Contract interpretation

The fundamental rule of contract interpretation is that contractual language must in principle be given effect as it is written. The Korean Supreme Court (the highest court in Korea for civil and criminal matters) has consistently ruled as follows:

> *Once the court is satisfied with the authenticity of the contractual document, the court must, in the absence of clear and convincing evidence to deny what is written, recognise the existence and the content of the parties' intent as it is written on the contractual document. (Supreme Court Judgment 2002Da23482 dated 28 June 2002)*

The importance of contractual language is further emphasised as follows:

> *In interpreting a contract, if the parties' true intent is not knowable, the interpretation should be based on the intent inferred from outward expressions rather than the intent inside the parties' mind because what constitutes the contractual intent is the intent inferred from expressions, i.e., the expressed intent, rather than the intent which was held in the parties' mind.*[2]
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> [2]*Ibid.*

The Supreme Court also ruled that "contract interpretation aims to establish clearly the objective meaning the parties assigned to the expression. While the court is not always constrained solely by the language chosen by the parties, the court's task is nevertheless to base itself on the contractual language and to interpret reasonably the objective meaning which the parties assigned to the expression regardless of

what the parties might have entertained in their mind."[3]

If the objective meaning is unclear from the language of the contract, the Supreme Court has given guidance as follows: "when the court has to interpret the intent of the parties because there is a difference of views as to the interpretation of the contract, the interpretation must be done reasonably in accordance with logic and rules of experience, taking account comprehensively of the textual content, motives and circumstances leading to the agreement, the aim and purpose which are to be achieved by the agreement as well as the parties' true intent."[4]The Supreme Court has also held that the interpretation must be consonant with the notions of justice and equity as well as the common sense of the general public and the ordinary commercial understanding.[5]

3Supreme Court Judgment 2000Da40858 dated 23 March 2001. Also see Supreme Court Judgment 2002Da23482 dated 28 June 2002.

4Supreme Court Judgment 93Da32668 dated 25 March 1994; Supreme Court Judgment 96Da1320 dated 9 April 1996. Similar rulings are repeated in a number of cases. For example, Supreme Court Judgment 92Da47236 dated 24 August 1993. The "rules of experience" mean rules derived from the experience of living in society (□□□□□ □□□□ □□ □□).

5Supreme Court Judgment 2008Da90095, 90101 dated 14 May 2009.