



2022

Compliance Program Manual

Message from the CEO

Dear SK siltron associates,

It is with a joyful heart that I inform you that SK siltron has been continuing its growth as a semiconductor materials company that is trusted by all through our ongoing technological innovation and consistent quality control. SK siltron has always sought to promote fair trade compliance and a culture of shared growth, inspired by the competition that comes from market fairness.

Today, the market we find ourselves in is increasingly demanding fair trade, in such aspects as ESG management and transparency in all transactions. SK siltron also embraces ethical management and a culture of fair trade. As such, it is incumbent on us to improve our systems and competitiveness to achieve the growth that goes hand in hand with this belief.

As our commitment to dispense with a routine approach to compliance and instead pursue an active and voluntary practice of fair trade, SK siltron and its people have united to adopt its compliance program, and I hereby declare our commitment to it, a solemn affirmation of our will to ensure fair trade.

Through the active practice of the CP, SK siltron will set an example in ethical management and fair trade. The trust of society and of our customers in SK siltron will be stronger than ever, and SK siltron will be able to achieve a level of qualitative growth befitting the tech giant that it is.

As CEO, I will stand alongside you in the following commitments.

1. We will actively practice fair trade, a source of SK siltron's competitiveness.
2. We will seek to ensure the transparency of the subcontract work we get involved in, and shun unfair trade practices, such as exploiting leverage over business partners, and unfair sourcing and use of information, such as unfair demands for technical information.
3. We will never instruct, approve, or facilitate any violation of fair trade legislations.

I hope this has helped you to fully understand SK siltron's unwavering support for fair trade. We thank you for your ongoing interest in and support for our efforts in this area. Thank you.

Jang Yong-ho
CEO
SK siltron

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Section 1. Understanding the Compliance Program

A. Compliance Program

- Companies can develop and operate a compliance program (CP) for voluntary compliance with fair trade legislation.

1) Purpose

The employees of a company can refer to the company's CP for behavioral guidelines that tie into compliance with fair trade legislation. The purpose of a CP is to prevent violations of fair trade legislation and make related improvements.

2) The Need for a CP

① Companies' Prevention of Loss Resulting from Infringement, and Improved Public Image

As penalties for violation of fair trade legislation are becoming more substantial with the passage of time, the importance of compliance in business management centered on a CP is increasing. A successful CP allows a company to instill in its employees a good understanding of fair trade legislation and consequently enjoy such benefits as the prevention or minimization of fines, lawsuits, damages, and other expenses associated with Fair Trade Commission actions, as well as the maintenance of a good public image that would be otherwise marred by Fair Trade Commission actions, bolstered by a declaration of commitment to compliance.

② Creation of a Culture of Compliance

The creation of a culture of compliance from the operation of a CP helps a company's employees adopt compliance awareness as second nature, and can spread an understanding of the need for a culture of compliance among the company's business partners. Ultimately, the company can achieve order and transparency of trade with its network of business partners.

3) The Eight Requirements for the Success of a CP

① Formation and Implementation of CP Standards and Procedures

The standards and procedures necessary for the members of SK siltron to clearly understand and practice fair trade-related compliance must be formed and implemented. SK siltron's CP Policy has been in effect since June 2022.

② CEO's Will and Support for the CP

As the head of SK siltron, the CEO must make public SK siltron's will and plans for voluntary compliance with fair trade legislation, and actively support its CP activities.

The CEO of SK siltron made a declaration of commitment to SK siltron's Compliance Program in August 2022 via a company-wide notice and broadcast.

③ Appointment of a Chief CP Officer

The board of directors of SK siltron must appoint a chief CP officer to achieve the effectiveness of CP operations.

SK siltron's Chief CP Officer is indicated below.

- Head of Business Management Division

④ Development and Use of a CP Manual

A CP manual for use within SK siltron, prepared under the chief CP officer's responsibility, includes information related to fair trade legislation and CP standards and procedures. It must be made available in document or electronic document format for convenient access by all employees.

Said CP Manual serves as SK siltron's official CP Manual.

⑤ Ongoing Execution of Systematic CP Training

Effective training in CP standards and procedures and compliance with fair trade legislation must be provided regularly to the CEO and members of the purchasing and sales operations and any other operations deemed a high risk in fair trade.

The Legal Affairs Team of SK siltron, in charge of SK siltron's fair trade activities, provides the members of SK siltron with CP training at least once a year.

⑥ Operation of an Internal Monitoring System

A soundly structured monitoring and audit system is required for prevention or early detection of infringements. Monitoring and audit results must be reported to the board of directors or another chief decision-making body regularly (at least two times per year).

For prevention or early detection of fair trade-related infringements, SK siltron collects

and processes reports of fair trade infringements through the SK Group's ethical management website, and performs compliance diagnosis to identify and address related risks.

⑦ Disciplinary Action for Violations of Fair Trade Legislation

Company policy defining instances of violation of fair trade legislation by employees and the commensurate disciplinary actions entailed must be formed and observed. When such an instance of violation is discovered, steps must be taken to actively respond to it and prevent its recurrence.

SK siltron's company policy prescribes the disciplinary actions to be imposed on employees found to have violated fair trade legislation.

⑧ Evaluation and Improvement of Efficiency

Evaluation of CP standards and procedures and their implementation must take place regularly and the necessary improvements made to ensure the continuing efficiency of the CP.

SK siltron evaluates and updates its CP standards and CP Manual on a regular basis.

B. CP Rating System

- A company can apply for a rating of its CP when at least one year has passed from its adoption. The CP rating system rates such a company at least once a year on its CP operating performance and other related factors.
- At present, SK siltron is not being rated on its CP, but will apply to be rated if it deems it necessary at any point in the future.

Section 2. Fair Trade Act and Business

A. Outline of Unfair Trade Activities

- Unfair trade activities involve the use of unfair methods of trade which are detrimental to free market competition.

1) Forms of Unfair Trade Activity

01	Trade Refusal
02	Discriminatory Treatment
03	Exclusion of Competitors
04	Unfair Customer Recruitment
05	Forced Trade
06	Abuse of an Advantageous Position in Trade
07	Trade on Binding Conditions
08	Interference with Business Activities
09	Unfair Support

2) Determinants of Illegality

- The core of the illegality of unfair trade activities is "the potential to prevent or reduce fair trade," which includes restriction and unfairness of competition.
- The illegality of unfair trade activities is determined on a case-by-case basis.

3) Penalties

Classification	Penalty surcharge	Imprisonment/fine	Note
Trade Refusal to Interference with Business Activities (01 to 08 as indicated above)	Up to 4% of related revenue (Up to KRW 1 billion if no related revenue exists)	Up to 2 years of imprisonment or KRW 150 million in fines	Multiple penalties possible
Unfair Support (Specially related persons included)	Up to 10% of related revenue (Up to KRW 4 billion if no related revenue	Up to 3 years of imprisonment or up to KRW 200	

	exists)	million in fines	
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B. General Unfair Trade Activities

1) Unfair Trade Refusal

- In principle, it is up to the individual business to decide with whom it will trade, but refusal to start or continue trade which materially complicates the activities of another business or restricts competition in the related markets constitutes trade refusal.
- There are two broad categories of trade refusal: ① collective trade refusal and ② miscellaneous trade refusal.
- Abstention from trade with businesses which do not satisfy standards set reasonably and in line with the company's production or sales policy does not constitute trade refusal.

① Collective Trade Refusal

- Collective trade refusal is the refusal to start trade with or the decision to cease trade with or conspicuously limit the volume or nature of trade with a certain business as a collective doing of two or more companies in competitive relations without a valid reason.

○ Examples

- Collective refusal to engage in trade with a trade partner
- Refusal to supply, purchase, start/continue trade, etc.
- Proposal of conspicuously disadvantageous trade conditions or conspicuous restriction of the volume or nature of products or services for trade, constituting a trade refusal in essence

○ Determinants of Illegality

- Restriction of competition in related markets
- In principle, collective trade refusal is deemed a competition restriction risk

- An accused business can make an argument in its defense, to be judged for validity

② **Miscellaneous Trade Refusal**

- Miscellaneous trade refusal is the refusal to start trade with or the decision to cease trade with or conspicuously limit the volume or nature of trade with a certain business without a valid reason.

○ **Examples**

- Refusal to engage in trade with a trade partner as an entity
- Refusal to supply, purchase, start/continue trade, etc.
- Proposal of conspicuously disadvantageous trade conditions or conspicuous restriction of the volume or nature of products or services for trade, constituting a trade refusal in essence

○ **Determinants of Illegality**

- Restriction of competition in related markets
- Refusal to trade products or services essential to a trade partner's business
- Ready availability of substitute trade partners
- Stress placed on a trade partner's business activities
- Barrier placed against the market entry of a competitor
- Use of trade refusal as a means to demand activities prohibited by the Fair Trade Act

2) Discriminatory Treatment

- A business has freedom when it comes to setting the conditions (prices, etc.) and nature of its trade, but the setting of conditions and nature of trade in a manner that discriminates against a certain trade region or partner by a single business or by two or more businesses which prevents or reduces normal competition in related markets is illegal.
- There are four broad categories of discriminatory treatment: ① price discrimination, ② trade condition discrimination, ③ discrimination on behalf of affiliated companies, and ④ collective discrimination.

① Price Discrimination

- Price discrimination is the application of a conspicuously advantageous or disadvantageous price to a trade region or partner.

○ Examples

- Price discrimination against a certain trade region or partner
 - * A price is all payment actually made by a trader partner for a product or service, and trade conditions include such direct influences on a price as discount rates.

○ Determinants of Illegality

- Restriction of competition in markets a price discriminator or trade partner is part of
- Competition restriction is determined by comprehensively considering the following.

► **Competition Restriction in Markets the Price Discriminator is Part of**

- Potential of a price discriminator to maintain or strengthen its market position through price discrimination
- Price discrimination intended to exclude competitors from competition (note: price discrimination to enter a new market is a means of response to competition and its effect of competitor exclusion can be seen as minor)
- Potential of price discrimination to exclude competitors from related markets, and price discrimination causing set prices to fall below the cost of manufacture or purchase of products and services
- One-time vs. ongoing price discrimination; while the competition restriction effect of one-time price discrimination can be seen as minor, ongoing price discrimination likely increases the effect of competition restriction

► **Competition Restriction in Markets the Trade Partner is Part of**

- Exclusion or potential exclusion of a trade partner or its competitors from competition in markets the trade partner is part of from price discrimination
- A trade partner's ability to easily switch trade partners when its treatment is rendered relatively disadvantageous by price discrimination must be considered: competition restriction is minor if the trade partner can switch trade partners easily
- Potential of price discrimination to exclude a trade partner's competitors from competition, and price discrimination causing set prices to fall below the cost of manufacture or purchase of products and services
- One-time vs. ongoing price discrimination; while the competition restriction effect of one-time price discrimination can be seen as minor, ongoing price discrimination likely increases the effect of competition restriction

- Even determined instances of competition restriction can be seen as non-infringing if the price discrimination involved is validated as follows:
 - Instances where price discrimination reflects marginal cost or market conditions based on such elements as trade volumes, transport cost, trade partners' roles, and perishability of products
 - Instances where efficiency increases (increased benefits or economic efficiency of businesses enjoying discounted prices) or consumer welfare increases resulting from price discrimination conspicuously exceed the restriction on competition
 - Instances where reasonable grounds for price discrimination are recognized to

exist

② Trade Condition Discrimination

- Trade condition discrimination is the unfairly advantageous or disadvantageous treatment of a certain business in the conditions (volumes, quality, etc.) or nature of trade.

○ Examples

- Discrimination in trade conditions other than price
 - * Discrimination in aspects of trade other than price and direct influences on price (e.g., volume discounts), such as contract performance methods and payment conditions
- As trade condition discrimination is directed at businesses, discrimination against consumers is not considered trade condition discrimination. However, discrimination not directed at any specific business but at all businesses meeting certain criteria or all businesses in a certain region is seen as potential trade condition discrimination.

○ Determinants of Illegality

- Restriction of competition in markets that a trade condition discriminator or trade partner is part of.
- Competition restriction or non-infringement is determined as per price discrimination.

③ Discrimination on Behalf of Affiliated Companies

- Discrimination on behalf of affiliated companies is the unfair rendering of conditions (prices, volumes, quality, etc.) and nature of trade which are conspicuously advantageous or disadvantageous for the benefit of affiliated companies.

○ Examples

- Discrimination in conditions (prices, etc.) and nature of trade to give advantage to affiliated companies

- Consumers can also be subjected to discrimination on behalf of affiliated companies

○ **Determinants of Illegality**

- Restriction of competition or concentration of economic power, with the rendering of conditions (prices, etc.) or nature of trade conspicuously advantageous to affiliated companies or conspicuously disadvantageous to competitors of affiliated companies recognized as the hallmark.
- However, a reason given by a discriminator on behalf of affiliated companies in defense will be assessed for validity, with the following valid reasons being accepted as the basis for non-infringement.
 - Efficiency or consumer welfare is enhanced through an instance of discrimination on behalf of affiliated companies conspicuously exceeding competition restriction
 - Reasonable grounds for discrimination on behalf of affiliated companies are recognized to exist

④ **Collective Discrimination**

- Collective discrimination is discriminatory treatment of a business by two or more businesses to render its business activities conspicuously advantageous or disadvantageous.

○ **Examples**

- Discriminatory treatment of a certain business by two or more businesses. Collective discrimination is distinct from unfair collective action in that it can take place without agreement and the businesses participating in the collective discrimination do not always need to be real or potential competitors. Actual discriminatory treatment must take place.
- Discrimination in the conditions (prices, etc.) or nature of trade is included.

○ **Determinants of Illegality**

- Collective discrimination is determined as per price discrimination and trade condition discrimination.

- As collective discrimination involves multiple businesses, its instances are more likely to be determined as illegal than instances of price discrimination or trade condition discrimination.

3) Exclusion of Competitors

- Exclusion of competitors is a business's exclusion of other businesses from competition, not by normal means of competition but through the sale of products or services at prices conspicuously lower than their costs or the purchase of products or services at prices unfairly higher than their customary prices.
- Exclusion of competitors can take the form of ① unfairly low pricing or ② purchase at unfairly high prices.

① Unfairly Low Pricing

- Unfairly low pricing is a company's continuing supply of products or services at prices conspicuously lower than their costs without a valid reason, or other instances of the supply of products or services at unfairly low prices, to potentially exclude competitors of the company or its affiliated companies from competition.
- Unfairly low pricing can be continuous or temporary.

○ Examples

- Continuous unfairly low pricing is the supply of products or services at prices conspicuously lower than their costs* over an extended period.

* Costs of manufacturing or purchasing

- Temporary unfairly low pricing is the supply of products or services at prices conspicuously lower than their costs one time or over a short period (up to one week).

○ Determinants of Illegality

- Potential of an instance of unfairly low pricing to exclude competitors of the company or its affiliated companies from competition (competition restriction) in markets where the products or services concerned are traded. "Potential to exclude competitors" is the potential of an instance of unfairly low pricing to exclude competitors from the market, not an actual instance of such exclusion.

