

Korean Contract Law I

23 April 2022

- This is 24 hour take home examination (from 10:30 am 23 April 2022 to 10:30 am 24 April 2022).
- During the course of the examination, you may freely consult materials in your possession and 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.
- No length limit applies to your answers.

[1] Question 1

Tiger Foundation's Memorandum of Incorporation ("MOI") states that the Foundation's objectives are "to promote animal welfare, to educate the general public about the plight of wild life, and to be engaged in all activities relevant to the foregoing."

The MOI further states that the Foundation shall have 7 directors, each of whom shall have the representative authority. But MOI provides that any contract which exceeds 1 billion KRW shall require an approval of the Board of Directors.

Mr Lee, a Director of Tiger Foundation, decided to buy a plot of land in the name of the Foundation. The plot is located in the outskirts of Seoul. Mr Lee expected that the land price will continue to rise due to the proposed redevelopment plan recently leaked to a local newspaper. The contract price was 3 billion KRW. In order to finance this transaction, Mr Lee approached KU Bank and YS Bank. Each of these banks approved a loan to the Tiger Foundation in the amount of 1 billion KRW each, repayable in one year.

Neither the purchase of land nor the loan agreements were approved by the Board of Directors. The purchase of land turned out to be disastrous. The local government cancelled the redevelopment plan due to the premature leak and the employees of the local government responsible for the leak were being prosecuted. The land price plummeted and the plot is currently worth much less than 3 billion KRW. Mr Lee, meanwhile, decided to escape from the embarrassment by taking the 2 billion KRW from the Foundation's account and he disappeared.

Ms Kang, the owner of the land, demanded completion of the land conveyance. When the Foundation was unable to pay the balance, Ms Kang deposited with the court all documents necessary to complete the transfer of ownership to the Foundation and demanded payment from the Foundation. The Foundation denied the obligation, pointing out that the purchase of the land shall not be binding upon the Foundation.

While the dispute continued, KU Bank and YS Bank also demanded repayment of the loan. The Foundation argues that the Banks shall have to sue Mr Lee because the Foundation is also a victim of Mr Lee's criminal manoeuvre.

Will the Foundation be required to pay the balance of the purchase price to Ms Kang?

Will the Foundation be required to repay the loans to KU Bank and YS Bank?

What other remedies can be resorted to by Ms Kang, KU Bank and YS Bank? [2009 mid-term exam question]

[2] Question 2

In the late 1990's, Tiger Life Insurance Co ("TLI") was suffering from financial crisis. It was on the verge of bankruptcy. The government decided to rescue the company by injecting tax-payer's money. TLI became a state-owned insurance company.

When the economic situation improved and TLI's performance showed signs of recovery, the government decided to sell 51% of TLI's shares to an investor who has experience and know-how of running a world class insurance company. The government accordingly invited bidders worldwide indicating that the investor should ideally have proven records of managing insurance companies.

HW, Inc. had no record or experience of running insurance companies. It's main line of business has been manufacturing of all sorts of hardware for home and industrial use. HW formed a consortium with Short Life Insurance (SLI) which is a renowned and well-respected household name in the insurance business worldwide.

The consortium (HW-SLI) was successful in acquiring 51% share of TLI in March 2003. In the hand of HW-SLI, TLI was doing good business. However, in October 2006, it emerged that HW had attempted to bribe government officials in an effort to acquire TLI in 2003. Moreover, before the acquisition of TLI, HW had secretly guaranteed SLI that SLI would not bear any risk even if TLI's performance should turn out to be poor. According to their secret arrangement, SLI would not benefit from the good performance of TLI either. It had been further agreed that, one year after the acquisition, SLI would leave the consortium leaving TLI entirely in the hand of HW. SLI did leave the consortium in March 2004. The government was somewhat surprised by this move, but no action was taken by the government at that time.

In October 2006, however, when HW's attempted bribery was being investigated, the government began monitoring the situation. In June 2007, while the directors of HW were being prosecuted for their attempted bribery and when the secret arrangements between HW and SLI began to be divulged, the government notified rescission of the sale of 51% share of TLI to HW-SLI consortium (2003 sale) and demanded HW to return the shares of TLI.

HW flatly rejected the government's demand arguing that it is a politically motivated move aggravated by the government's greed, seller's remorse and shameless effort to get hold of the fantastic results of TLI in the meantime which, according to HW, were due entirely to HW's effort and skill.

How should this dispute be resolved. [2012 mid-term exam question]

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