

Korean Contract Law I

25 June 2017

- The duration of the examination is 75 minutes (from 4:00 pm to 5:15 pm).
- During the course of the examination, you may freely consult materials in your possession and on-line resources.
- On each Answer sheet, you must write your **student number only**. Please do **not** write your name.
- You must attempt the following **two (2)** Questions.

[1] Question 1

Alpha Co. is a supplier of sonar and radar for ships (“**Alpha**”). Beta Co. is a shipbuilder (“**Beta**”). Alpha and Beta concluded a contract whereby Alpha was to install sonar and radar for 2 naval vessels, called “Lucky” and “Happy”. Once these two ships are completed, Beta was to supply them to the Korean Navy. Alpha and Beta executed 2 contracts, one for Lucky (contract 1) and one for Happy (contract 2). Under contract 1, Beta was to pay USD 1.5 million in three installments: USD 0.5 million on execution of the contract (15 Oct 2015), USD 0.5 million upon completion of the installation (1 April 2016) and USD 0.5 million when an independent research laboratory, Naval Research Institute (“**NRI**”), issues a certificate of approval after a minimum two months of test operation. Under contract 2, Beta was to pay USD 1.8 million in three installments: USD 0.6 million on execution of the contract (15 Oct 2015), USD 0.6 million upon completion of the installation (1 July 2016) and USD 0.6 million when the NRI issues a certificate of approval after a minimum two months of test operation. Both contracts require Alpha to provide Beta with a performance guarantee in the amount of 10% of the contract price from a bank or an insurance company who undertakes to pay the guarantee amount to Beta upon Beta’s demand in the event of Alpha’s breach of contract. Both contracts stipulate a liquidated damage of USD 1000 per day of late installation if Alpha fails to meet the deadline for installation (1 April 2016 for Lucky and 1 July 2016 for Happy).

Alpha completed installation of sonar and radar for Lucky on time on 1 April 2016. Beta paid promptly as agreed. However, in June 2016, news reports began to appear where it is asserted that the sonar and radar installed by Alpha on Lucky are wholly inadequate for a navy ship and that there is a growing suspicion that the sonar might perhaps be a cheap variety commonly used for small fishing vessels. Alpha firmly denies the allegation and claims that it has met or exceeded the agreed technical specifications for sonar and radar. NRI is still conducting the test operation and no certificate of approval has been issued yet.

Alpha did not meet the deadline for installation for Happy. Alpha completed installation of sonar and radar for Happy on 20 July 2016. Beta refused to pay USD 0.6 million arguing that the sonar and radar installed on Lucky are defective. Beta argued that until the defect of Lucky’s sonar and radar is repaired, Beta is entitled to withhold payment for the sonar and radar installed on Happy.

Alpha disagrees. Alpha pointed out that the two contracts are separate and independent.

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Alpha further argued that Alpha was not responsible for the delay of installation on Happy because it was caused by unreasonable demands from NRI during the test operation of Lucky. As NRI constantly requested information, Alpha's staff had little time left and the progress of the work was severely disrupted. Alpha informed Beta that if Beta does not pay USD 0.6 million by 31 July 2016, Alpha would terminate contract 2. Beta maintained that no payment can be made until the defective sonar and radar on Lucky are repaired. On 2 August 2016, Alpha sent a termination notice to Beta and claimed damage for lost profit in respect of contract 2.

Discuss how the dispute must be resolved.

[2] Question 2

Gamma Co. ("**Gamma**") and Delta Corporation ("**Delta**") are joint venture partners. They set up a company called Purair Ltd. which manufactures air filters. Recently, air filters are in great demand in Korea and China due to poor air quality of these countries. The Shareholders Agreement ("**SHA**") between Gamma and Delta has the following provision:

If Gamma and Delta cannot agree on a strategically important issue in connection with the cooperation in the field of air filter manufacturing and marketing and if reasonable efforts to overcome such disagreement have failed to lead to a mutually satisfactory solution, either party may terminate this Agreement by a written notice to the other party.

The SHA further stipulates that the terminating party shall be entitled to purchase the shares of the other party at a substantially discounted price.

The parties have had some difficulties regarding Delta's proposal to set up a new joint venture company in China, where Gamma already has a branch office. The parties have been carefully avoiding an all out confrontation on this issue. But directors appointed by Delta were still talking about the business opportunities in China.

On 15 May 2017, George, Gamma's CEO, sent the following letter to David, who is Delta's CEO:

Dear David,

I hope this letter finds you well. Although we have had a bit of issues regarding your proposal for the Chinese market, I believe that the matter has now been satisfactorily dealt with. I believe that we are currently enjoying an excellent relationship as joint venture partners, fully cooperating on all major issues.

However, in the event that there may exist a disagreement on a strategically important issue in connection with the cooperation in the field of air filter manufacturing and marketing, Gamma hereby explicitly exercises the right of termination and herewith send you the notice of termination.

I really hope you do not think that there is a disagreement between us.

Yours ever,

George

David replied as follows on 25 May 2017:

Dear George,

I am very puzzled to have your strange letter. My lawyers told me that you are not entitled to terminate the Shareholders Agreement.

I am absolutely convinced that there is a serious disagreement on a strategically important

issue between us. Therefore, Delta hereby unconditionally and immediately terminates the Agreement. Please note that this is Delta's written notice of termination.

All good wishes,

David

Discuss how this dispute must be resolved.

[End of questions. You must answer **both questions**.]