- In principle, continuous unfairly low pricing is deemed a competitor exclusion risk. However, a reason given by a business accused of continuous unfairly low pricing in defense will be assessed for validity, with the following being accepted as valid bases for non-infringement:
 - The absence of barriers to entry into the concerned market (e.g., economies of scale, business permits, trade expenses, etc.) rendering continuous low pricing ineffective in keeping new competitors at bay, even if current competitors are excluded
 - Low pricing of limited quantities for the clearance of faulty products, products about to expire, or seasonal products or inventories
 - Low pricing necessitated by supply conspicuously exceeding demand
 - Limited-time low pricing for promotional purposes, coinciding with a new store opening or new market entry
 - Low pricing to prevent bankruptcy or insolvency, or low pricing by a business in bankruptcy or insolvency
 - Efficiency increases or consumer welfare increases from an instance of continuous unfairly low pricing conspicuously exceeding competition restriction
 - Instances where reasonable grounds for continuous unfairly low pricing are recognized to exist
- Temporary unfairly low pricing is determined based on its potential to exclude competitors from the markets where the products or services concerned are traded.

② Purchase at Unfairly High Prices

- Purchase at unfairly high prices is the purchase of products or services at prices higher than is customary to potentially exclude competitors of a company or its affiliated companies from competition.

○ Examples

- Purchase of products or services at prices higher than their customary prices. A customary price is the average price observed in normal transactions between businesses in the market at a given time.

- As the exclusion of competitors by intentionally creating a scarcity of certain products or materials is attributed to the proportion of bought-up products or services in their total supply, purchase at higher prices does not need to continue.

○ **Determinants of Illegality**

- Potential of an instance of purchase at unfairly high prices to exclude from competition competitors of the company or its affiliated companies (competition restriction) in markets where a scarcity of the concerned products or services has been achieved
- Potential of the exclusion of competitors (competition restriction) is determined by comprehensively considering the following:
 - Competitors and potential competitors' full dependence on the products or services purchased at high prices for the continuation of their business
 - Ease of the sourcing of the products or services concerned, and of substitute products or services; the availability of substitutes at substantially higher cost leaves the potential for competition restriction
 - Potential of purchase at high prices to place or potentially place stress on competitors' business activities
- Even determined instances of purchase at unfairly high prices potentially excluding competitors (competition restriction) can be seen as not being infringing if the purchase at unfairly high prices involved is validated as follows.

4) Unfair Customer Recruitment

- Unfair customer recruitment is a company's use of means such as the provision of benefits, prevention of contract conclusion, or encouragement of non-performance of contract to motivate the customers of another company to trade with the company.
- Unfair customer recruitment comprises ① customer recruitment with the offer of inappropriate benefits, ② customer recruitment by deception, and ③ miscellaneous unfair customer recruitment.

5) Forced Trade

- Forced trade is a company's use of such means as tying or the use of personnel to force customers to purchase or sell products or services, and is intended to unfairly force the customers of a competitor to trade with the company.

- Forced trade can include ① tying, ② sale by personnel, and ③ miscellaneous forced trade.

6) Abuse of an Advantageous Position in Trade

- Abuse of an advantageous position in trade is a business's use of its advantageous position in trade to impose such disadvantages as forced purchase of commodities on trade partners in less advantageous positions, or to interfere in their business management to exploit the economically vulnerable, and is prohibited because it prevents or reduces trade partners' spontaneous development, and fair trade.
- There are five broad categories of abuse of an advantageous position in trade: ① forced purchase, ② forced provision of benefits, ③ forcing of sales targets, ④ provision of disadvantages, and ⑤ management interference.
- Determinants of an Advantageous Position in Trade

► Determinants of an Advantageous Position in Trade

- Continuing trade relations
- Considerable dependence by others in trade
- The extent of continuing trade relations or dependence by others in trade is determined by comprehensively considering market conditions, the characteristics of the products or services concerned, etc.
- [Example] Instances where a company has been trading with its suppliers or certain businesses (trade partners) for an extended time, and the trade partners opt for another company because maintaining trade relations with the company involves large expenses
Instances where an immense loss is expected from an inability to change facilities/equipment, or other negative factors

- Abuse of an advantageous position in trade is determined by comprehensively considering a company's holding of an advantageous position in trade with trade partners, the fairness of trade, and the validity of the abusive activities concerned. Fairness of trade is determined by comprehensively considering the purpose of the abusive activities concerned, potential prediction by trade partners, customary trade practice in the industry concerned, and related legislation. The validity of a suspected abusive activity is determined by comprehensively considering whether the attendant increases in efficiency or consumer welfare conspicuously exceed the attendant prevention or reduction of fair trade, and whether any other reasonable reasons for the activity exist.

① Forced Purchase

- Forced purchase is the forcing of a trade partner to purchase products or services it does not seek.

② Forced Provision of Benefits

- Forced provision of benefits is the forcing of a trade partner to provide a company with funds, commodities, services, or other benefits.

○ Examples

- Forcing a trade partner to provide funds, commodities, or other economic valuables.
- Economic valuables include money, securities, commodities, and services. Using an affiliated company's advantageous position in trade to force the provision of benefits is included. Active demand for the provision of economic valuables by a trade partner as well as a passive enjoyment of economic valuables through the transfer of expenses to a trade partner is included.
- [Example] A company which is a dominant buyer demanding a set percentage of its purchase be supplied for free without a valid reason

③ Forcing of Sales Targets

- Forcing of sales targets is the specification of targets in the trade of products or services supplied by a company, and the forcing of a trade partner to meet such targets.

④ Provision of Disadvantages

- Provision of disadvantages is the setting or change of trade conditions disadvantageous to a trade partner or the application of disadvantages in the performance of such trade conditions, using methods other than forced purchase, forced provision of benefits, and forcing of sales targets.

○ Examples

- Setting or change of trade conditions disadvantageous to a trade partner

The setting of trade conditions disadvantageous to a trade partner at the outset of trade, or the change of existing trade conditions to be disadvantageous. Trade conditions include restraints, purchase at low prices and sale at high prices, pricing conditions (fees, etc. included), payment methods and times, return of purchases, product inspection methods, and contract termination conditions.

- Application of disadvantages to a trade partner in trade.

Non-performance of trade conditions as well as the forcing of certain actions in trade relations to impose disadvantages on a trade partner. The imposition of disadvantages can be active, such as actions performed to the disadvantage of a trade partner, or passive, such as the non-performance of expenses and other obligations of a company.

- [Example] A company delays performance due to reasons attributable to itself, but does not pay the interest due on the delay for an extended period, forcing a trade partner to abandon its dues
- [Example] A company uses its advantageous position in trade to refuse trade with a trade partner without a valid reason, to impose a disadvantage (trade refusal by abuse of an advantageous position in trade)

⑤ Management Interference

- Management interference is the requirement of a trade partner to obtain a company's instruction or approval in the appointment or dismissal of personnel, and the restriction of a trade partner's production items, facility sizes, production volumes, and nature of trade.

○ Examples

**Coupang's Appeal Against Its Arraignment on Charges of Violation of the Large Retail Business Act
[2021Sosim2493]**

[Facts]

To minimize potential loss of margins from its price matching policy, Coupang demanded 101 of its suppliers increase the prices of their supply to Coupang's competitors if prices offered to consumers by said competitors decreased due to temporary discounts and other conditions between 2017 and September 2020.

[Fair Trade Commission's Opinion]

Coupang's action restricted or influenced the nature of trade between suppliers and Coupang's competitors, infringed suppliers' freedom of decision-making, and unfairly interfered in suppliers' management activities, thus constituting an abuse of an advantageous position in trade.

7) Trade on Binding Conditions

- Trade on binding conditions is a company's prevention of a trade partner from trade with competitors of the company or its affiliated companies, restricting the trade partner's freedom of choice and monopolizing purchase and distribution channels to impede competitors' market entry. It is an illegal activity which prevents or reduces market competition and consumer welfare.
- Trade on binding conditions can be broadly divided into ① trade on exclusive conditions and ② restriction of trade areas or partners.

① Trade on Exclusive Conditions

- Trade on exclusive conditions is a company's trade with a trade partner under unfair conditions that prevent the trade partner from trading with competitors of the company or its affiliated companies.

○ Details

- Competitors of a company or its affiliated companies include current and potential competitors.
- Exclusive conditions include direct prohibition or restriction of a trade partner's trade with competitors, and the prohibition or restriction of trade of items in competition with a company's supplied items. Sales exclusivity agreements, and conditions obligating a trade partner to cease current trade with competitors or abstain from new trade relations, are exclusive conditions.
- As well as the inclusion of terms preventing trade with competitors in an agreement,

trade with competitors which entails disadvantages not specified in an agreement is also an exclusive condition.

○ **Determinants of Illegality**

- Restriction of competition in related markets by trade on exclusive conditions.

② Restriction of Trade Areas or Partners

- Restriction of trade areas or partners is the trade of products or services under unfair conditions that restrain a trade partner in its selection of trade areas or partners.

8) Interference with Business Activities

- Interference with business activities is a company's severe impediment of another company's business activities by such methods as unfair use of another company's technology, unfair recruitment of another company's personnel, or unfair interference in another company's cessation of trade relations with the company.
- Interference with business activities can be broadly divided into ① unfair use of technology, ② unfair recruitment of personnel, ③ interference in the cessation of trade relations, and ④ miscellaneous interference with business activities.

① Unfair Use of Technology

- Unfair use of another company's technology, causing a considerable impediment to its business activities.

② Unfair Recruitment of Personnel

- Unfair recruitment of another company's personnel, causing a considerable impediment to its business activities.

③ Interference in the Cessation of Trade Relations

- Unfair interference in the cessation of another company's trade relations, causing a severe impediment to its business activities.

④ Miscellaneous Interference with Business Activities

- Unfair methods other than unfair use of technology, unfair recruitment of personnel, and interference in the cessation of trade relations, causing a severe impediment to another company's business activities.
- [Example] Distribution of materials containing slander against another company

C. Unfair Support

1) Definition of Unfair Support

- Unfair support can be broadly divided into ① unfair provision of advance payments, loans, personnel, real estate, securities, products, services, intangible property rights, and other valuables to a specially related person or a company, or the trade of such valuables under conspicuously advantageous conditions with a specially related person or a company constituting support for said specially related person or company, and ② trade through a specially related person or a company, which performs no real role, as a medium when direct trade with another company would provide a considerable advantage.

○ Subjects and Objects of Support

- A subject of support is a company which provides unfair support, and an object of support is a specially related person or a company enjoying economic benefits from the support provided by a subject of support.

○ Determinants of Unfair Support

In principle, the unfairness of support activities is determined by comprehensively considering such factors as the relations between a subject and object of support, the purpose of support activities, the structure and characteristics of the markets an object of support is part of, the scale of support provided in trade, the economic benefits from support activities, the period of support, the frequency of support, the time of support, the economic conditions of an object of support at the time of support, the extent of change in the competitive capacities and conditions of small and medium companies and other competitors, trends in the market share and credit rating of an object of support before/after support, and the extent of market openness.

- A concerned support activity's potential to prevent or reduce fair trade through the

prevention or reduction of competition in the markets the object of support is directly or indirectly part of, concentration or economic power, and other conditions is assessed

- The unfairness of support provided to a specially related person that is not a business is assessed on its potential to prevent or reduce fair trade through the prevention or reduction of competition in the markets the specially related person is directly or indirectly part of, the concentration of economic power, and other conditions as achievable by the specially related person through the investment in affiliated companies of economic benefits obtained from the support activities concerned

○ **Examples of Unfair Support**

► **Instances where a support activity can potentially allow the object of support to form, maintain, or strengthen its position of advantage in certain areas of trade**

[Example] Support provided to a company that is active in a market where small and medium companies make up over half of the market share, by its affiliated companies, without a valid reason, resulting in the company's achievement of a market share of 5% or larger, or one of the three largest market shares

► **Instances where a support activity can potentially exclude competitors from certain areas of trade in which the object of support is active**

[Example] Support in an area of trade provided to a company (object of support) by its affiliated companies (subject of support) that allows the object of support to enjoy stability of business activities unrelated to its competitiveness and without risks, while competitors and potential competitors are left out of the opportunity to trade with a large trade partner such as the subject of support

► **Instances where a support activity allows the object of support to enjoy a considerable competitive advantage over its competitors**

[Example] Support provided to an object of support to increase its business capacity through the improvement of capital power, technological power, sales power, product perception, and other conditions, giving the object of support advantage over competitors in business activities

[Example] Support provided to an object of support to strengthen its business foundation and stabilize or strengthen its finances

► **Instances where a support activity in an area of trade where the object of support is active prevents or challenges the exit of the object of support or the entry of other companies**

► **Instances where a support activity takes place by unfair methods and procedures, including unfair methods and procedures of competition, such as the evasion of legal obligations, and where said support activity can potentially prevent or reduce fair trade in an area of trade in which the object of support is active through the prevention or reduction of competition, concentration of economic power, or other means**

[Example] A securities company's evasion of the ban on the acquisition of corporate bonds of affiliated securities companies as specified in the Securities Acquisition Regulations by operating under another securities company to enjoy economic benefits in the form of fees, preventing or reducing fair and free competition with other securities companies

○ **Examples that are Not Unfair Support**

► Instances where a large business group supports the corporate restructuring of its affiliated companies or their business areas within the range necessary to indemnify the affiliated companies

[Example] An affiliated company that is a guarantor for the debts of an object of support taking over the debts of the object of support within the range of the guarantee

[Example] An affiliated company holding a stake in an object of support participating in a paid-in capital increase executed by the object of support, commensurate with the stake held

► Instances where a consignee company is made known in advance and a consignor company (affiliated company) receives reasonable and indiscriminatory support in accordance with the Act on the Promotion of Mutually Beneficial Cooperation between Large Enterprises and Small and Medium Enterprises

► Instances where support is provided to a small or medium-sized company established on employee investments to assume certain business areas of a company in its corporate restructuring in accordance with the Framework Act on Small and Medium Enterprises for a period of no longer than three years from its establishment for the development of self-sufficiency, and which produces little influence on existing trade relations of other small and medium companies

[Example] Support provided to a company established by separating the original company's in-house parts manufacturing business, which does not encroach on existing trade relations of other small and medium companies competing with the separated company

[Example] Support provided to a company established by separating the original company's product manufacturing business, with the separated company maintaining only the trade relations of the original company

[Example] Support provided to a company established by separating the original company's product manufacturing business which exports the majority of its products (70% or more), with the separated company continuing to export the majority of its products

► Instances where a government-funded institution establishes a company by separating one or more its businesses in accordance with the Public Enterprise Privatization and Management Improvement Plan, and provides the separated company with the support necessary for the development of self-sufficiency for a period of no longer than one year using facility investment funds and research and technical personnel held before the separation and assets transferred with the separation, and which has little influence on trade relations of existing companies

► Instances where a complete holding company provides a complete subsidiary with capital support in excess of the former's funding interest rate, as specified in the Financial Holding Companies Act

► Instances where the value of a single support activity or a series of support

activities does not exceed KRW 50 million, and are recognized as unlikely to prevent or reduce fair trade

▶ Instances where a business owner that is obligated to employ persons with disabilities pursuant to Paragraph 1, Article 28 of the Act on the Employment Promotion and Vocational Rehabilitation of Persons with Disabilities holds more than 50% of all the shares issued by a standard employer of disabled persons as defined in Subparagraph 8, Article 2 of the above Act or more than 50% of all the capital of said standard employer, and provides support to said standard employer, which the business owner de facto runs, within a reasonable range as necessary for the development of self-sufficiency

▶ Instances where support is provided in the form of prioritized purchase of products of social enterprises approved by the Minister of Employment and Labor, consignment of services to social enterprises, lease of facilities to social enterprises free of charge or under considerably advantageous conditions, and other forms as specified in Article 7 of the Social Enterprise Promotion Act

2) Unfair Funding

- Unfair funding can take the form of ① the unfair provision of funds to a specially related person or a company in such forms as advance payments and loans on considerably advantageous or disadvantageous conditions, or ② the supply of considerably large sums to provide a company or a specially related person with excessive economic benefits.

