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KOREA INTRODUCES A NEW EVIDENCE DISCLOSURE FRAMEWORK FOR TECHNOLOGY MISAPPROPRIATION

On January 29, 2026, the Ministry of SMEs and Startups ("MSS") announced that the National Assembly had passed an amendment to the Act on the Promotion of Mutually Beneficial Cooperation between Large Enterprises and Small and Medium Enterprises ("Cooperation Act"). The amendment introduces a new evidence disclosure framework applicable to technology misappropriation disputes, which the MSS refers to as "K-Discovery."

I. LEGISLATIVE BACKGROUND AND POLICY RATIONALE

The amendment forms part of the Korean government's broader policy initiative to combat technology misappropriation involving small and medium enterprises ("SMEs"). According to the MSS, it is intended to address structural challenges that SMEs have long faced in proving both infringement and damages in technology misappropriation disputes.

In many such cases, critical evidence necessary to prove the occurrence of an unlawful misappropriation and quantify damages is located within the alleged perpetrator's internal materials and is not readily accessible to the affected SME. As a result, such evidence is often not produced in court proceedings, leading to the loss of claims or withdrawal from litigation altogether for the SMEs harmed by technology misappropriation.

The amendment introduces a new evidence disclosure framework aimed at addressing this evidentiary imbalance through a series of procedural mechanisms, including: (i) court-appointed expert investigations; (ii) expanded court authority to order the production of documents; (iii) court-ordered preservation of evidence; (iv) out-of-court examination of parties; and (v) an expanded scope of protection for technical information.

According to the MSS, the amendment is expected to improve the effectiveness of remedies for SMEs and promote a more balanced framework for technology cooperation.

II. KEY FEATURES OF THE AMENDMENT

1. Court-Appointed Expert Investigations

Under the amended Cooperation Act, courts may, upon application by a party, appoint an independent expert to conduct fact-finding investigations in damages claims arising from technology misappropriations. Such investigations may include on-site inspections of offices or production facilities, review and copying of relevant documents, and examination, measurement, or testing of equipment and systems. The findings of the court-appointed expert may be admitted as evidence by the court.

The availability of expert investigations is subject to several statutory requirements. In particular, the court must be satisfied that: (i) an application for such investigation has

been filed by a party; (ii) there is a substantial likelihood that the opposing party engaged in technology misappropriation; (iii) the burden imposed on the opposing party is not excessive in light of the necessity for the investigation; and (iv) it would be difficult for the applicant to obtain the relevant evidence through other means.

At the same time, the scope of such investigations is limited. Confidential materials exchanged between a party and its legal counsel for the purpose of providing legal advice or preparing for litigation are excluded from the scope of expert investigations.

2. Court Orders for Production of Documents

The amended Cooperation Act provides that MSS must submit records from its administrative investigations upon request by the court. Certain materials may be exempt from disclosure, including information classified as non-disclosable under other laws or trade secrets protected under the Unfair Competition Prevention and Trade Secret Protection Act. However, even in such cases, the court may order the production of such materials where it determines that they are essential to proving damages or calculating the amount of damages.

3. Court Orders for Preservation of Evidence

Under the amended Cooperation Act, where a damages action arising from technology misappropriation has been filed, or is likely to be filed, courts may order any person in possession or control of relevant materials to preserve such evidence for a specified period of up to one year. The purpose of such an order is to prevent the destruction or loss of evidence, and the court may, upon application by a party, extend the preservation period within the same one-year limit.

A court order for the preservation of evidence may be issued only where the court is satisfied that: (i) an application for such an order has been filed by a party; (ii) the materials to be preserved are sufficiently identified; and (iii) there is a risk that irreparable harm would result to the applicant if the preservation order is not issued.

If a party fails to comply with a preservation order, the court may deem the opposing party's allegations regarding the facts to be proven by such materials to be true. In addition, any person who intentionally destroys or renders unusable evidence in violation of a preservation order may be subject to criminal penalties, including imprisonment for up to seven years or a criminal fine of up to KRW 100 million.

4. Out-of-Court Examination of Parties

The amended Cooperation Act introduces a mechanism allowing the out-of-court examination of parties in damages actions arising from technology misappropriation, in a manner akin to depositions in U.S. civil litigation. Where necessary to establish relevant facts or to verify materials relating to damages, the parties may conduct examinations of one another outside of court, and audio or video recordings of such examinations may be submitted to the court as evidence.

This mechanism is subject to important safeguards. An application must be submitted

by both parties, each represented by legal counsel. In determining whether to permit such examinations, the court will consider, among other factors, (i) whether the number of examinees and the scope, method, and location of the examination would impose an undue burden on the opposing party, and (ii) whether the examination is necessary to verify asserted facts or preserve evidence.

If a party, without justifiable grounds, fails to appear for an examination or obstructs the examination process by refusing to take an oath or provide testimony, the court may impose disadvantages for such party, including deeming the opposing party's allegations regarding the expected testimony to be true.

5. Expanded Scope of Protection for Technical Information

Under the current Cooperation Act, prohibitions against the misappropriation of technical information apply only to the conducts occurring after a business relationship involving the provision of technical information has been formally established. As a result, technology misappropriation at the pre-contractual stage has not been expressly covered.

The amended Cooperation Act addresses this gap by extending protection for technical information to the conducts occurring prior to the formation of a business relationship involving the provision of such information.

III. IMPLICATIONS

The introduction of the evidence disclosure regime marks a significant procedural shift in technology misappropriation disputes under Korean law. Although similar measures have been discussed in the past, the enactment of this amendment reflects the government's strong policy commitment to strengthening protections for SMEs, and the new mechanisms are expected to be actively utilized in practice.

With the expanded availability of court-ordered evidence disclosure and preservation measures, companies handling technical information of business partners should assume that their internal processes and records relating to such information may be subject to judicial scrutiny. This underscores the importance of maintaining clear internal standards and documented procedures throughout the receipt, storage, use, and management of technical information.

In anticipation of potential disputes, companies should consider reviewing their evidence management and internal compliance frameworks. Given that the amendment will enter into force two years after promulgation, this transition period provides an opportunity to strengthen record-keeping practices, access controls, segregation of technical information, and internal approval processes.

Companies should also ensure that appropriate external procedures are in place to prevent unintended disclosure of technical information in situations such as changes in subcontractors or business transfers. Measures such as obtaining consent from counterparties may be necessary to mitigate dispute-related risks.

From a broader legal framework perspective, the expansion of protection for technical information to the pre-contractual stage aligns the Cooperation Act with existing protections under other Korean statutes. In particular, the Fair Transactions in Subcontracting Act already covers certain conduct occurring prior to the conclusion of a subcontract, while the Unfair Competition Prevention and Trade Secret Protection Act recognizes the misappropriation of ideas during business negotiations or transaction processes as a form of unfair competition. Taken together, these statutes establish overlapping layers of protection against technology misappropriation.

It is also worth noting that several bills proposing the introduction of evidence disclosure mechanisms under the Fair Transactions in Subcontracting Act are currently pending before the National Assembly. In addition, legislative proposals to introduce discovery-like procedures in patent litigation have also been submitted. We will continue to monitor related legislative developments and provide updates.

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