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# NEWSLETTER

Intellectual Property Group

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## Amendments to Act on Prevention of Divulgence and Protection of Industrial Technology passed at the National Assembly's Plenary Session

### ••• Supplementations to National Core Technology Regulations and Enhancement on Industrial Technology Protection

The amendments to the Act on Prevention of Divulgence and Protection of Industrial Technology (**APDPIT**) were passed at the plenary session of the National Assembly on December 27, 2024. The amendments enhance and supplement the regulatory framework for national core technology (**NCT**) by addressing operational gaps identified in the current system. Key changes include the introduction of an *ex officio* decision notification system, whereby authorities can require entities to undergo official determination of their NCT ownership status. Additionally, entities that acquire the NCT ownership status must complete a registration process. The amended APDPIT also strengthens industrial technology protections through several measures, including increasing the cap on punitive damages and penalties for leaking or misappropriating industrial technologies, while easing the elements for establishing industrial technology misappropriation. The amended APDPIT will take effect 6 months following its promulgation.

#### 1. Noteworthy Changes to Regulating NCT under the Amended APDPIT

##### ■ Newly introducing *ex officio* decision notification system and registration policy

Under the current APDPIT, companies, research institutes, specialized institutions, universities, and other entities in possession of industrial technologies (collectively, the **Entities**) may apply to the Minister of Trade, Industry and Energy (**MOTIE**) for official determination of whether their technologies qualify as NCT. (Article 9(6) of the current APDPIT). However, concerns have been raised that this official determination process is only available through voluntary applications by the Entities.

To address these concerns, the amended APDPIT introduces new provisions enabling MOTIE to notify *ex officio* decisions requiring companies, research institutes, specialized institutions, universities and other entities (collectively,

the **Companies**) to seek official determination of their NCT ownership when MOTIE deems that technologies qualifying as NCT may be owned by the Companies (Article 9-2(2) of the amended APDPIT). Upon receiving such notification, the Companies must file an application for NCT ownership determination within 30 days. This period may be extended by up to 30 additional days upon prior consultation with MOTIE, provided there is justifiable cause (Article 9-2(3) of the amended APDPIT).

The amended APDPIT also requires the Companies to register as NCT-owning entities with MOTIE within 30 days from the date of receiving MOTIE's official determination of their ownership of NCT or National Advanced Strategic Technology (**NAST**) or acquiring NCT through assignment from the Entities (Article 9-3 of the Amended APDPIT).

Under the amended APDPIT, the Companies may face a penalty not exceeding KRW 10,000,000 (approximately USD 6,800) if they fail to file an application to seek official determination of the NCT ownership status within 30 days of receiving MOTIE's *ex officio* decision notification or undertake the required registration process within the prescribed 30-day period (Articles 39(1)(i) and (ii) of the amended APDPIT).

- **Streamlining procedures for suspending, prohibiting or restoring unapproved or unreported NCT exports or cross-border mergers and acquisitions**

Even under the current APDPIT, where the Entities have failed to obtain approval or make required advance reporting for NCT exports and cross-border mergers and acquisitions, or have obtained such approval or made such reports through deceitful means, MOTIE may (i) request an investigation by the head of an intelligence and investigation agency, (ii) have the results reported to the Industrial Technology Protection Committee (**ITPC**) and (iii) following ITPC deliberation, order remedial measures including suspension, prohibition, or restoration to the original state (*i.e.*, unwinding of the transaction) (Articles 11(7) and 11-2(9) of the current APDPIT).

The amended APDPIT makes a distinction between an Entity's "failure to obtain the approval or make advance reporting" and "obtaining the approval or making advance reporting through deceitful means". Under this distinction, in case the Entity, without approval or reporting, exports NCT or proceeds with a cross-border merger and acquisition, MOTIE may immediately order suspension, prohibition or restoration to the original state, thereby streamlining the procedures. (For your information, if the approval has been obtained or the advance reporting has been made by way of making false statements or otherwise using deceitful means, MOTIE may take the procedure outlined above) (Articles 11(8) and 11-2(10) of the amended APDPIT).

On that note, the amended APDPIT did not revise "the head of an intelligence investigation agency" to "the Chief of National Intelligence Service (**NIS**)" (For your information, under the Presidential Decrees, namely Planning and Adjustment Regulations governing Intelligence and Investigation Work, agency include the National Intelligence Service, the Prosecutors' Office and the National Police Agency), but the term is read to mean the NIS Chief (Please note that the Foreign Investment Promotion Act expressly designates the NIS Chief.).

- **Newly introducing charges for compelling compliance for unapproved or unreported cross-border mergers and acquisitions**

As explained above, under the current APDPIT, MOTIE may order measures, including suspension, prohibition and restoration to the original state, against unapproved or unreported NCT exports and cross-border mergers and acquisitions (Article 11-2(9) of the current APDPIT). However, the effectiveness of the current APDPIT has been put to question due to non-availability of sanctions for failing to comply with such orders regarding cross-border mergers and acquisitions.