- [Example] Loan of funds by a subject of support to an object of support at an interest rate lower than those offered by finance companies

* The interest rate actually applied to the loan must be considerably lower or higher than the normal interest rate that would apply to a loan identical or similar in form, type, value, period, credit status, and other aspects taking place between two independent parties without special relations.

- [Example] Failure to collect dividends on held shares issued by an object of support without a valid reason
- [Example] Conclusion of a long-term agreement for the purchase of real estate owned by an object of support, followed by the payment of the down payment and interim payment and then the termination of the purchase agreement before the settlement of the balance, to forfeit a considerable portion of the down payment and interim payment

- Examples

Unfair Support Activities of Woongjin Thinkbig and Five Other Companies

[2011Seogam2312]

[Facts]

In Woongjin Polysilicon's borrowing of KRW 62.1 billion from Woori Bank, Woongjin Holdings (plaintiff) supplied KRW 60 billion and 1 million shares as security without any compensation in return, allowing Woongjin Polysilicon to acquire the loan at an interest rate of 5.50% to 5.87%, which was lower than the normal interest rate on unsecured loans.

[Fair Trade Commission's Opinion]

The court ruled that the defendant, (Fair Trade Commission), who in its calculation of the funding concerned was likely not subject to difficulties calculating its interest rate or to special circumstances likely to drive its interest rate below the normal interest rates, calculated the amount of the funding concerned by comparing the actual interest rate applied and the normal interest rate of 6.83% to 7.07% on the sole grounds that no precedents existed of unsecured loan transactions taking place between Woori Bank and Woongjin Polysilicon or another company with a credit rating similar to Woongjin Polysilicon's, which it thus ruled illegal, and calculated the penalty surcharge accordingly.

3) **Unfair Provision of Securities, Real Estate, Intangible Property Rights, and Other Assets**

- Unfair provision of securities, real estate, intangible property rights, and other assets is the unfair provision of such assets to a specially related person or a company under considerably advantageous or disadvantageous conditions or in considerably large volumes to provide a company or a specially related person with excessive economic benefits.

* The actual price at which the asset is supplied must be considerably lower or higher than the normal price that would apply to a transaction identical or similar in time, type, value, period, and other aspects taking place between two independent parties without special relations.

► **Normal Prices are Calculated through the Following Steps**

- ㉠ Where precedents of an actual transaction identical in time, type, value, period, and other aspects to the transaction concerned have occurred between two independent parties without special relations, the precedent transaction price is the normal price.
- ㉡ Where no precedents for the transaction concerned exist, ① a similar case suitable for comparison with the transaction concerned is selected, ② the sample case and transaction concerned are analyzed for differences in transaction conditions that could influence the price, ③ and any such differences identified are reasonably adjusted to calculate the normal price.
- ㉢ Any such differences identified are reasonably adjusted to calculate the normal price.

- [Example] **Purchase of shares at high prices:** Participation of a subject of support in a paid-in capital increase of an object of support in such forms as third-party allocation or acquisition of forfeited shares, where the subject of support, hitherto with no stake in the object of support, acquires shares issued by the object of support at such high prices as would preclude acquisition by independent parties without special relations

- [Example] **Backdoor acquisition of shares:** Acquisition of forfeited shares by a subject of support at high prices through a finance company to evade finance laws, or by other legally evasive means
- [Example] **Sale of real estate at low prices or purchase of real estate at high prices:** Sale of real estate to an object of support at a price lower than the market price, or purchase of real estate from an object of support at a price higher than the market price
- **Examples**

Unfair Support Activities of Samsung Affiliates [2018Naebu2188]
<p>[Facts]</p> <p>Samsung Electronics and three other Samsung-affiliated companies used Welstory as their sole contractor for the provision of in-house meal services to the four companies' personnel beginning in April 2013, providing Welstory with such support to maintain high profits as a guarantee of margins on food ingredients, the payment of an additional 15% of personnel charges as a consignment fee, and an automatic incorporation of price and pay increase rates, which were specified in the concluded negotiated contracts.</p>
<p>[Fair Trade Commission's Opinion]</p> <p>The support of the four companies over some nine years provided Welstory with excessive economic benefits, and Welstory achieved stable revenue from internal transactions and actively issued dividends, functioning as a core funding channel for the Welstory CEO and his relatives. The support Welstory received in the instance concerned allowed it to offer conspicuous advantages over competitors in the bidding for large-scale meal services, threatening the survival of smaller, independently operated meal service providers.</p>
<p>The support artificially maintained and strengthened Welstory's business foundation and finances, giving Welstory a considerable competitive advantage over its competitors.</p>

4) Unfair Support by Real Estate Lease

- Unfair support by real estate lease can be ① the lease of real estate to a specially related person or a company free of charge or at a price considerably higher than the normal price, or ② the lease of considerably large volumes of real estate to provide a specially related person or a company with excessive economic benefits.

* A normal lease price is the price for the lease of an item of real estate similar in type, size, location, lease time/period, and other conditions between independent parties without special relations. Where a reasonable calculation of such a normal price is difficult, the following formulas are used.

- Normal price of lease for a given period = (50/100 of normal price of real estate) x Days of lease x Term deposit interest rate / 365
- Lease price = Lease deposit for a given period x Days of lease x Term deposit interest rate / 365

- [Example] **Lease of real estate at low prices:** Acceptance of rent past the contracted deadline coupled with the collection of little or no late payment interest
- [Example] **Lease of real estate at high prices:** Use of a building or facility owned by an object of support by a subject of support, in which the rent an independent party without special relations would pay as well as an additional lease deposit or additional rent is paid
- **Examples**

Unfair Support Activities of Shinhan Bank [2005Jogi4245]	
[Facts]	The defendant leased the real estate concerned to Shinhan Capital and Shinhan Life Insurance, both affiliated companies of the defendant, at KRW 70,250 per pyeong (3.31 m ²), conspicuously below the normal rate of KRW 84,370 per pyeong.
[Fair Trade Commission's Opinion]	<p>The object of support, which had been in intense competition with competitors in the specialized credit finance market at a time when business conditions were poor due to an extended currency crisis, improved its business performance through the support concerned to the extent that it gained considerable advantages over competitors in the facility lease, installment finance, and life insurance markets, and achieved a concentration of economic power.</p> <p>It was ruled that the support concerned could potentially prevent or reduce fair trade.</p>

5) Unfair Trade of Products and Services

- Unfair trade of products and services can take the form of ① the unfair provision or trade of products and services to a company or a specially related person at prices considerably lower or higher than what is normal, and ② the supply or trade of considerably large volumes of products and services to provide a company or a specially related person with excessive economic benefits.

① Unfair Support by Payment Difference

○ **Examples**

- Provision or trade of products and services to or with a company or a specially related person at prices considerably lower or higher than those applied to normal transactions as a means of providing excessive economic benefits.

* The actual price at which the product or service is supplied or traded must be considerably lower or higher than the normal price that would apply to a transaction identical or similar in time, type, value, period, and

other aspects taking place between two independent parties without special relations. Calculation of normal prices is consistent with 3) Unfair Provision of Securities, Real Estate, Intangible Property Rights, and Other Assets.

* In trade occurring from a subject of support adding an object of support to a trade step or the subject trading through the object, the normal price is the price that would be applied in a direct transaction between a company similar to the subject or object and another company. However, where a trade structure comprising Affiliated Company 1 (subject of support), Affiliated Company 2 (object of support), and Affiliated Company 3 applies, if it is customary for Affiliated Company 1 or a company similar to Affiliated Company 1 to engage in direct transactions with affiliated companies or other companies, the normal price is the price that would apply in a direct transaction between Affiliated Company 1 and Affiliated Company 3 with Affiliated Company 2 (a special relation) excluded.

○ **Specific Cases**

- Delaying the collection of account receivables due from an object of support followed by their write-off as uncollectible debt
- Non-collection or delayed collection of accounts receivable or service dues without the collection of interest on arrears
- Issuing loans to or some other arrangement of loans by an object of support for employees purchasing products made and sold by the object of support, with the interest on the loans being covered in part or entirely by the funds of an affiliated company to which the employees belong
- Running advertising through an advertising medium operated by an object of support at rates higher than the normal advertising rates, to overpay for advertising services
- Consigning housing management to an object of support with a deferment of the date for the transfer of rent and other proceeds from housing management by the object of support to after the consignment service payment date in each month to allow the object of support to enjoy interest on the housing management proceeds for the length of the deferment
- Trading products or services between an object and subject of support where, although the trade conditions, such as the nature and quality of the products and services, are similar to those in trade between the object of support and non-affiliated companies or among competitors, the object of support enjoys a higher gross profit margin

② **Unfair Support by Considerable Volume**

○ **Examples**

- Provision or trade of products and services to or with a specially related person or a company in considerable volumes as a means of providing excessive economic benefits.

► **Considerations in Determining Unfair Support by Considerable Volume**

- Ⓐ Notwithstanding the object of support being subject to cost reduction effects, such as economies of scale, from the trade volume, and as consistent with the trade partner's characteristics, the object of support's enjoyment of said cost reduction effects to an excessive degree
- Ⓑ A volume of trade between the subject and object of support alone sufficient to remove business risks of the object of support– i.e., a trade volume larger than the minimum trade volume required by the object of support to start or maintain business
- Ⓒ In determining unfair support based on the above standards, any valid reason behind the support activities of the subject of support must be considered, such as whether the subject of support enjoys cost reduction, quality improvement, or other efficiency increases from characteristics unique to its trade with the object of support.

○ **Specific Cases**

- Assignment of various logistics business activities by a subject of support to an object of support through a non-competitive business transfer or negotiated contract on advantageous terms

6) Unfair Provision of Personnel

- Unfair provision of personnel can take the form of ① the provision of personnel at considerably low or high rates, or ② the provision of considerably large numbers of personnel to provide a specially related person or a company with excessive economic benefits.

► **Instances where the personnel concerned provide services to both the subject and the object of support**

Where the relations of the personnel concerned to the subject and object of support in the provision of services for pay are reasonable and clear, the normal pay is the sum of all salaries and allowances the personnel concerned receives from the subject and object of support minus the pay issued by the subject of support to the personnel concerned for services rendered.

Where the relations of the personnel concerned to the subject and object of support in the provision of services for pay are not reasonable or clear, the normal sum of all salaries and allowances the personnel concerned receives from the subject and object of support is an allotment of the proportion the total revenue of the object of support makes up in the total revenue of both the subject and object of support in a given business year.

However, where a business involving the provision of personnel can be recognized as such, the revenue from said business can be recognized as the revenue of the subject and the object of support.

- [Example] Provision of personnel for business support, after which the subject of support covers the personnel charges
- [Example] Provision of personnel on a personnel dispatch contract, after which the subject of support does not collect personnel charges, including retirement allowances, in part or full
- [Example] Appointment of personnel responsible for the business activities of the object of support in the capacity of an advisor or other to the subject of support, after which the subject of support issues the personnel with salaries or allowances
- [Example] Transfer or dispatch of personnel by the subject of support to the object of support, after which the former covers part of the pay for the personnel
- **Examples**

Unfair Support Activities of Samyang Foods [2015Jegam0797]
<p>[Facts]</p> <p>From 1995 to March 2015, Samyang Foods placed 11 of its personnel, including one Ra (last name; first name redacted), in charge of the affairs of Eco Green Campus, an affiliated company, and paid the personnel on behalf of Eco Green Campus. The defendant Samyang Foods organized for one of its executives to concurrently serve as the CEO of Eco Green Campus, and paid them in Eco Green Campus's stead. Lee, a Samyang Foods executive, concurrently served as the CEO of Eco Green Campus from May 31, 2007, to March 28, 2011, while one Park, another Samyang Foods executive, concurrently served as the CEO of Eco Green Campus from March 29, 2011, to March 31, 2015.</p>
<p>[Fair Trade Commission's Opinion]</p> <p>Samyang Foods dispatched personnel to perform the business activities of its affiliated company, and covered their personnel expenses and supplied them with paid-for company vehicles, providing the personnel with considerable economic benefits and thereby supporting Eco Green Campus. The defendant Eco Green Campus's acceptance of support from the defendant Samyang Foods in the form of personnel and company vehicles paid for by Samyang Foods constitutes an instance of unfair support, as Eco Green Campus accepted Samyang Foods' support despite the potential for said acceptance to constitute unfair support.</p>

7) Unfair Addition of Trade Steps, Etc.

- ① Unfair addition of trade steps, etc. is trade that has assigned a specially related person or a company to a role of little to no significance as a trade step, or requires trading to take place through such specially related person or company when direct trade with another company would provide a considerable advantage. ② Even if such a specially related person or company has a distinct role, the issuing of payment deemed excessive for the role, providing excessive economic benefits, also constitutes unfair support.

► Considerations in Determining Unfair Addition of Trade Steps, Etc.

- Ⓐ Was it unlikely that the decision of the subject of support to add the object of support to trade steps or require trade through the object of support resulted from normal business management comprising such activities as the customary and minimum required analysis and validation?
- Ⓑ Is this an exception to the customary trade practice or the past trade behavior of the subject of support?
- Ⓒ Have the unnecessary trade steps added rendered the conditions of the trade concerned disadvantageous to the subject of support?
- Ⓓ Did the addition of an object of support in a role of little or no significance to trade steps, or trade through such object of support, result in the payment of additional and unnecessary distribution expenses by the subject of support to the object of support?
- Ⓔ Would direct trade with another company by the subject of support without trading through the object of support enable trade at lower prices than trading through the object of support?

- [Example] Indirect purchase of products by the subject of support from a supplier through a middle distributor, the object of support, without such middle distributor having a real role in the trade when direct purchase from the supplier would provide considerable advantages.
- [Example] Arrangements made by the subject of support to have its suppliers purchase intermediate materials required for the production of goods delivered to the subject of support through the object of support which does not have a real role in the trade
- **Penalties**

Ⓐ Corrective Action

Actions to cease and prevent the recurrence of the activity concerned; deletion of the contact terms concerned; public announcement of the corrective action

Ⓑ Penalty Surcharge

Up to 10% of the revenue related to the infringement (or up to KRW 4 billion if no such revenue exists)

* Revenue related to an infringement is different from revenue which results when normal prices are observed

Ⓒ Criminal Penalty

- Subject of support committing unfair support activities: Imprisonment for up to 3 years or a fine of up to KRW 200 million
- Dual liability: Where the head or an employee of a company, in the course of the company's business activities, commits an act for which the criminal penalty is the one described above, the criminal penalty is applied to both the head/employee and the company.

