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PROPOSED AMENDMENT TO GAME INDUSTRY ACT ENFORCEMENT DECREE: DOMESTIC REPRESENTATIVE DESIGNATION

I. INTRODUCTION

The Ministry of Culture, Sports and Tourism (the “**MCST**”) amended the Game Industry Promotion Act (the “**GIPA**”) as of October 22, 2024, imposing a new obligation on foreign game companies of a certain size to designate a representative in Korea (Article 31(2) of the GIPA). This amendment proposal to the Enforcement Decree of the GIPA is a follow-up to the above amendment and contains matters related to the criteria of the scope of those that are required to designate a representative in Korea as mandated by the GIPA. The main contents of the amendment proposal of the Enforcement Decree and the related guide (draft) are as follows.

II. TO WHOM THE DOMESTIC REPRESENTATIVE DESIGNATION SYSTEM APPLIES

1. A person who is engaged in game distribution or game provision business without an address or business place in Korea.

The system assumes that the person who is engaged in game distribution or game provision business in Korea has no address or presence in Korea. Whether or not a person distributes, supplies, or provides game products in Korea is determined by comprehensively considering various factors such as whether there is a Korean version of the game product, whether domestic payment methods are accepted, or whether other conveniences for domestic users are provided, etc. For example, if a person provides game services in Korean language, has secured a significant number of Korean users, and is engaged in marketing activities, including advertising related to game products in Korea, even if the person has servers not in Korea but in a foreign country, has no business presence in Korea, and has not filed or registered as a game related business in Korea, the person may be subject to application of the Korean representative designation system. However, a person who has signed an intermediary contract with a game-related business and distributed game products or provided game usage services using telecommunication networks is excluded from the scope of application of the Korean representative designation system.

2. A person who meets any of the following criteria:

- A. Having recorded sales of at least KRW 1 trillion in the previous year (or previous fiscal year for corporations):

In this context, “sales” are not limited to sales generated in Korea only in game sector, but refer to the total sales of the person around the world.

- B. Having distributed or provided game products to an average of at least 100,000 Korean users during the three months immediately preceding the end of the previous year:

That is, only Korean users of an individual game product are at least 100,000 persons on average during a period from October to December in the preceding year, and the specific formula of calculation is as follows:

$$\text{Monthly average number of users (only Korean users)} = \frac{\text{A total number of Korean users during October, November, December of the preceding year}}{3 \text{ months}}$$

It should be noted that if a single game distributor or provider distributes and provides multiple game products, the number of users of all game products is not summed up but only the number of users of an individual game product that is more than 100,000 persons is considered. However, if one game product is provided in various forms and on various platforms including PC and mobile, the number of users on every form and platform shall be summed up and considered in the calculation.

- C. A person deemed by the MCST to require designation of a domestic representative, on the grounds that the game product has caused or is likely to cause substantial harm to users

Whether an incident or accident that causes significant harm to game users has occurred or is likely to occur is determined by comprehensively considering media reports, the National Assembly's criticism, user complaints, etc. For example, if the number of users of a game product during the standard period under the Enforcement Decree (draft) cannot be calculated since the game product was released after December of the preceding year, but the number of users skyrocketed during a short term requiring urgent user protection, or user complaints are suddenly increasing against the relevant game product, the Minister of Culture, Sports and Tourism may determine that the relevant distributor is required to designate a Korean representative irrespective of the sales or the number of Korean users.

III. ROLE AND QUALIFICATIONS OF THE DOMESTIC REPRESENTATIVE

The domestic representative is responsible for: (i) follow-up management reports related to the distribution order of game products, prevention of use in fraudulent acts, and prevention of promotion of speculative acts, pursuant to Article 31(2) of the GIPA, and (ii) the fulfillment of the obligation to indicate particulars such as disclosure of information of probability-based items pursuant to Article 33 of the GIPA on behalf of the game business.

The domestic representative must be a natural person or legal person with an address or place of business in Korea. In the case of a natural person, he or she does not need to be a Korean but must be fluent in Korean regardless of his/her nationality. A business may

designate multiple domestic representatives, and one domestic representative may represent multiple foreign businesses. If a game distributor or provider has a domestic corporation established by himself/herself, or a domestic corporation that exercises a controlling influence over the composition of its directors and business operations, etc., it is recommended to designate the corporation as a domestic representative.

IV. PROCEDURE FOR DESIGNATING A DOMESTIC REPRESENTATIVE

The domestic representative must be designated in writing, and the name (in the case of a corporation, its trade name and the name of its representative), address (in the case of a corporation, the location of its business office), telephone number, and e-mail address, etc., must be included in the designation contract (if multiple Korean representatives are designated, information of every representative should be included in the designation letter). In this context, a telephone number means a telephone number in Korea that can be reached in connection with the performance of the role of the domestic representative.

V. SANCTIONS FOR VIOLATIONS

If a regulated business fails to designate a Korean representative, it may be subject to an administrative fine of up to KRW 20 million. As this obligation is assessed annually based on sales volume or user count, and administrative fines may be imposed for each instance of noncompliance, it should be noted that repeated violations may result in cumulative penalties each time the obligation arises and is not fulfilled. If the Korean representative is in violation of each subparagraph of Article 31-2 (1) of the GIPA, the foreign principal company shall be deemed to be a violator.

VI. FUTURE PROSPECTS

The MCST plans to provide a legislative notice on the amendment proposal to the Enforcement Decree about six months prior to October 23, 2025, the effective date of the system, so as to give foreign game companies a sufficient period for preparation, and for the MCST to collect comments, go through regulatory and legislative examinations, and prepare and promulgate the final amendment.

The domestic representative system is designed to strengthen oversight and enforcement in cases where foreign game companies violate domestic game distribution regulations. The MCST, which oversees the system, has stated its commitment to ensuring compliance by foreign game companies required to appoint Korean representatives and to ensuring the system operates effectively. Accordingly, foreign game companies should take proactive steps to comply with the amended game industry regulations.

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Bae, Kim & Lee, LLC has extensive experience in advising and litigating within the game industry, building substantial expertise in this sector. In addition to providing comprehensive guidance on the newly introduced requirement for foreign game-related businesses to designate a domestic representative under the amended game industry laws, BKL is also equipped to fulfill the duties of a Korean representative. This capability is backed by its deep knowledge of domestic representative responsibilities, honed through its role as a representative under the Personal Information Protection Act, the Act on Promotion of Information and Communications Network Utilization and Information Protection, and other relevant laws. Should you have any questions, please feel free to contact us.

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