To strengthen enforcement, the amended APDPIT introduces a new provision authorizing the imposition of charges compelling compliance against persons that do not comply with MOTIE orders regarding cross-border mergers and acquisitions. These charges may be levied up to KRW 10,000,000 (approximately USD 6,800) per day, commencing from the day following the expiration of the compliance deadline (Article 11-3 of the amended APDPIT).

## 2. Noteworthy Changes towards Strengthening Industrial Technology Protection

- **Raising the cap on punitive damages for willful industrial technology misappropriation and the penalty for technology leakage**

Under the current APDPIT, if an industrial technology misappropriation is deemed willful, the award can be increased up to three times the damage recognized by the court. However, the amended APDPIT has raised this cap to **quintuple** damages (Article 22-2(2) of the amended APDPIT).

Additionally, the amended APDPIT has increased the penalty for leaking **NCT** with knowledge that it will be utilized in overseas countries to **KRW 6.5 billion** (approximately USD 4.4 million), up from KRW 1.5 billion (approximately USD 1 million). For leakage of industrial technologies, the penalty has also become more substantial, increasing to **KRW 3 billion** (approximately USD 2 million) from KRW 1.5 billion (approximately USD 1 million) (Articles 36(1) and (2) of the amended APDPIT).

- **Relaxing criteria for establishing industrial technology misappropriation and expanding the applicability scope**

Under the current APDPIT, the following activities are prohibited as acts of industrial technology misappropriation: (i) when a person under confidentiality obligation through contracts with an Entity leaks industrial technology **with the knowledge that unjust profits will be gained and harm will be inflicted to such Entity** (Article 14(ii) of the current APDPIT), (ii) when a person exports NCT or proceeds with cross-border mergers and acquisition involving NCT without obtaining the approval or after obtaining the approval using deceitful means **with the knowledge that NCT is or will be used in overseas countries** (Article 14(vi) of the current APDPIT), (iii) when a person exports NCT or proceeds with mergers and acquisition involving NCT without making advance reporting or after making advance reporting using deceitful means **with the knowledge that NCT is or will be used in overseas countries** (Article 14(vi-2) of the current APDPIT), (iv) when a person under confidentiality obligation through contracts with an Entity refuses the Entity's return-or-destroy requests after no longer having the right to store or use industrial technology **for the purposes of gaining unjust profits or inflicting harm to such Entity** (Article 14(vi-3) of the current APDPIT).

The amended APDPIT has been revised to ease the elements for establishing an act of industrial technology misappropriation by deleting **“with the knowledge that unjust profits will be gained and harm will be inflicted to such Entity ”** from (i) -type misappropriations, **“with the knowledge that NCT is or will be used in overseas countries”** from (ii) and (iii)-type misappropriations, and **“for the purposes of gaining unjust profits or inflicting harm to such Entity”** from (iv)-type misappropriations (Articles 14(ii), (iii), (ix) and (x) of the amended APDPIT).

Furthermore, the following acts have been added to the list of acts of industrial technology misappropriation: (i) when a person with access to industrial technology pursuant to contracts with an Entity leaks industrial technology outside the designated place(s) without permission or uses or discloses industrial technology outside the permitted scope of use, (ii) when such person introduces, brokers or solicits industrial technology misappropriations and (iii) when such person exports NCT after failing to make advance reporting to MOTIE or making advance reporting using deceitful means (Articles 14(iv), (vi) and (viii) of the amended APDPIT).

Regarding punishment requirements for acts of industrial technology misappropriation, the requirement of **“for the purposes of using industrial technology, or causing it to be used, in overseas countries”** has been relaxed to **“with the knowledge that industrial technology will be used in overseas countries”** (Articles 36(1) and (2) of the amended APDPIT).

### 3. Implications

With the introduction of the *ex officio* decision notification system and the registration policy in these latest amendments, companies that believe they own NCT face an increased urgency to undertake official determination and registration procedures without delay.

Also, NCT exports and cross-border mergers and acquisitions are now subject to more rigorous controls, since MOTIE may immediately order remedial measures (*e.g.*, suspension, prohibition and restoration to the original state) on unapproved or unreported transactions. MOTIE may impose charges to compel compliance for non-compliant persons in the case of unapproved or unreported cross-border mergers and acquisitions. Furthermore, criminal actions can be pursued against the act of exporting NCT without making advance reporting or making advance reporting using deceitful means, which has been added to the statutory list.

Given the increased importance of obtaining approval and making advance reporting for NCT exports and cross-border mergers and acquisitions, a need for thorough preparation cannot be overstated for NCT-owning companies.

Finally, increased caps on punitive damages and penalties, coupled with the expanded scope of punishment, signify stronger protections for industrial technology and NCT. In this heightened regulatory environment, companies must exercise increased caution to avoid inadvertent misappropriation of other companies' industrial technology or NCT.

Lee & Ko's Trade Secret & Company Information Protection Team renders professional assistance with respect to various NCT and NAST matters, including investigations on NCT/NAST leak, approval for cross-border mergers and acquisitions and approval for technology export, drawing from our accurate understanding of such technologies and extensive work experience with National Police Agency's Security Investigation Unit, NIS and MOTIE. If you need any legal assistance, please contact us.

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