- **Examples**

Unfair Support Activities of Lotte PS Net [2012Seogam1294]
[Facts] In a departure from its conventional method of direct trade, Lotte PS Net, from September 2009 to July 2012, purchased automatic teller machines through its affiliated company Lotte Aluminium (formerly Lotte E&M) when it could have purchased them directly from the ATM manufacturer Neo ICP.
[Fair Trade Commission's Opinion] Despite having the option of directly purchasing the ATMs from their manufacturer, the defendant made an indirect purchase through its affiliated company Lotte Aluminium as a middle distributor and paid higher prices than a direct purchase would entail, thereby providing Lotte Aluminium with excessive economic benefits, which constitutes unfair support for Lotte Aluminium.

D. Prohibition of the Provision of Unfair Benefits to Specially Related Persons

- Article 47 of the Fair Trade Act; Article 54 of the Enforcement Decree of the Fair Trade Act

1) Subject and Object of Support

○ **Subject of Support**

- A company belonging to a business group subject to disclosure (a company belonging to a business group with an appointed head and subject to disclosure)

○ **Object of Support**

- A specially related person (the controller and their relatives)
- A company with a 20% stake or larger held by specially related persons, or a company with a 50% stake or larger held by the forenamed company

2) Examples

○ **Trade Under Conditions Considerably More Advantageous Than Normal Trade (Subparagraphs 1 and 3, Paragraph 1, Article 47 of the Fair Trade Act)**

- Provision or trading of **funds, assets, products, services, personnel, and other valuables** at prices considerably lower or higher than those observed in normal trade
- Provision or trading of cash and other financial products to or with specially related persons, at prices considerably lower or higher than those observed in normal trade

- **Exceptions**

Trading at a price with less than a 7% difference from the normal price, and with a total annual trade value less than KRW 5 billion (KRW 20 billion for products and services)

Included in total trade value are sales as well as purchases

- **Normal Price**

Precedents are studied to infer a market price expected to apply between independent parties without special relations through a reasonable adjustment process; tax laws and such institutions are followed if no precedents exist

► **Inference of a Normal Price**

- ㉔ Where precedents of an actual transaction that is identical in time, type, value, period, and other aspects to the transaction concerned have occurred between two independent parties without special relations, the precedent transaction price is the normal price
- ㉕ Where no precedents for the transaction concerned exist, ① a similar case suitable for comparison with the transaction concerned is selected, ② the sample case and transaction concerned are analyzed for differences in transaction conditions that can influence the price, ③ and any such differences identified are reasonably adjusted to infer the normal price.
- Where no precedents for the transaction concerned can be found, the general economic and management conditions and other relevant conditions the transaction parties were subject to at the time of the transaction are considered and a realistic price that the transaction parties likely would have selected is inferred as the normal price.
- In such a case, the type and volume of the assets, products, or services, the transaction conditions, and other conditions are considered, and the method indicated in Article 5 (Method of Normal Price Calculation) of the Adjustment of International Taxes Act and Article 4 (Evaluation of Property) of the Inheritance Tax and Gift Tax Act is observed.

■ **Examples**

Provision of Unfair Benefits to Specially Related Persons by Affiliated Companies of Kumho Asiana Group
[2016Jegam3225]

[Facts]

Affiliated companies of Kumho Asiana Group loaned funds to a bus company (51% stake held by specially related persons) within the Kumho Asiana Group directly or through suppliers, including an airline meal service company, as a medium, at a low interest rate.

[Fair Trade Commission's Opinion]

The transaction concerned took place under conditions considerably more advantageous than the interest rates on loans offered by financial institutions and commercial banks at the time. As a considerable portion of the interest gains the bus company made from the loan was bound to the specially related persons due to their stake in the bus company, and the bus company used the loan to purchase core affiliated companies, maintaining or strengthening the dominance of the specially related persons, the transaction concerned constitutes the provision of unfair benefits to specially related persons and is illegal.

○ **Provision of Business Opportunities (Subparagraph 2, Paragraph 1, Article 47 of the Fair Trade Act)**

- Provision of business opportunities by a subject of support to a company under its control, business opportunities closely related to activities the company is or will be performing and which will bring the company considerable benefits

- **Determinants**

- Actual control of the subject of support over the company concerned, as defined in Article 4 of the Enforcement Degree of the Fair Trade Act

Stake: Controller and their related persons hold a 30% share or larger in the company as the largest investor

Control: Controlling influence of the controller on the management of the company, e.g., appointment of 50% or more of the CEO and executives

- Determination of the business opportunity as an opportunity entailing considerable benefits from the standpoint of the subject of support, not the object of support
 - Business activities internally reviewed or decided even if actions have not been taken externally

- **Exceptions**

- The company's incapacity to execute the business opportunity

Legal ban on the business opportunity (legal incapacity) or conspicuous degradation of financial capacity (economic incapacity)

- The company's making of a fair payment for the provision of the business opportunity

A fair payment is determined based on the market value of the business opportunity by comprehensively considering the type, scale, transaction conditions, and other conditions of the business opportunity at the time of its provision.

- The company's rejection of the business opportunity for reasonable grounds

The company must reject the business opportunity after an objective and logical review of the value of the business opportunity and the economic expenses and other conditions entailing the execution of the business opportunity. Whether the rejection is reasonable or not is determined from

the standpoint of the subject of provision or the company controlled by the subject of provision, not the business group as a whole.

○ **Trade of a Considerable Scale Not Preceded by Reasonable Consideration or Comparison (Subparagraph 4, Paragraph 1, Article 47 of the Fair Trade Act)**

- Prohibition of the supply of large concentrations of workloads by way of providing unfair benefits

Trade of a considerable scale taking place without the screening process customary to, expected for, or appropriate for the trade, such as the collection and study of the sufficient information needed in trade partner selection and agreement conclusion, including business capacity, finances, credit, technology, quality, price, and scale/time/terms of trade, followed by an objective and reasonable review of the information or a comparative analysis against other companies

- **Determinants**

- Reasonable consideration or comparison involves ① the collection of information on market participants through market research and other activities, ② the comparison of trade conditions by collecting proposals from major market participants and other measures, and ③ the selection of a trade partner on reasonable grounds.
- In principle, the execution of competitive bidding constitutes the occurrence of reasonable consideration or comparison.

Instances in which conditions only certain affiliated companies can meet are offered, bidding-related information is inadequately communicated to market participants, the successful bidder is selected on unreasonable grounds, and other instances of non-competitive bidding are excluded

- **Exceptions**

- **Where the value of total trade between the trade parties in a given year is below KRW 20 billion, and the trade partner's average revenue below 12% of said value of total trade**

Included in the value of total trade is the value of all sales and purchases taking place between the trade parties, including the value of the transaction concerned.

Average revenue in a given year is calculated based on the preceding three years and compared with the value of total trade in each of the preceding

three years.

- **Exceptions Pursuant to Paragraph 2, Article 47 of the Fair Trade Act:**
Instances where trade of a considerable scale not preceded by reasonable consideration or comparison is inevitably necessary to achieve the company's intended purpose in the trade, such as efficiency increase, security, and urgency

► **Trade Producing Efficiency Increase**

- Trade clearly recognized as producing such efficiency-increasing effects as cost reduction, sales increase, quality improvement, and technology development as would be difficult to achieve through trade with another party due to such needs and factors as multi-directional correlations and personnel/physical cooperation networks

► **Trade Requiring Security**

- Trade which will or could cause irrecoverable economic losses through a leak of technology, information, or other assets key to business activities if the trade was to take place with another party due to such needs and factors as the setup and operation of essential facilities, research and development of core technology, and accessibility of core management information

► **Trade Requiring Urgency**

- Trade rendered inevitable by business exigencies caused by factors external to the company, such as rapid changes in the economy, financial crises, natural disasters, and IT system failures from hacking or viruses

■ **Examples**

Provision of Unfair Benefits to Specially Related Persons by Affiliated Companies of the Business Group Taekwang
[2016Jegam3225]

[Facts]

Affiliated companies of Taekwang purchased kimchi at high prices from Tsis (100% stake held by specially related persons) and purchased large volumes of wine from Mervin (100% stake held by specially related persons) without reasonable consideration or comparison, thus providing unfair benefits.

[Fair Trade Commission's Opinion]

The kimchi transaction took place under considerably advantageous conditions considering the highest normal price of kimchi observed in the trade of kimchi, and the wine transaction was trade of a considerable scale not preceded by reasonable consideration as it was enforced without review and against the opposition of executives. The transactions improved the finances of Tsis and Mervin, and the profits from the ensuing business performance were directly bound to the specially related persons as

per the stakeholding structure, constituting the provision of unfair benefits to specially related persons.

3) Penalties for Infringement

○ Subject of Support

- Corrective Action
- Penalty surcharge (up to 10% of 3 years' average revenue; up to KRW 4 billion if no revenue exists)
- Imprisonment for up to 3 years or a fine of up to KRW 200 million

○ Object of Support

- Corrective Action
- Penalty surcharge (up to 10% of 3 years' average revenue; up to KRW 4 billion if no revenue exists)

○ Parties Involved in Instruction

- Corrective Action
- Imprisonment for up to 3 years or a fine of up to KRW 200 million

E. Unfair Joint Action

- The prohibition of collusion as specified in Article 40 of the Fair Trade Act

1) Examples

○ Cooperation with other companies in any of the following activities to unfairly restrict competition, or instruction of other companies to carry out any of the below activities, is prohibited:

- Setting, maintenance, or change of prices
- Setting of the conditions of trade or payment

- Restriction of the manufacturing, release, transport, or trade of products
- Restriction of trade areas or partners
- Restriction of the acquisition or expansion of facilities and equipment
- Restriction of the types and specifications of products
- Joint management of key areas of operations
- **Collusive Bidding**

○ **Forms of Collusive Bidding**

- Bid price rigging
- Pre-determination of the successful bidder
- Driving of a competitive bidding contract into a negotiated contract
- Determination of order volumes, etc.
- Management interference

2) Exemption and Reward Systems

○ **Leniency (for Voluntary Reporting) System and Amnesty Plus System**

Leniency System	Where two companies have colluded, the first to voluntarily report the collusion is fully exempt from the penalty surcharge due, and the second to do so receives a 50% reduction of the penalty surcharge due
Amnesty Plus System	Where a company being investigated for collusion becomes the first to supply evidence of another collusion, that company can receive an additional reduction of the penalty surcharge entailing the current investigation

○ **Whistleblower Reward System**

- Third parties, parties other than companies involved in an unfair joint action and which voluntarily report such involvement, are entitled to a reward for reporting an unfair joint action
- Scope of third parties: Companies that are non-participants in an unfair joint action, current or former employees of companies that are participants in an unfair joint

action

3) Examples

Unfair Joint Action of Six Cable Manufacturers in the Bid for a Purchase Contract with Korea Hydro and Nuclear Power [2013Kachong2367]
[Facts] On February 10, 2004, sales personnel of the former LG Cable & System, Taihan Cable & Solution, the former Jinro Cable, the former Iljin Electric, and Seoul Electric Wire colluded to come to an advance agreement on which among the five companies would be the successful bidders for individual items in an upcoming bid for a nuclear power plant cable purchase contract with Korea Hydro and Nuclear Power, which was building two nuclear power plants (bid scheduled for 2004) followed by another two (bid scheduled for 2008). The sales personnel of the five companies further colluded with the sales personnel of Kukdong Cable on August 13, 2004, to have Kukdong Cable join the cartel formed for the distribution of order volumes among its members and other activities, and came to an advance agreement on which among the now six companies would be the successful bidders for individual items in a coming bid for an additional two nuclear power plants (bid scheduled for 2010).
[Fair Trade Commission's Opinion] The companies participated in the bid and each won the agreed bid item, as distinguished by cable type, sharing the lucrative purchase contract as colluded. Their coming to an advance agreement on which among them would win which bid for which product, designed to distribute among them the order volumes the purchase contract would bring, and participating in the bid via impersonators constitutes an unfair restriction of competition in the area of bidding for nuclear power plant cables.

Section 3. Subcontracting Act and Business

A. Purpose and Characteristics of the Subcontracting Act

1) Purpose

- **Article 1 of the Subcontracting Act (Purpose)** The purpose of this law is to establish fairness and order in subcontract transactions to enable principal contractors and subcontractors to complement each other and achieve balanced development on an equal footing, thereby contributing to the sound development of the national economy.

2) Characteristics

- Special Law within Civil Law or Commercial Law

The Subcontracting Act is a mandatory law, and is applicable regardless of any agreement reached by parties.

- Special Law within the Fair Trade Act

The Subcontracting Act takes precedence over any unfair trade-related stipulations in the Fair Trade Act.

- National Law

Irrespective of the nationality of the client, the Subcontracting Act applies only to instances where the principal contractor and subcontractor are domestic businesses (companies). A domestic company owned by a foreign party is also subject to the Subcontracting Act.

B. Application of the Subcontracting Act

1) Application of the Law

① Principal Contractor

- A company that is not a small or medium-sized company, as defined in Paragraph 1 or 3, Article 2 of the Framework Act on Small and Medium Enterprises (small and

medium business cooperatives as defined in the Small and Medium Enterprise Cooperatives Act included), and which commissions construction, manufacturing, and other activities to a small or medium-sized business.

- SK siltron is a company that is not a small or medium-sized company and is one that commissions manufacturing to small and medium-sized companies, which makes SK siltron a principal contractor as per the Subcontracting Act.

② Subcontractor

- A small or medium-sized company commissioned to perform manufacturing and other activities by a principal contractor.

③ Application of the Subcontracting Act to Subcontract Transactions

- Enacted specially for the regulation of subcontract transactions, the Subcontracting Act applies only to subcontract transactions. Even outside of subcontract transactions, a company in a dominant position which engages in activities banned by the Subcontracting Act can be subject to punishment in the context of unfair trade activities as per the Fair Trade Act (abuse of an advantageous position in trade, etc.).
- Consignment of the manufacturing of products in part or full to a small and medium company (small and mid-sized companies included) by SK siltron, a manufacturer, constitutes a subcontract transaction.
- A subcontractor's manufacturing of a new product, which it developed independently, with SK siltron's approval also constitutes a subcontract transaction.
- Consignment of the manufacturing of a sample for technology development or test purposes also constitutes a subcontract transaction.
- The apparent consignment of manufacturing involving a product or service of a universal nature which counts as a "substitute" sold to unspecified parties does not constitute a subcontract transaction but an outright sale/purchase.

