

SOUTH KOREA

Recent statutory amendments relating to KORUSFTA



By Ghil-Won Jo

In early December 2011, in anticipation of the taking of effect of the KORUSFTA (Korea-US Free Trade Agreement) on January 1, 2012, amendments were made to the Monopoly Regulation and Fair Trade Act (the MRFTA) and the Unfair Competition Prevention and Trade Secrets Protection Act (the UCPTSPA).

Under the amended MRFTA, a consent resolution system was introduced. This new system allows for a prompt resolution of a case without the determination of the unlawfulness of the alleged violator's conduct through prior negotiations between the alleged violator and the Prosecutor General and the gathering of opinions from the interested parties and related authorities; provided that (i) the alleged violator, a business operator, makes a voluntary proposal for corrective measures – including the applicable remedies for damages incurred by consumers and the restoration of the situation – and (ii) the conduct at issue represents a minor violation of the MRFTA or where there is uncertainty as to the illegality of the conduct under the MRFTA. With the implementation of the consent resolution system, rapid and practical remedies in the form of a price reduction and compensation for damages to consumers will be possible, such as would have been impossible under the pre-existing unilateral corrective measures.

In addition, from a business operator's perspective, the new system has advantages as it is expected that the prompt resolution of a case would save time and cost and eliminate a guilty admission, thereby limiting any potential damage to the corporate image. Further, it is expected that the new system will enable the implementation of realistic and effective corrective measures that restore the market order, as the corrective measures proposed by the alleged violator – which is knowledgeable about the relevant market condition, the interested parties, and the relevant government bureaus and departments – would be fully reflected

on such corrective measures. In other words, this new system under the amended MRFTA was introduced to enable people to promptly respond to the rapidly-changing market condition, to remedy any damages incurred by consumers or other business operators, and to restore competitive orders in the market. In addition, the amended MRFTA includes the provisions relating to the required procedures, exceptions to the applicability, the grounds for cancellation and the means to secure performance under the consent resolution system.

Further, a mandatory confidentiality order was introduced under the amended UCPTSPA for application in litigation involving unfair competition or trade secret infringements. This new system is aimed at protecting the trade secrets which have been

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disclosed by litigants in the course of litigation proceedings. The system is a court order which prohibits the use and/or disclosure of a litigant's trade secret by the opposing party to the litigation or its legal counsel outside of the relevant litigation, where such trade secret have been provided to the opposing party during the course of, and for the sole purpose of the litigation. Accordingly, the new system is expected to minimise any potential risk of an unauthorised disclosure of corporate trade secrets during the course of a litigation which will, in turn, facilitate the production of evidence and promote the

efficient legal review of the case.

Under the amended UCPTSPA, an individual who uses a trade secret in violation of a mandatory confidentiality order will be subject to criminal penalties (e.g., an imprisonment of up to five years or a fine of up to KRW 50 million (approx. US\$42,490)). In addition, to be charged with a violation of a confidentiality order, a complaint filed by a victim or an individual authorised to bring such complaint under the relevant laws is required.

Lee International IP & Law Group

14F Kukdong Bldg., Chungmuro 3-Ka
Chung-Ku, Seoul 100-705, Korea

Tel: (82) 2 2262 6068

Mobile: (82) 10 5056 2904

Fax: (82) 2 2279 5020

Email: gwjo@leeinternational.com

www.leeinternational.com