney

**T** 82.2.3404.0288

**E** [mark.cho@bkl.co.kr](mailto:mark.cho@bkl.co.kr)

### **Jiyoung Sohn**

Senior Foreign Attorney

**T** 82.2.3404.0241

**E** [jiyoung.sohn@bkl.co.kr](mailto:jiyoung.sohn@bkl.co.kr)

### **Jinwook Song**

Partner

**T** 82.2.3404.0462

**E** [jinwook.song@bkl.co.kr](mailto:jinwook.song@bkl.co.kr)