- Even if a universal nature and the nature of a substitute is partially recognized, a transaction may count as a subcontract transaction if it demonstrates considerable and close correlations between its consignment and the manufacturing of the substitute. In such a case, the principal contractor's dominant position (high buying power), influences on the subcontractor's production planning, and stability and permanence of trade relations are considered.
- **Scope of Items of Consignment Manufacturing, as Officially Notified**
 - Finished products manufactured, repaired, or sold; machinery and facilities used for the manufacturing of a product are excluded
 - Intermediate materials used in the manufacturing or repair of products– i.e., materials, parts, semi-finished products, etc. – ordered with size or quality specifications (samples of mass production items excluded)
 - Molds of various materials used for the manufacturing of products
 - Packaging, labels, samples, user manuals, etc. supplied with products
 - Processing or consignment processing, including painting, plating, casting, forging, assembly, dyeing, and sewing, involved in the manufacture or repair of the above Products

C. Obligations of Principal Contractors

1) Issue and Preservation of Information in Writing (Article 3)

- The principal contractor must issue in writing all of the information below, which is required by law, before the subcontractor begins work for the delivery of a consignment product.
- **Statutory Information in Writing**
 - Date and nature of consignment
 - Time and location of delivery or handover
 - Method and time of inspection of the product
 - Amount of payment for subcontract work; method and date of payment
 - Cost of any materials, etc. to be supplied by the principal contractor

- Conditions, method, and procedure of adjustment of payment for subcontract work as necessitated by change in prices of materials, etc.

○ **Statutory Information to be Issued in Writing**

Step	Type of statutory information in writing
Transaction commencement (Article 3 of the Subcontracting Act)	Subcontract (added/changed agreements included) Acknowledgment of subcontract in writing – A subcontractor requested by a principal contractor to acknowledge communicated details (nature of consignment work, pay for subcontract work, etc.) is required to indicate acknowledgment or rejection in writing within 15 days
Transaction execution (Article 8 or 16 of the Subcontracting Act)	Proof of delivery/handover Notification of inspection results Notification of reductions – Grounds, criteria, quantities, method of reduction, etc. to be indicated where reductions apply Request for technical materials – Purpose of request for technical materials, attribution of rights related to the technical materials requested, payment for the technical materials requested and the method of payment, name and scope of the technical materials requested, request date, date and method of supply, other particulars validating the principal contractor's request for the technical materials – Notice of changes to agreement (additions or reductions) from design changes, etc.

- The principal contractor must issue a signed or stamped subcontract.
- Subcontracting-related documents, such as agreements, proof of delivery/handover, and bidding documents, must be preserved for three years from the subcontract transaction end date, and requests for technical materials for seven years.

○ **Examples**

Unfair Subcontracting Activities of Daelim Industrial [2018Geonha1299]
<p>[Facts]</p> <p>Between October 7, 2015, and December 27, 2017, Daelim Industrial commissioned manufacturing and construction to 35 subcontractors, but did not issue the statutory information in writing, including the pay for the subcontract work and the method of payment, before the subcontractor started the commissioned work, instead doing so between 4 and 388 days after the commissioned work had started.</p> <p>The agreement in writing that Daelim Industrial did issue was missing such information as the method and date of subcontractor payment, and the conditions, method, and procedure of adjustment of subcontractor payment according to changes in the prices of materials and other supplies occurring after the consignment of the manufacture, repair, or installation of a product, or the execution of a service.</p>
<p>[Fair Trade Commission's Opinion]</p> <p>Failure to issue or a delay in the issuing of an agreement in writing indicating such statutory information as the subcontractor payment and the method of payment before the commencement of the commissioned work constitutes an unfair subcontract transaction.</p> <p>Commissioning manufacturing work and other types of work to subcontractors through the issuing of an agreement in writing which does not contain all the statutory information constitutes an infringement of Paragraph 1 of Article 3 of the Subcontracting Act.</p>

2) **Obligation for the Issue of Advance Payments (Article 6)**

- The principal contractor must issue an advance payment to the subcontractor within 15 days from the date on which it receives an advance payment from the client. If the principal contractor receives an advance payment before commissioning manufacturing and other activities to the subcontractor, the principal contractor must issue an advance payment to the subcontractor within 15 days from the date of commission.

3) Obligation to Issue a Local Letter of Credit (Article 7)

- Where the principal contractor commissions manufacturing or a service as necessary for a product to be exported, unless valid grounds exist, the principal contractor must issue a local letter of credit to the subcontractor within 15 days from the date of commission (or the date of the receipt of the original letter of credit if the commission was made before the principal contractor received the original letter of credit).

4) Obligation to Inspect and Report Inspection Results (Article 9)

○ Principles

- Determination of Inspection Standards
- Pursuant to the Subcontracting Act, the principal contractor and subcontractor must reach an agreement on the standards or methods of inspection.
- Where an agreement cannot be reached or an objective inspection cannot take place, the parties can agree to have the inspection performed by a third party, such as a certification institution.
- The standards or methods of inspection used must be objective, fair, and appropriate. However, decisions regarding the objectivity and fairness of inspection standards, based on full consideration of all the details involved, must be reached individually and specifically.

○ Obligation to Report Inspection Results

- Time Frame for Notification

Inspection results must be reported in writing to the subcontractor within 10 days from the product delivery date. In instances of commissioned manufacturing, the "product delivery date" is the date on which a notification of hitherto completion is received.

- Exceptions to the Obligation for Notification

Valid grounds for an exception to the obligation to report include difficulties completing inspection within 10 days due to a large volume of inspection items, the availability of inspection results after an extended time only, and a lack of clear agreement between the principal contractor and subcontractor on an extension of the inspection period.

- Consequences of Failed Notification

Allowing the inspection period to elapse without a valid reason constitutes a passed inspection. Thereafter, returns or reductions on account of a failed inspection cannot take place. As well, the subcontractor payment due date takes effect with the inspection-pass date as the value date.

- **Inspection Expenses**

- As an inspection is to the principal contractor's benefit, inspection expenses are incurred by the principal contractor, unless a separate agreement has been made in that respect. Inspection expenses must also be covered by the principal contractor where the subcontractor is instructed by the principal contractor to commission the inspection to a third party.

► Relations between Inspection and Return (Large Deliveries)

For large deliveries, a full inspection of the delivery is neither realistic nor economical. In such cases, a sample inspection or an inspection-free delivery is customary. In principle, where a fault is found in a delivered product, the attendant risk is the responsibility of the principal contractor. However, the exception of the allowance of a return applies if the terms of the return (grounds for return, time of return, compensation, etc.) specified in the agreement allow a return, or it is established that the grounds for return are attributed to the subcontractor.

- **Examples**

**Unfair Subcontracting Activities of NS International
[2014Seoje2223]**

[Facts]

The defendant, NS International, sold down jackets supplied by a subcontractor through distributors, and when consumers returned the purchased down jackets due to down falling out of the jackets, the defendant commissioned a quality test of the down jackets to a testing institution which determined the down jackets were of an inferior quality. The defendant demanded after-sales service from the subcontractor, the subcontractor refused the demand, and the defendant resorted to withholding the subcontractor payment.

[Fair Trade Commission's Opinion]

Paragraph 2, Article 9 of the Subcontracting Act requires a principal contractor to notify a subcontractor of product inspection results within 10 days of receiving the product from the subcontractor unless valid reasons exist, and prescribes that a failure to give such a notification during the period of 10 days constitutes a passed inspection. As there is no record of the defendant's having given notification in writing within 10 days of the acceptance of the down jackets regarding their inspection results, a passed inspection of the product delivered by the subcontractor is recognized, and the defendant's refusal to make the payment for the subcontract work performed on the grounds of a critical fault in the product after longer than one month passed from the defendant's acceptance of the product is an infringement.

The defendant's experience of loss from poor sales of the product owing to the fault identified after the acceptance of the product is a matter to be handled separately in civil proceedings, and does not constitute legal grounds for an exemption from the obligation to make payment for the subcontract work performed.

5) Obligation to Issue Subcontractor Payments (Article 13)

○ Principles

- In principle, the principal contractor must make the subcontractor payment within 60 days from the acceptance of the product

In principle, the date of product acceptance is the value date in the calculation of the subcontractor payment date in instances of consignment manufacturing. Here, "the date of product acceptance" indicates, with movable products, the date on which the product is delivered to the principal contractor, i.e., the date on which the product is placed under the principal contractor's control, and, with immovable products, the date on which the attendant inspection starts.

- Exceptions to the principle of subcontractor payment within 60 days

Where the "batched closing system" is opted for, the date of tax invoice issue is the value date. That is, if the subcontractor makes frequent deliveries to the principal contractor and more than one tax invoice issue date per month is observed between them, the set tax invoice issue dates are observed as product acceptance dates for the sake of clarity.

Where a subcontract is terminated and settlement of subcontractor payments does not take place, the product acceptance date is observed as the agreement termination date, regardless of the time of settlement.

○ **Calculation of Periods**

- Where a subcontractor payment date is specified as a period, the first date of the period is not included in the calculation of the period. If the last day of the period falls on a weekend or a public holiday, the period lapses on the following business day.

○ **Obligation to Pay Delay Interest**

- Subcontractor payments must be made within 60 days from the product acceptance date or the tax invoice issue date. If payment is made after said 60 days, delay interest must be paid at a rate of 15.5% per annum. For example, the issuing of a subcontractor payment on the 90th day following the product acceptance requires the payment of delay interest on 30 days.

○ **Announcement of Conditions of Subcontractor Payment, Etc. (Article 13-3 of the Subcontracting Act) [Enforced January 12, 2023]**

- Under the Fair Trade Act, a principal contractor belonging to a business group subject to announcement must follow presidential decrees in making announcements related to its in-house subcontractor payment dispute resolution body established for the handling of disputes initiated by subcontractors in relation to methods, amounts, and periods (the period from the date of product acceptance by the principal contractor to the date of the issue of subcontractor payment to the subcontractor) of subcontractor payment and other subcontractor payment-related matters.

○ **Examples**

Unfair Subcontracting Activities of Daelim Industrial
[2018Geonha1299]

[Facts]

Daelim Industrial commissioned five construction activities, including the installation of a water culture center, to four subcontractors, in relation to a construction project that had the goal of increasing the flood control capacity of Chungju Dam. After the product delivery was completed on December 12, 2017, Daelim Industrial did not issue the subcontractor payments to the subcontractors. Between June 16, 2015 and May 31, 2018, Daelim Industrial issued a bill-alternative payment to 245 subcontractors by way of the issue of their subcontractor payments. The performance dates for the bill-alternative payments were set in excess of 60 days from each product delivery date, but Daelim Industrial did not pay the subcontractors for the fees on the performance of the bill-alternative payments applied to the period from the 60th day from each product delivery date to the performance date.

[Fair Trade Commission's Opinion]

The defendant's (Daelim Industrial) failure to pay the subcontractors within 60 days of the product acceptance (statutory payment date), and its failure to pay the subcontractors the fees on the performance of the bill-alternative payments with performance dates coming after the statutory payment dates for the subcontractor payments it issued to the subcontractors constitute an infringement of Paragraph 1 and 7, Article 13 of the Subcontracting Act.

Unfair Subcontracting Activities of Posco ICT**[2019Geonha1524]****[Facts]**

Between November 2013 and October 2014, Posco ICT commissioned the manufacturing of electronic devices, switchboards, and other products to be supplied to a Brazilian steel mill to four subcontractors, including Korea CCS. While the product acceptance was completed by November 14, 2015, Posco ICT did not issue the subcontractor payments within 60 days of the product acceptance date. Moreover, Posco ICT commissioned manufacturing and other activities to 15 subcontractors, including Human Air Tech, between July 2013 and January 2015, and the product acceptance was completed between September 30, 2013, and May 28, 2015. Posco ICT issued the subcontractor payments past the statutory payment dates, but failed to pay the delay interest due on the delay periods.

[Fair Trade Commission's Opinion]

Posco ICT's failure to issue subcontractor payments to the subcontractors past the statutory payment dates constitutes an infringement of Paragraph 1, Article 13 of the Subcontracting Act. Moreover, Posco ICT's failure to pay the subcontractors the delay interest due on the delay periods in the issuing of the subcontractor payments constitutes an infringement of Paragraph 9, Article 13 of the Subcontracting Act.

6) Obligation to Issue Refunds for Customs Duties, Etc. (Article 15)

- Where a principal contractor commissions the manufacturing of a product to be exported to a subcontractor and collects a refund of customs duties and other payments made as per the Act on Special Cases Concerning the Refund of Customs Duties Levied on Raw Materials for Export, the principal contractor must issue a refund to the subcontractor based on the particulars of the refund it received within 15 days from the refund acceptance date.

7) Obligation to Adjust Subcontractor Payments Following Design Changes, Etc. (Article 16)

○ Principles

- If all of the following conditions occur after a principal contractor commissions manufacturing and other activities, the principal contractor must increase the subcontractor payment due in accordance with the particulars and rates of the contract price increase provided by the client. In the event that the principal contractor receives a contract price reduction from the client, the principal contractor can reduce the subcontractor payment due in accordance with the attendant particulars and rates.
- Increase of contract price on the grounds of design change, change in the times of product delivery, etc., or change in economic conditions
- Addition of expenses involved in the completion of product delivery on the grounds of design change, change in the times of product delivery, etc., or change in economic conditions
- Where a subcontract payment is increased or decreased due to a design change or other changes, the principal contractor must notify the subcontractor of the details of the subcontractor payment adjustment due within 15 days. However, no such notification is required if the client notifies the subcontractor directly.
- An increase or decrease of a subcontractor payment must be applied within 30 days of the principal contractor's acceptance of a contract price increase or decrease from the client.

8) Obligation to Adjust Subcontractor Payments Following Supply Cost Changes (Article 16-2)

○ Request for Subcontractor Payment Adjustment by Subcontractors

- In the event that, after a subcontractor is commissioned for manufacturing or another activity, ① the supply cost of the product or other items changes, ② expenses other than supply cost, such as overheads, change due to a delay in the delivery of the product or other items for reasons unattributable to the subcontractor, ③ or, due to an expected reduction in the supply cost of the product or other expenses, a contract for a progressive reduction of the subcontractor payment with the elapsing of the contract period is concluded, but, owing to grounds unattributable to the subcontractor, such as a decrease in the volume of the product or other items by the principal contractor, the supply cost or other expenses do not decrease or the rate of decrease is lower than the rate of the agreed decrease of subcontractor payment, rendering an adjustment of the subcontractor payment inevitable, the subcontractor can request an adjustment of the subcontractor payment by the principal contractor.
- Supply cost is a cost incurred by a subcontractor in the manufacturing, repair, or installation of a product or other items, or in the execution of a service, and includes material cost, personnel cost, and expenses.
- Expenses other than supply cost are instances where overheads and other expenses occur in addition to material cost and personnel cost. Regardless of whether the principal contractor has accepted additional payment from the client in line with a change of supply cost, the subcontractor can request an adjustment of subcontractor payment.

○ Initiation of Negotiations by Principal Contractors

- A principal contractor which receives a request from a subcontractor for an adjustment of subcontractor payment must initiate the attendant negotiations within 10 days of receiving said request, and must not reject or neglect the negotiations without a valid reason.
- The specifics of the adjustment are to be agreed on by the parties to the negotiation.

- **Instances Where an Adjustment by the Subcontractor Dispute Mediation Council Can be Requested**
 - Failure of the principal contractor to initiate negotiations within 10 days of the date of a request for an adjustment
 - Failure to reach an agreement within 30 days of the date of a request for an adjustment
 - Clear expectation of an agreement not being reached after negotiations are initiated as consistent with ① an indication of the intent to cease negotiations by either party, ② a twofold or larger difference between the adjustments proposed by the two parties, or ③ an expectation of critical loss, such as major difficulties in business activities, in the event of delays in negotiations

- **Supply Cost Adjustment Negotiations with a Union**
 - Where a sudden change in supply cost renders a request for subcontractor payment by the subcontractor inevitable, and the subcontractor is a member of a union, the subcontractor's union, at the request of the subcontractor, can also engage in adjustment negotiations with the principal contractor. Instances where the principal contractor and subcontractor are members of the same union are excluded.

