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SERIOUS ACCIDENTS PUNISHMENT ACT (SAPA): FATAL WORKPLACE ACCIDENT EXCLUDED FROM SAPA LIABILITY

A subcontractor was engaged by Company A to guide cars and commuter buses on the premises of Company A. During his duties, an employee of the subcontractor was struck and killed by one of the buses.

The Korean labor authorities and public prosecutor's office (collectively, the "Investigators") initiated an investigation into potential violations of the Occupational Safety and Health Act ("OSHA") and the Serious Accidents Punishment Act ("SAPA") by Company A. Typically, a decision not to prosecute for an OSHA/SAPA violation is made after a full-scale investigation is conducted by formally booking the suspect based on the allegations. In contrast, the Investigators concluded the case beforehand by legally determining that there is no basis for the allegations, without formally booking the suspect.

Immediately after the accident, BKL visited the site to analyze the key facts and causes of the accident. From the beginning of the case, we actively presented arguments to the Investigators, which led to the decision to close the preliminary investigation as described below.

I. ACCIDENT IS NOT AN "INDUSTRIAL ACCIDENT"

The Investigators determined that the accident did not meet the definition of an industrial accident under OSHA, which is necessary for a SAPA violation. Instead, the accident was caused by the bus driver's negligence. BKL successfully argued that the incident was a traffic accident caused by a third party's wrongdoing, not by work or business-related factors.

II. NO VIOLATION OF OBLIGATION TO TAKE "SAFETY AND HEALTH MEASURES" UNDER OSHA

The investigation found that Company A had met all prescribed safety and health measures under OSHA. BKL demonstrated that Company A had not violated OSHA by assigning the employee to guide vehicles in the parking lot. This conclusion was supported by an analysis of OSHA obligations, relevant court precedents, and corrective orders in similar cases.

III. NO SAPA VIOLATION DUE TO LACK OF CAUSALITY

BKL argued that a SAPA violation requires a failure to secure safety and health measures under SAPA, which depends on a failure to comply with OSHA requirements. Since Company A adhered to OSHA safety and health measures, the Investigators accepted that there was no causality to support a SAPA violation.

IV. IMPLICATIONS

Shortly after the fatal accident, BKL assisted Company A in responding to the Investigators with a team of attorneys specializing in SAPA incidents. BKL assessed the key facts and causes of the accident, analyzed relevant OSHA and SAPA provisions, and effectively explained to the Investigators that there was no indication of any violation by Company A or its executives. As a result, the Investigators closed the matter at the outset, avoiding a full-scale investigation.

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Bae, Kim & Lee assisted in multiple matters involving industrial safety and is highly-experienced in dealing with severe industrial accidents. The long-existing industrial safety task force team (TFT) was joined by specialists on SAPA-matters, who exhibit excellent expertise and abundant practical experience in the field of industrial accidents and regulatory compliance. Among others, the TFT advises on the SAPA and its effects on workplaces, inspects compliance systems, assists with responding to investigation agencies in case of serious accidents. For any additional information or questions on SAPA, please reach out to the BKL SAPA Response Team (project.safety@bkl.co.kr) or your BKL contact.

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