

Korean Contract Law I

23 June 2018

- The duration of the examination is 75 minutes (from 10:00 am to 11:15 am).
- 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. (“**Alpha**”) has 100% shares of A Co, which in turn wholly owns B Co. Alpha is looking for an opportunity to sell A Co and B Co to a suitable buyer. Beta Co. (“**Beta**”) is a private equity fund who is interested in the investment opportunity. After having studied the growth potential and the financial status of A Co and B Co, Beta decided to acquire them from Alpha at the price of USD 300 million. Alpha and Beta executed the Share Purchase Agreement (“**SPA**”) on 1 September 2017, whereby Alpha agreed to sell and transfer all shares of A Co to Beta on the Closing Date, which shall take place 1 month after all conditions precedent to the Closing have been met or waived by the parties. Alpha also warranted that, as of the Closing Date, it shall not have caused A Co to sell its subsidiary to a third party.

On 10 December 2017, Alpha notified that all conditions precedent are met and that the Closing must take place on 10 January 2018. Beta disagreed. Beta argued that some of the conditions precedent have not been met and refused to make payment in exchange for the shares of A Co.

On 13 February 2018, Alpha caused A Co to sell B Co to a third party, arguing that the Closing Date has gone past and that Alpha is no longer prevented under the SPA from causing A Co to sell off its subsidiary. Alpha instead demanded Beta to pay the full purchase price plus delay interest calculated from 11 January 2018 in exchange for all shares of A Co, as allegedly agreed under the SPA.

Beta argues that since Alpha caused A Co to sell B Co to a third party, and because the purpose of the SPA cannot be achieved with the purchase of the remaining A Co only, Beta terminates the SPA. Beta argues that Alpha must pay damage to Beta in the amount corresponding to the costs of concluding the SPA (consisting of the expenses incurred in the negotiation and conclusion of the SPA).

Discuss how the dispute must be resolved.

[2] Question 2

Delta Development Co. (“**Delta**”) is a construction company which builds and sells apartments. They announced an exciting new apartment development project in the city of X and recruited home buyers. All units of the apartments were sold. Near the apartment complex in the city of X, however, the municipal government already had a plan for a landfill site. Buyers who concluded the contract to purchase the apartments without knowing

about the planned landfill site were angry when the landfill site began operation. Noise from lorries carrying and dumping garbage and the unpleasant smell from the landfill site made the apartments highly unpopular. The price of the apartments in question nevertheless augmented by about 10%. Other apartments built and sold by Delta in other cities have seen much high price increase (about 30% over the initial selling price upon completion of the construction of the apartments) during the comparable period.

Some of the buyers sued Delta about two years after the initial sale of the apartments in the city of X and argued that they were deceived by Delta and that they now terminate the contract.

Discuss whether the contract may be terminated and explain all possible remedies, if any, available to the buyers.

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