- **Instances where the principal contractor engages in adjustment negotiations in good faith, but the demands of the subcontractor are not met or an agreement is not reached, do not constitute an infringement.**

D. Prohibitions on Principal Contractors

1) Prohibition of Unfair Special Contracts (Article 3-4)

- Principal contractors must not encroach on or restrict subcontractors' interests.

○ **Examples**

- Transfer of expenses not indicated in writing
- Transfer of expenses involved in the handling of complaints and accidents
- Transfer of expenses not indicated in bidding documents
- Transfer of expenses involved in the acquisition of permits or environmental/quality management
- Transfer of expenses involved in the change of designs or work particulars
- Transfer of expenses involved in re-work, additional work, or maintenance work
- Transfer of responsibility for indemnity
- Transfer of responsibilities that were not foreseeable at the time of consignment
- Restriction of subcontractor payment adjustment requests
- Restriction of subcontractors' legal rights
- Restriction of subcontractors' rights to technical materials and other items
- Setting of subcontractors' obligations at standards higher than what is prescribed by law
- Transfer of principal contractors' obligations to subcontractors
- Augmentation of subcontractors' contractual responsibilities

○ **Determinants of Illegality**

- Fairness and validity of the terms of a subcontract concluded between a principal contractor and subcontractor for the consignment of manufacturing or other activities
- Setting of agreement terms through sufficient negotiations
- Diligence in a principal contractor's provision to the relevant subcontractor of the

information and materials needed to determine a subcontractor payment

- Deviation from trade practices customary to the industry concerned
- Conformance to the purpose of the applicable legislation
- Nature and characteristics of the product or other items
- Nature and extent of disadvantage experienced by a subcontractor

○ **Examples**

Unfair Subcontracting Activities of Daelim Industrial [2016Seogeon2713]
<p>[Facts]</p> <p>In its March 18, 2014 commissioning of construction to take place at a construction site (Zone 2) in Hanam, including earthworks, Daelim Industrial included the following contractual terms in the construction site manual it supplied.</p> <p>(1) The coverage of all expenses involved in the securing of temporary yards, the acquisition of the attendant permits, and the coverage of the expenses involved in the acquisition of the permits by the subcontractor, (2) the acquisition of permits related to construction and the coverage of the attendant expenses by the subcontractor, (3) the coverage of the expenses involved in all inspections and tests performed at the instruction of the client and principal contractor by the subcontractor, (4) the inclusion of the expenses involved in early-morning and nighttime work instructed by the principal contractor in the quoted unit prices, (5) the mobilization of equipment at the principal contractor's instruction and the coverage of the attendant additional expenses by the subcontractor, (6) the coverage of expenses involved in pilot construction work and other activities performed at the demand of the client by the subcontractor, (7) the coverage of the expenses involved in the unloading and on-site management of supplied materials by the subcontractor, (8) the inclusion of the expenses involved in the processing of waste in the quoted price</p>
<p>[Fair Trade Commission's Opinion]</p> <p>Irrespective of whether an unfair special contract is actually effectuated or has the potential to be effectuated or not, the setting of restrictive contractual conditions that unfairly encroach on or restrict the interests of a subcontractor, or contractual terms transferring the expenses involved in quality control activities, such as construction quality tests and inspections, to a subcontractor when the applicable legislation prescribes that such expenses be covered by a client, constitutes an unfair special contract and an infringement of Article 3-4 of the Subcontracting Act.</p>

2) Prohibition of Unfair Setting of Subcontractor Payments (Article 4)

[Four Major Unfair Subcontracting Activities: Subject to the Triple Compensation System for Subcontractors]

- Where a principal contractor commissions manufacturing or other activities to a subcontractor, the former cannot set a subcontractor payment that is ① unfair or ② lower than what is customary for products identical or similar to the product concerned.
- Where the subcontractor files for compensation with a court as per the triple compensation system for subcontractors, the principal contractor is subject to the attendant disciplinary actions taken by the Fair Trade Commission, and is also liable to make compensation of up to three times the value of the loss experienced by the subcontractor. The value of said compensation is calculated by comprehensively considering the principal contractor's intent, the scale of the loss sustained by the subcontractor, the gains enjoyed by the principal contractor, the period and frequency of the infringement, the principal contractor's relief efforts toward the subcontractor, and other factors.

○ **Examples**

- Decrease of unit prices at a uniform rate without a valid reason
- Unilateral allocation of subcontractor payments by methods such as a request for assistance
- Discriminatory treatment of certain subcontractors without a valid reason
- Use of methods designed to cause misunderstanding of transaction conditions
- Unilateral setting of low unit prices
- Setting of subcontractor payments lower than direct construction costs without a valid reason
- Setting of subcontractor payments lower than the lowest bid without a valid reason

○ **Determinants of Illegality**

- In principle, determining whether a set subcontractor payment is "unfair" involves a comprehensive consideration of whether the nature, means, and procedure of the setting are objective, reasonable, fair, and appropriate.

- In principle, determining whether a subcontractor payment is “lower than what is customary for products identical or similar to the product concerned” involves a comprehensive consideration of whether the subcontractor payment is lower than that which is made in normal trade relations producing a product identical or similar to the concerned product. However, in competitive bidding for the lowest bid, “a subcontractor payment made in normal trade relations” is the lowest bid submitted, and in instances of newly developed products, “a subcontractor payment made in normal trade relations” is the sum of the manufacturing cost of the product and other items and the average operating profit margin of subcontractors which the principal contractor is engaged in trade with and which are in an industry identical or similar to the one the subcontractor concerned is in.

○ Examples

Unfair Subcontracting Activities of GS Engineering [2018Seogeon0678]
<p>[Facts]</p> <p>In its commissioning of subcontract work on four sites in Hanam and Daejeon performed between October 2012 and May 2016, GS Engineering set subcontractor payments that were among the lowest subcontractor payments on record, and indeed were illegal, lower than the sum of the direct construction costs (material cost, direct personnel cost, expenses) consistent with the principal contractor’s original contract.</p>
<p>[Fair Trade Commission’s Opinion]</p> <p>GS Engineering’s conclusion of a subcontract for the construction project concerned without bidding but after the acceptance of construction cost quotes from subcontractors only constitutes the conclusion of a negotiated contract. GS Engineering set a subcontractor payment lower than the sum of the direct construction costs indicated in its original contract. Because there are no records of GS Engineering’s having reviewed the subcontract for appropriateness, no valid reason can be claimed to back its setting of the illegal subcontractor payment, which constitutes an infringement of Subparagraph 6, Paragraph 2, Article 4 of the Subcontracting Act.</p>

3) Prohibition of the Decrease of Subcontractor Payments (Article 11)

[Four Major Unfair Subcontracting Activities: Subject to the Triple Compensation System for Subcontractors]

- The reduction of an initially set subcontractor payment is illegal in principle, but is legal in cases where the principal contractor proves the validity of the decrease.

- Where a subcontractor payment is to be reduced, the subcontractor must be given advance notification in writing of ① the grounds for the decrease, ② volumes of products and other items subject to the decrease, ③ amount of the decrease, ④ method of decrease, such as deduction, ⑤ and any other details validating the decrease. (The Fair Trade Commission recommends the use of its standard template Notification of Subcontractor Payment Decrease.)

○ **Examples**

- Reduction of subcontractor payments through a retroactive adjustment of unit prices
- Reduction of subcontractor payments on invalid grounds such as the principal contractor's request for assistance and order cancellation by the trade partner
- Reduction of subcontractor payments on the grounds of cash payment or early payment
- Reduction of subcontractor payments on the grounds of a lapse of the subcontractor that did not cause a loss to the principal contractor
- In instances where the subcontractor purchases supplies from the principal contractor or uses the principal contractor's property, such as equipment, the deduction of an amount exceeding the fair value of such purchase or use from the subcontractor payment
- Reduction of subcontractor payments on the grounds of commodity or material prices being lower at the time of subcontractor payment than at the time of delivery
- Reduction of subcontractor payments on such invalid grounds as deficits in management or reduced sale prices
- Transfer of expenses to be covered by the principal contractor to the subcontractor

○ **Determinants of the Validity of a Decrease**

- The validity of the reduction of a subcontractor payment is determined by comprehensively considering the circumstances of the conclusion of a subcontract and the subcontract payment decrease, the details of contract performance, the characteristics of the product and the attendant market conditions, the extent of the reduction to subcontractor payment, method of reduction, faults of the subcontractor, and other factors.
- Regardless of the grounds, methods, times, and monetary values involved in the reduction of a subcontractor payment, the principal contractor must prove the

validity of the reduction. Failure to provide such proof constitutes an infringement.

4) Prohibition of Unfair Cancellation of Commissions and Rejection of Deliveries (Article 8)

[Four Major Unfair Subcontracting Activities: Subject to the Triple Compensation System for Subcontractors]

- After the commissioning of manufacturing and other activities, the principal contractor must not cancel the commission when no grounds for cancellation attributable to the subcontractor exist, or refuse or delay the acceptance or handover of the product.
- Regardless of the execution of inspection, the principal contractor must immediately issue an acceptance certificate on delivery of the product.

○ **Examples**

■ Unfair Cancellation of Commissions

The principal contractor's commissioning of manufacturing or other activities to the subcontractor followed by a cancellation of the commission when no grounds attributable to the subcontractor exist (cancellation of a commission after an agreement with the subcontractor on appropriate compensation of the subcontractor for loss resulting from the cancellation is acceptable)

■ Change of the details of a commission, such as order volumes or specifications, also constitutes an unfair cancellation. Change of the details of a commission can include the following:

- Change of the details of a commission put into writing as per Article 3 of the Subcontracting Act
- Instruction of activities different from the particulars of the commission made initially
- Instruction of additional work or re-work after delivery

■ Unfair rejection of delivery

Unfair rejection or delay of the acceptance or handover of the subcontractor's product after the delivery date

○ **Determinants of Illegality**

- No grounds attributable to the subcontractor

Grounds attributable to the subcontractor include a critical impact on the subcontractor's business management, such as an application for bankruptcy or rehabilitation procedures, cancellation of business, and suspension of business, the subcontractor's refusal to perform the commissioned manufacturing or other activities without a valid reason, and the subcontractor's infringement of contractual terms preventing the achievement of the contract purpose.

- An "unfair cancellation of commission by the principal contractor" is determined by a review of whether the cancellation took place as allowed by the contract, whether real negotiations took place between the principal contractor and subcontractor, and whether the two parties came to an agreement on appropriate compensation for the loss to be sustained by the subcontractor from the principal contractor's cancellation before the cancellation took place.

○ Examples

Unfair Subcontracting Activities of Samsung Heavy Industries [2018Gigam3446]
<p>[Facts]</p> <p>Between 2015 and 2018, Samsung Heavy Industries canceled or changed 6,161 commissions of ship part manufacturing by 142 external suppliers, with no grounds for said cancellation or change attributable to the suppliers.</p>
<p>[Fair Trade Commission's Opinion]</p> <p>Using its commission change system (PCR system), Samsung Heavy Industries presented the suppliers with an opportunity to opt for a cancellation or change of commission only, with no procedures implemented to address the loss and other conditions to be experienced by the suppliers. As the PCR system did not support a function allowing the reason for a cancellation or change to be entered and the suppliers were left with the sole choice of consenting to the cancellation or change without being made aware of the reason, it constituted an infringement of Paragraph 2, Article 12-3 of the Subcontracting Act.</p>

5) Prohibition of Unfair Returns (Article 10)

[Four Major Unfair Subcontracting Activities: Subject to the Triple Compensation System for Subcontractors]

- A principal contractor which accepts a delivery from a subcontractor must not

return the delivered product to the subcontractor if there are no grounds for return which are attributable to the subcontractor.

○ **Examples**

- Return due to a trade partner's circumstances, including order cancellation and change in finances
- Return due to an unfair inspection failure resulting from inaccurately set inspection standards or methods
- Return of a product failing inspection due to a quality defect in the materials supplied by the principal contractor
- Return of a product delayed in delivery due to delays in material supply by the principal contractor

○ **Examples**

Unfair Subcontracting Activities of Intops [2009HG1116]
[Facts] Intops accepted two deliveries of injection-molded products, and made returns two to six months after the delivery dates on the grounds that the orders placed were in excess of the required volume. Intops's acknowledgment that the returns were made on grounds attributable to itself, which were its placement of excessively large orders due to the negligence of its personnel, clears the subcontractor of any accountability, and Intops never notified the subcontractor of inspection results after the deliveries were completed.
[Fair Trade Commission's Opinion] The return made with no grounds attributable to the subcontractor constitutes an infringement of Article 10 of the Subcontracting Act.

6) Prohibition of the Demand for the Provision of Technical Materials (Article 12-3)

[Four Major Unfair Subcontracting Activities: Subject to the Triple Compensation System for Subcontractors]

- In principle, demands for technical materials are prohibited. A demand for

technical materials can be made only when a valid reason exists and the demand is absolutely necessary, within a limited range.

○ **Request for Technical Materials in Writing**

- Requests for technical materials must be made in writing, and must include the following. Such written requests must be stored for seven years from the completion date of the subcontract transaction.
 - Purpose of the request for technical materials
 - Attribution of rights in relation to the requested technical materials
 - Payment for the provision of the requested technical materials, and the method of the payment
 - Names and scopes of the requested technical materials
 - Request date, provision date, provision method
 - Other details validating the principal contractor's request for technical materials
- The scope of technical materials includes information on methods of manufacturing or service, such as work process diagrams, approval diagrams, design diagrams, and circuit diagrams, patent rights, utility model rights, design drawings, production cost statements, and sales information.
- Technical materials requested and received must be used for a valid purpose, which is the grounds on which the request was made. All instances of unauthorized distribution of technical materials constitute appropriation of technology and are punishable.

○ **Obligation for the Conclusion of a Confidentiality Agreement**

- Where technical materials are to be supplied by a subcontractor, a confidentiality agreement that includes the following must be concluded with the subcontractor.
 - Names and scopes of the technical materials
 - Period of use of the technical materials
 - List of personnel scheduled to hold in store the supplied technical materials
 - Obligation to maintain the confidentiality of the technical materials
 - Prohibition of the use of the technical materials for unspecified purposes
 - Compensation due in the event of a breach of agreement
 - Method and date of the return or destruction of the technical materials

7) Prohibition of Forcing of the Purchase of Products, Etc. (Article 5)

- Unless a valid reason exists, such as the maintenance or improvement of quality by the subcontractor, the principal contractor must not force the subcontractor to purchase or use the products or services it designates.

8) Prohibition of Unfair Demand of the Payment for Purchase of Products, Etc. (Article 12)

- In instances where the principal contractor arranges for the subcontractor to purchase products or other items from the principal contractor, or to use equipment belonging to the principal contractor as required for the manufacturing, repair, or installation of a product, or for the execution of a service, the principal contractor must not engage in any of the following activities.

