Korean Contract Law II

12 December 2017

- The duration of the examination is 75 minutes (from 9:00 am to 10:15 am).
- During the examination, you may freely consult materials in your own possession, including online 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. They have an equal weight in assessment.

[1] Question 1 (50 points)

EFG Co. ("EFG" or the "Company") is a manufacturer of plastic packaging materials. Its main factory is located in Yongin, South Korea. Dimon Co. Ltd. ("Dimon") wanted to acquire EFG. Dimon and EFG concluded the Share Purchaser Agreement ("SPA") on 1 October 2016 whereby Dimon acquired 95% of EFG shares from 5 shareholders ("Sellers"), who are all members of Kim family.

On behalf of the Sellers, the negotiation was done by Mr Steve Kim, who holds 5.1% EFG shares. He is the Representative Director of EFG. He will only sell 0.1% of EFG shares and retain 5% of EFG shares and continue to serve as the managing director of EFG for 5 more years because Dimon did not wish to change the management structure too radically after the acquisition. All other shareholders (who are the father, brother, sister-in-law and his own wife) will sell all their EFG shares (which amount to 95% of EFG shares) to Dimon.

The SPA has the following clause:

Article 9 (Sellers' warranties)

9.1. The Company's property has no burden or condition which limits the Company's right as the owner of the property.

9.2. The Company has all necessary environmental permits and does its business in compliance with the applicable environmental regulations.

Article 15 (Limitations and Restrictions of Purchaser's Remedies)

15.1. After the Closing of the SPA, indemnity claims shall be the sole and exclusive remedy for the Purchaser, who hereby expressly gives up – as from the Closing of the SPA – the right of termination of the SPA for any reason whatsoever.

15.2. Any indemnity claims of the Purchaser arising out of any breach of warranty in connection with this SPA shall be time-barred after 31 December 2017.

15.3. Other than the warranties expressly given under the present SPA, the Sellers have not and do not make any warranties whether implied or arising from law.

The closing of the SPA took place as agreed on 1 November 2016 and the Company has been operating as before under Steve Kim's management.

On 1 March 2018, however, Dimon discovered that Yongin City has had an urban plan to build a road straight through EFG's Yongin factory. Steve Kim had known about it but kept quiet about it. Yongin City notified EFG that the land needed for the road shall soon be acquired by the local government in accordance with the relevant statutes. In March 2018, Dimon also discovered that the Company was in violation of a number of environmental regulations. Unless the Company makes a huge investment, it will not be able to conform to the applicable regulatory standards. If the Company's non-compliance is brought to the attention of the relevant governmental agency, the Company's directors may be prosecuted and the Company may be ordered to shut down until it obtains the required permits to handle hazardous materials on site.

Dimon immediately complained to Steve Kim and claimed that the SPA is now terminated. Steve Kim responded that after the Closing of the SPA, termination is not possible and that indemnity claims are now all time-barred.

How should this dispute be resolved?

[2] Question 2 (50 points)

Mr Lee leased a gas station (petrol station) near Anam Junction from Grease Co., who owns and operates a number of gas stations all over the country. Mr Lee's gas station was doing well and he needed additional storage capacity and more gas pumps (petrol pumps).

Mr Lee asked Grease Co. whether the company can install another underground storage tank and 5 more gas pumps. Grease Co refused but suggested that Mr Lee could, if he wishes, make those additions at his own costs. Mr Lee therefore carried out the necessary work to bury an additional underground storage tank and installed 5 more gas pumps. The underground storage tank cost 200 million KRW and gas pumps cost 30 million KRW each.

When the agreed 5 year lease period was over, Grease refused to renew the lease and demanded Mr Lee to leave and to put everything back to the original condition (i.e., to remove the additional underground storage tank and the 5 additional gas pumps) because those additional pumps and the underground storage tank are not compatible with the company's plan for adding a convenience store to the gas station. Mr Lee argued that he has no obligation to restore the property to its original condition and that Grease must instead pay Mr Lee 350 million KRW plus interest.

Discuss how the dispute must be resolved.

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