○ Examples

- Instruction of payment for the purchase or use in part or in full before the due date for the subcontractor payment for the product
- Instruction of payment for the purchase or use with conditions conspicuously less favorable than the conditions under which the principal contractor would make the payment for its own purchase and use, or its supply to a third party

9) Prohibition of Unfair Demand of Economic Benefits (Article 12-2)

- The principal contractor must not, without a valid reason, instruct the subcontractor to provide the principal contractor or a third party with funds, products, services, or other economic benefits.

10) Prohibition of Unfair Payment in Substitutes (Article 17)

- The principal contractor must not unfairly make subcontractor payments in commodities.

11) Prohibition of Unfair Management Interference (Article 18)

- The principal contractor must not use methods such as the adjustment of trade volumes to interfere with the subcontractor's personnel affairs, restrict production items, facility sizes, and other conditions, or engage in any other forms of management interference. Any of the following activities shall constitute unfair management interference when performed without a valid reason.

○ Examples

- Restriction of trade on the grounds of restriction of technical materials by the subcontractor, or export by the principal contractor
- Application of restraints on the subcontractor with regard to trade with the principal contractor or companies designated by the principal contractor
- Demand of management information as defined and notified by the Fair Trade Commission, including cost information, from the subcontractor
- Demand of management information
 - Information on material costs, personnel costs, and other costs executed by the subcontractor for delivery of the product (cost contracts, cost statements, cost calculation statements, information on the details of material costs, labor costs, etc. incurred)
 - Information on sales of products and other items the subcontractor delivers to other companies (bills of sale, sales statements by client, etc.)
 - Information on the subcontractor's management strategies (development/production plans, new investment plans, etc.)
 - Information on the subcontractor's operations, such as client lists, conditions (prices, etc.) on which products and other items are delivered to other companies, etc.
 - IT system credentials (IDs and passwords) used by the subcontractor in transactions with other companies

○ **Instances of Appropriate Demand of Management Information**

- Demanding information necessary for the principal contractor's performance of its legal obligations, e.g., a request for pay-related information in relation to a commission as necessary for the principal contractor's payment of the subcontractor's personnel (separate payment vs. direct payment)
- Demanding information needed to be shared between the principal contractor and subcontractor in their joint bidding
- Demanding information needed in the course of a new product development jointly undertaken by the principal contractor and subcontractor
- Demanding information needed for contract performance, including settlements, in relation to a subcontract for a product yet to be mass produced or given a market price
- Demand made by the principal contractor of a subcontractor subject to an agreement based on Article 3-3 of the Subcontracting Act for documents on support provided to a secondary subcontractor or subcontractors further down the subcontracting ladder

○ **Examples**

Unfair Subcontracting Activities of Woongjin Coway [2008Hagae2356]	
[Facts]	In commissioning the manufacturing of parts used to produce air purifiers, bidets, and other products to 21 primary subcontractors, including Daeyou Electrical, Woongjin Coway determined and instructed the primary subcontractors of the unit prices to be observed in further subcontracting, unfairly interfering with the primary subcontractors' management.

[Fair Trade Commission's Opinion]

The subcontractor is an entity independent from the principal contractor and with the right to autonomy in its setting of unit prices, order volumes, and other conditions in further subcontract transactions, and the defendant directly intervened in the subcontractor's setting of unit prices to be applied to further subcontracting. Considering that the setting of unit prices in subcontracting is an essential aspect of business, the principal contractor's unfair restriction of the primary subcontractors' right to autonomously set unit prices for secondary subcontractors constitutes unfair interference in management. The defendant's intervention in the setting of conditions of further subcontract transactions between the primary and secondary subcontractors on the grounds of quality maintenance and the supply of technology and funds by the defendant cannot be recognized as valid, and constitutes an infringement of Article 18 of the Subcontracting Act.

12) Prohibition of Retaliatory Measures (Article 19)

- The principal contractor must not restrict order acceptance opportunities for the subcontractor, cease trade with the subcontractor, or otherwise apply disadvantages to the subcontractor on the grounds of a subcontractor or union engaging in any of the below activities.

○ **Examples**

- Reporting the principal contractor to the authorities for infringement of Article 19 of the Subcontracting Act
- Requesting an adjustment of subcontractor payment to the principal contractor or through the Subcontractor Dispute Mediation Council
- Submitting subcontract documents requested by the Fair Trade Commission
- The principal contractor must not bypass the application of Article 19 of the Subcontracting Act by employing evasive methods in subcontract transactions.

13) Prohibition of Evasion of the Law (Article 20)

- The principal contractor must not bypass the application of Article 20 of the Subcontracting Act by employing evasive methods in subcontract transactions.

E. Obligations of Clients

1) Direct Issue of Subcontractor Payments

○ Article 14 of the Subcontracting Act

- In any of the following circumstances, the client must directly issue to the subcontractor a subcontractor payment commensurate with the degree to which an activity of manufacturing, repair, installation, or service is performed by the subcontractor.
 - The principal contractor is unable to make subcontractor payments on the grounds of suspension of payment, bankruptcy, cancellation of permits, licenses, or registrations related to business, or other such incapacitating conditions, and the subcontractor responds with a request for a direct issue of a subcontractor payment.
 - The client directly issues subcontractor payments as per an agreement reached by the client, principal contractor, and subcontractor.

An explicit and simultaneous agreement between the three parties is not required; an implicit agreement reached by each party's indication of agreement at separate times is also valid.
 - The principal contractor fails to issue two or more installments of a subcontractor payment due in line with subcontractor payment terms, and the subcontractor responds with a request for the direct issuing of the subcontractor payment.
 - The principal contractor fails to fulfill its obligation of guaranteeing its issue of subcontractor payments in line with the subcontracted construction contract performance and subcontractor payment guarantee terms, and the subcontractor responds with a request for a direct issue of the subcontractor payment.
- Where any of the above grounds for a direct issuing of subcontractor payments occur, the client's payment obligation and the principal contractor's subcontractor payment obligation to the subcontractor lapse within the applicable range.
- If the principal contractor, in relation to the concerned subcontract, provides

documents proving delays in the issuing of personnel pay, payments for materials, and other payments by the subcontractor, and requests the client to cease the direct issuing of subcontractor payments, the client must not directly issue the subcontractor payments concerned.

- In the client's direct issuing of subcontractor payments to subcontractors, subcontractor payments already issued to the principal contractor must be excluded.
- Where the direct issuing of subcontractor payments by the client to the subcontractor must be preceded by a check of work completion to date or other conditions, the principal contractor must perform the necessary steps without delay.
- In the context of multiple tiers of subcontracting, the client is the principal contractor.

○ **Method and Scope of the Issue of Subcontractor Payments**

- The subcontractor's direct request for the issuing of subcontractor payments pursuant to Paragraph 1 of Article 14 of the Subcontracting Act takes effect when it reaches the client, and the onus is on the subcontractor to prove the client has received said request.
- The client is obligated to directly issue subcontractor payments within the scope of its obligation to issue payments to the principal contractor.
- Where the grounds for the direct issue of subcontractor payments are satisfied, and the subcontractor payments due for the portions of manufacturing, repair, or installation performed by the subcontractor are confirmed, the client must issue subcontractor payments to the subcontractor as per the contract.

Section 4. Disclosure by Fair Trade Commission Mandate

A. Board-of-directors Decisions and Disclosures on Large Internal Transactions

1) Provision

- A company belonging to a business group subject to disclosure and seeking a transaction of funds, assets, securities, products, or services constituting a transaction valued at over 5% of its total capital or capital, whichever is larger, or over KRW 5 billion, entered into with or performed for a specially related person, must obtain its board of directors' approval in advance and make a disclosure.

2) Application

① Application of the law to companies: Domestic companies belonging to a business group subject to disclosure pursuant to the Fair Trade Act

SK siltron is subject to this law, as SK is a business group subject to disclosure.

② Involvement of specially related persons: Transactions entered into with or performed for specially related persons

- A transaction performed for a specially related person is a transaction that is not performed with the specially related person as a direct transaction partner, but is a transaction with the specially related person indirectly entered into through a third party. As such, the acquisition of securities issued by an affiliated company through a non-affiliated finance company constitutes an internal transaction.

○ Specially Related Persons

- Person exercising real control over the company (controller)
- Controller's related persons
- Spouse, blood relatives within the sixth degree, relatives within the fourth degree
- Non-profit corporations or organizations, to which the controller and the controller's related persons together constitute the largest investor, or established

by any of the forenamed persons, and their executives

- **Affiliated companies (Transactions with foreign affiliated companies are excluded from the obligation for board-of-directors decision and disclosure)**

Where two or more companies belong to the same business group, said companies are affiliated companies

- Executives and other personnel of non-profit corporations/organizations or affiliated companies controlled by the controller or the controller's related persons
- Parties participating in a combination of enterprises with the joint purpose of achieving control over business management

③ Application to Transactions

○ **Transaction Types**

- **[Funds transactions]** The direct supply of funds, including advance payments and loans, or a direct transaction involving such funds, and the indirect supply of or an indirect transaction involving funds through a third party who is not a specially related person.

Here, the definition of the term "funds" is not limited to advance payments and loans as accounting titles observed in accounting, but includes both direct and indirect supply of or transactions involving cash and other funds for financial convenience.

- **[Security transactions]** The direct supply of or a direct transaction involving securities such as shares and corporate bonds, or the indirect supply of or an indirect transaction involving securities through the brokerage of a third party who is not a specially related person. Additionally, the act of supplying or receiving commodities or other valuable with securities as security.

Example: Where shares and bonds issued by Affiliated Company A are purchased by Affiliated Company B through a non-affiliated company, Affiliated Company B performs a transaction for Affiliated Company A (transaction performed for a specially related person)

- **[Asset transactions]** A supply of or a transaction involving assets, including real estate and intangible property rights

Here, the definition of the term "asset" includes current assets and fixed assets (investment assets, tangible assets, intangible assets) not applied in transactions involving funds or securities, as well as the act of supplying or receiving security and real estate lease transactions.

- **[Product/service transactions]** A supply of or a transaction involving products or

services performed for or entered into with an affiliated company for which in excess of 20% of the issued shares are held by the controller as the sole holder or by the controller and the controller's relatives, or an affiliated company that is a subsidiary company as recognized by the Commercial Act and holds the total shares issued by the forenamed affiliated company in excess of 50%, constituting an ordinary transaction related to the parent company's business activities

Only the subsidiary companies and sub-subsidiary companies of a parent company are recognized as a subsidiary company under the Commercial Act.

In the context of transactions involving products and services, companies belonging to a business group whose controller is not a person but a corporation, such as Posco, KT, Nonghyup Bank, and S-Oil, are not subject to this requirement.

If a transaction is considered a product or service transaction for one party, both parties are considered to be engaged in a product or service transaction.

○ Trade Partners and Values

Nature of trade	Trade partner ¹⁾	Trade value ²⁾
Funds, securities, assets	Specially related persons e.g., domestic affiliated companies, controller's relatives, etc.	5%+ of KRW 5B+ or total capital/capital, whichever is larger ³⁾
Products or services (Summed up under sales on income statement)	Company funded by 20%+ by controller party, or a subsidiary company owned by 50%+ by an affiliated company of the forenamed company as recognized by the Commercial Act ⁴⁾	5% of quarterly total (sales + purchases) of KRW 5B+ or total capital/capital, whichever is larger

1) Trade partners include non-profit corporations/organizations but not foreign affiliated companies

2) Value-added tax not included in calculation of value

3) Total capital as per financial statements at the end of most recent business year as approved at a general meeting of shareholders. Capital as of the day before the board-of-directors decision date; paid-in capital for newly established companies. Capital increases from paid-in capital increase or conversion of convertible bonds into shares before board-of-directors decision date are included in capital.

4) In the case of SK Group, where SK and SK Discovery (domestic affiliated companies with a 20%+ stake held by the controller and relatives) are Company A, and subsidiary companies with a 50%+ stake held by Company A are Company B, Company A, Company B, or domestic affiliated companies with a 50%+ stake held by Company B are recognized as trade partners.

○ **Determinants of Application to Transactions**

- The above standards apply to transaction activities involving an individual transaction target with an individual transaction partner.
- Where a single item of transaction involving an individual transaction target with an individual transaction partner is divided and performed to evade the obligations related to board-of-directors decisions and disclosure, the divisions are combined and treated as a single item of transaction.
- Where multiple commercial paper transactions take place under the same conditions (issue date, maturity date, interest rate, etc.) with an individual trade partner on a single day, the multiple transactions are treated as a single borrowing, and the values of the commercial paper transactions are combined to determine whether disclosure is required.
- Where a contract is extended automatically as per the automatic extension provision in the contract, the contract extension must be subject to a board-of-directors decision, and shall be disclosed.
- Where multiple companies are trade partners, the companies must make a disclosure individually if they all meet the requirements for disclosure.

Where a transaction's value is 5% or more of the total capital or capital, disclosure is required even if the transaction value is under KRW 5 billion. Lower-capital companies need to be particularly vigilant in their review of the requirement of disclosure.

○ **Small-scale Internal Transactions**

- Auxiliary transactions occurring from the exercise of rights or the performance of obligations to a transaction subject to disclosure that do not produce new trade relations

Auxiliary transactions occurring from the exercise of rights or the performance of obligations to a transaction that do not produce new trade relations

- Instances where the trade partners are unable to determine the transaction conditions, including transaction values, transaction unit prices, and interest rates

○ **Affiliated Company-issued Security Transactions Constituting a Large Internal Transaction**

Classification	Primary market	Secondary market
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Trading company	O	Exchange trading	OTC trading		
		X (Transaction conditions cannot be set)	Transaction with a specially related person (Purchase/sale)	Transaction with a non-specially related person	
			O	Purchase	Sale
				O (Transaction performed for a specially related person)	X
Issuing company	O	X			

④ Calculation of Transaction Values

- The calculation below applies to transactions valued at KRW 5 billion or higher, or in excess of 5% of the concerned company's total capital or capital, whichever is larger.

Total capital is as per the financial statements at the end of most recent business year, as approved at a general meeting of shareholders, and capital is as of the day before board-of-directors decision date

○ Calculation Method

- Transactions involving funds, securities, or assets: Actual transaction value, not face value
- Real estate lease: Annual rent x
Converted annual rent (=Deposit x Interest rate)

Overheads excluded. Interest rates apply as per the Enforcement Regulations of the Value-added Tax Act (revised each year)
- Required security: Maximum required security
- Transactions involving products or services: Sum of the values of the transactions to occur in a quarter

Value-added tax excluded. Corporate accounting standards apply, but a unilateral transaction involving products or services constitutes a bilateral transaction involving products or services.

⑤ Time, Nature, and Procedure of Disclosure

○ Time of Disclosure

- Where a company subject to disclosure of internal transactions is a listed company, a board-of-directors decision on large internal transactions must be reached and followed by disclosure within one day. If a company subject to disclosure of internal transactions is not a listed company or is a public interest corporation, a board-of-directors decision on large internal transactions must be reached and followed by a disclosure within seven days.
- Where the last day for disclosure as indicated above does not fall on a business day, the disclosure must be made by the following business day.

○ Nature of Disclosure

- A company subject to disclosure of internal transactions must make such disclosure by specifying such key particulars as the transaction purpose and parties, transaction partner, contract conclusion methods such as competitive bidding or a negotiated contract (for product/service transactions only), transaction values and conditions, and total transaction balance from transactions of the same type with the transaction partner.
- The standard template available through the electronic disclosure system is used.

○ Procedure of Disclosure

- Disclosure of internal transactions must be made through the electronic disclosure system (Data Analysis, Retrieval and Transfer System: DART) and in accordance with the Regulation on Securities Issuance and Disclosures.

⑥ Disclosure Overlap from the Application of Multiple Laws

- Where a board-of-directors decision and disclosure of a large internal transaction overlap with any disclosure conforming to the Financial Investment Services and Capital Markets Act, the making of a disclosure in accordance with the Financial Investment Services and Capital Markets Act satisfies the obligation for disclosure in accordance with the Fair Trade Act. In such a case, the obligation for disclosure

as per both laws must be indicated.

⑦ **Change of Key Details of Board-of-directors Decisions and Disclosures**

○ **Board-of-directors Decision Process**

- Board-of-directors decisions on large internal transactions must be made according to the steps and methods specified in the Commercial Act.

○ **Change of Key Details**

- Where a company subject to disclosure of internal transactions seeks to change any of the following key details among disclosures made, it must repeat a board-of-directors decision and disclosure.
 - Change of transaction partner, target, or partner

Instances where the trade partner does not change in essence, as in instances involving a company name change, business transfer, merger, or other such activities, do not require a board-of-directors decision
 - Increase or decrease of transaction value or conditions (unit prices, contracted interest rates, etc.) by 20% or more from the original
 - Change of transaction details critically impacting contractual relations, such as a change of contract period
- Where a transaction is canceled unilaterally by one party through a board-of-directors decision, the other party does not require a board-of-directors decision but only a disclosure within seven days

⑧ **Board-of-directors Decision and Disclosure by a Public Interest Corporation as a Specially Related Person**

○ **Article 29 of the Fair Trade Act; Article 36 of the Enforcement Decree of the Fair Trade Act**

- Where a public interest corporation belonging to a business group subject to disclosure acquires or disposes of the shares of a domestic affiliated company or

performs an internal transaction exceeding a certain scale, a board-of-directors decision must be reached in advance, followed by a disclosure.

Internal transaction exceeding a certain scale refers to transactions exceeding 5% or more of total capital or basic net assets, whichever is the larger, or exceeding KRW 5 billion.

○ Examples

- Acquisition or disposal of the shares of a domestic company
Acquisition or disposal of the shares of a domestic company belonging to a business group subject to disclosure by a public interest corporation (regardless of number of shares and transaction value)
- Internal transactions involving the supply or trade of funds, assets, or securities
Supply or trade of funds, assets, or securities to or with a specially related person or for the sake of a special relation, the transaction value of which exceeds 5% of the total net assets or basic net assets of the party concerned, whichever is larger, or exceeds KRW 5 billion.

B. Regular Disclosure of Important Particulars Concerning Unlisted Companies

1) Provision

- An unlisted company belonging to a business group subject to disclosure must provide disclosure of important details concerning ownership and governance structures, as well as critical changes in financial structures and management activities.

○ Outline of Key Details

Classification	Details	Disclosure trigger	Disclosure period
Change in key details concerning ownership/governance	Changes to the holdings of the largest shareholders	Change by 1%+	Within 7 days from share transfer date ¹⁾
	Changes to executives	At occurrence	Within 2 months after

structures			end of registered quarter
Details causing critical change in financial structures	Decisions to acquire or dispose of non-current assets	10% of total assets	Within 7 days from board-of-directors or CEO decision ¹⁾
	Decisions to acquire or dispose of shares or investment securities of another corporation	5% of owner's capital	
	Donations, gifts	1% of owner's capital	
	Decisions to provide security or debt guarantee for another party	5% of owner's capital	
	Decisions to waive or assume debt		
	Decisions to increase or decrease capital, or issue convertible bonds or bonds with warrants	At decision	
Important particulars concerning management activities	Decisions on business transfers/mergers/divisions, share exchanges,	Dissolutions	
	Decisions on rehabilitation in accordance with the Debtor Rehabilitation and Bankruptcy Act		
	Decisions to start, stop, or resume management procedures as per the Corporate Restructuring Promotion Act		

* 1) Weekends and public holidays included in the 7 days. If the 7th day is not a business day, disclosure is required by the following business day. Period is calculated from the date on which the grounds occur, with weekends and public holidays included.

2) Companies Subject to Disclosure

- An unlisted company belonging to a business group subject to disclosure ① with current total assets of KRW 10 billion or higher as of the end of the preceding business year or
② current total assets of under KRW 10 billion as of the end of the preceding business year, with 20% or more of total issued shares held by a sole specially related person (the controller or the controller's relatives only) or multiple specially related persons, or which is a sole holder of over 50% of its own total issued shares.
- Finance and insurance companies are not subject to disclosure as unlisted companies.
- Whether or not a company added to or removed from a business group as an affiliated company during the year is subject to disclosure is determined according to the date of its addition or removal as an affiliated company. A business group designated for exclusion from the obligation for disclosure during a year is released

from the obligation starting on the date of such designation.

3) Disclosure Items and Details

① Changes in Important Details Concerning Ownership and Governance Structures

○ Outline

Disclosure item	Disclosure date	Disclosure trigger	Disclosure period
Change in shareholding of largest shareholder	Date of stake change	Change by 1%+	Within 7 days of share transfer date
Change in executives	Registration date as per register	Change (start/end of appointments, etc.)	Within 2 months of end of a registered quarter

○ Change in Shareholding of Largest and Major Shareholders

- Largest Shareholders and Major Shareholders
 - Largest shareholder: A shareholder in a company holding the largest number of shares based on the total issued shares granting voting rights (the controller alone or the controller and related parties)
 - Major shareholder: A shareholder under any name but functioning on its own calculations and holding over 10% of a company's total issued shares granting voting rights, or exercising real control over the company's key management particulars, such as the appointment and dismissal of executives
- Change in Shareholding
 - A change in the shareholding of a largest shareholder or major shareholder is recognized when it exceeds 1% of the total issued shares.
 - Regardless of the grounds for such change, such as merger, the issue of new shares, or the sale of shares, a change in the number of shares held does not create the obligation for disclosure if the ratio of shareholding does not change.

- Where there are multiple largest shareholders, disclosure is required if the ratio of each shareholder's shareholding changes by more than 1%.
 - Where the controller and the controller's related parties are the largest shareholder, the stakeholdings of the individual shareholders, the controller, the controller's relatives, affiliated companies, registered executives, etc. as distinct from treasury shares must be specified.
 - Where the controller party (controller and controller's related parties) is the largest shareholder, even if the total number of shares held or total stake ratio does not change, disclosure is required if the rate of the distribution of shares among controller party members changes by 1% or more. Where the controller party is not the largest shareholder, even if the rate of the distribution of shares among the controller party changes, disclosure of a "change in shareholding of the largest shareholder, etc." is not required if the ratio of the largest shareholder's shareholding does not change.
- Dates of the occurrence of grounds for disclosure, i.e., stake change date, must conform to the Enforcement Decree of the Fair Trade Act
 - Transfers of shares: Date of share certificate handover (date of payment for shares, date on which the rights to the shares are actually transferred)
 - Purchases of new shares: The day after the due date for the payment for share purchase
 - Transfers of stakes in companies: Date of stake transfer effectuation
 - Change in shareholding ratios due to capital reduction, share cancellation, or other reasons: Date of shareholding ratio change confirmation

○ **Change in Executive Appointments**

- All changes in executive appointments (registration dates) occurring in each quarter must be disclosed within two months from the end of each quarter, i.e., by the last day of February, May, August, and November.

* Example: An executive change registered on October 1, 2018, must be disclosed by the last day of February 2019.

- Re-appointments are not subject to disclosure, but changes of position are.

* Example: Executive Director ⇒ Auditor, Executive Director ⇒ CEO

② Particulars Causing Critical Change in Financial Structures

○ Outline

Disclosure item	Disclosure date	Disclosure trigger	Disclosure period
Acquisition or disposal of non-current assets	Date of board-of-directors (CEO) decision	10% of total assets (10% of paid-in capital) ¹⁾	Within 7 days of decision date
Acquisition or disposal of another corporation's shares or securities		5% of owner's capital ²⁾	
Investment securities			
Donations or gifts		1% of owner's capital	
Security supply or debt guarantee for another party		5% of owner's capital	
Debt waiver from debt assumption or another party's actions		5% of owner's capital	
Capital increase or decrease		Decision	
Issue of convertible bonds or bonds with warrants		Decision	

* 1) For a newly established company that is still without financial statements as of the end of the last business year, the paid-in capital at the time of establishment is used.

* 2) Owner's capital = Total assets – Total liabilities ± Increase/decrease in capital and capital surplus from the end of the last business year to the date of the occurrence of grounds for disclosure.

* For the total assets and owner's capital as of the end of the last business year, the period from the end of three months from the end of each business year to the end of three months from the end of the next business year applies (Corporations observing December closing: April 1 of current year to March 31 of following year)

○ Decision to Acquire or Dispose of Non-current Assets

- Board-of-directors or CEO decisions on the acquisition or disposal of non-current assets valued at 10% of total assets as of the end of the last business year or higher are disclosed.

* Individual contract values (individual board-of-directors/CEO decisions) are observed

- Non-current assets include items categorized according to accounting standards (assets under construction, investment assets, etc.)

○ **Decisions to Acquire or Dispose of Shares or Investment Securities of Another Corporation**

- Board-of-directors or CEO decisions on the acquisition or disposal of shares or investment securities issued by another corporation (domestic/international affiliated companies excluded) valued at 5% of owner's capital or higher are disclosed.

* Total value of shares of another corporation to be acquired is observed

- Disclosure is required if the issuing corporation is not an affiliated company at the time of the decision.

○ **Decisions for Donations or Gifts**

- Board-of-directors or CEO decisions on donations or gifts valued at 1% of owner's capital or higher are disclosed.

○ **Decisions to Provide Security or Debt Guarantee to Another Party**

- Board-of-directors or CEO decisions on the provision of security or debt guarantees to another party valued at 5% of owner's capital or higher are disclosed.

* "Debt guarantee" in this context differs in concept from the debt guarantee referred to in Article 10-2 of the Fair Trade Act, and encompasses all particulars of a debt guarantee. As such, the provision of debt guarantees or security to foreign affiliated companies also requires disclosure.

- Debt guarantees in the form of contract performance guarantee or tax payment guarantee are excluded.

○ **Decisions on Debt Assumption and Debt Waiver by Another Party**

- Board-of-directors or CEO decisions on debt assumptions or debt waivers valued at 5% of owner's capital or higher are disclosed.

○ **Capital Increase or Decrease**

- Board-of-directors or CEO decisions on capital increases or decreases are disclosed.
- No reference amount is observed. Every decision is subject to disclosure.

○ **Decisions to Issue Convertible Bonds or Bonds with Warrants**

- Board-of-directors or CEO decisions on the issuing of domestic or foreign convertible bonds or domestic or foreign bonds with warrants are disclosed.
- This concerns bonds that can be converted to shares at a later date only.

③ **Particulars Causing Critical Change in Management Activities**

○ **Outline**

Disclosure item	Disclosure date	Disclosure trigger	Disclosure period
Transfer of operations	Date of board-of-directors (CEO) decision	Decision	Within 7 days of date of decision
Share exchange or transfer			
Company merger or split			
Occurrence of a ground for dissolution or start/end of rehabilitation/management procedures			

○ **Decisions to Transfer Operations**

- Decisions on the transfer of operations as per Article 374 of the Commercial Act are disclosed.

- Decisions on contracts on the lease of all operations, delegation of management, or sharing of all profits and losses with another party, or the conclusion, change, or termination of contracts equivalent to the aforementioned contracts are disclosed as per Article 374 of the Commercial Act.

○ **Decisions to Exchange or Transfer Shares**

- Decisions on a comprehensive exchange of shares as per Article 360-2 of the Commercial Act, or a comprehensive transfer of shares as per Article 360-15 of the Commercial Act are disclosed.

C. Disclosure of Business Group Conditions

- Companies belonging to a business group subject to disclosure (SK siltron included) must disclose the business group's general conditions, operating conditions such as the operation of executives and a board of directors, share ownership, and transactions with specially related persons.
- In principle, quarterly disclosures are required. However, annual disclosures are permitted for certain conditions.

○ **Outline of Key Details**

Classification	Details	Disclosure trigger	Disclosure schedule
General conditions	Company overview (company name, CEO, business type, employee count, etc.)	Designated date ¹⁾	Annual
	Finances (assets, debts, capital, debt ratios, etc.)	End of business year preceding designated date	
	Profits and losses (revenue, operating profit, net profit, etc.)	Designated date	
	Foreign affiliated companies	Designated in previous year to designated date in current year	
	Changes in affiliated companies	Designated date	
Operating conditions (Executives, board of directors, etc.)	Executives	Designated in previous year to designated date in current year	
	Operation of board of directors, committees within board of directors, systems related to general assemblies of shareholders, etc.	Designated date	

Share ownership	Shareholding by specially related persons (controller, relatives, non-profit corporations, affiliated companies, treasury shares, etc.)	Designated date	
	Shareholding by domestic affiliated companies	Before construction completion date	Quarterly
Transactions between affiliated companies and specially related persons	Funds transactions between affiliated companies	End of quarter	Quarterly
	Lending of funds to specially related persons (affiliated companies excluded)		
	Security transactions between affiliated companies		
	Trade of securities with specially related persons (affiliated companies excluded)		
	Product/service trade between affiliated companies	Start date to end date of preceding business year	Annual
	Trade of major products/services between affiliated companies		
	Management, and advisory service transactions between holding company, subsidiaries, sub-subsidiaries, and sub-sub-subsidiaries		
	Real estate lease transactions between holding company, subsidiaries, sub-subsidiaries, and sub-sub-subsidiaries		
	Other asset transactions between affiliated companies	Start date to end of quarter preceding designated date	Quarterly
	Trademark transactions between affiliated companies	Start date to end date of business year preceding designated date	Annual
	Trade of other assets with specially related persons (affiliated companies excluded)	Start date to end of quarter preceding designated date	Quarterly
	Balance of bonds and debts from trade between affiliated companies	End of business year preceding designated date	Annual
	Debt guarantees between affiliated companies	End of quarter preceding due date	Quarterly
	Security provision between affiliated companies		
	Internal transactions of affiliated companies with a high ratio of stake held by specially related persons	Start date to end date of business year preceding designated date	Annual
All circular shareholdings between affiliated companies	Circular shareholdings between domestic affiliated companies	Designated date	Annual
	Changes in circular shareholdings between domestic affiliated companies	End of quarter preceding due date	Quarterly

Holding company	Conditions of affiliated companies that are not a holding company, subsidiary, sub-subsidiary, or sub-sub-subsidiary	Designated date	Annual
Exercise of voting rights by finance and insurance companies	Exercise of voting rights of shares of domestic affiliated companies by finance and insurance companies	End of quarter preceding due date	Quarterly

* 1) Date designated by a business group subject to disclosure in the current year (usually May 1)