

Repeal of the KFTC's Pharmaceutical Industry Guidelines

On May 21, 2014, the Korea Fair Trade Commission ("KFTC") announced that it will streamline industry guidelines for standard contracts which may overly constrain corporate activities. The Pharmaceutical Industry Fair Trade Guidelines and the Guidelines for Patent License Agreements are among those that will be repealed by the KFTC.

By modifying the "positive" regulations (e.g. prohibitions unless an exception applies) under the current industry guidelines for standard contracts into "negative" regulations which are the general principles of the Monopoly Regulation and Fair Trade Act ("MRFTA"), the KFTC is aiming to encourage autonomous corporate activities. On the other hand, the KFTC will explicitly stipulate the standards to determine illegality/unfairness in its examination guidelines or relevant legislation.

The Pharmaceutical Industry Fair Trade Guidelines to Be Repealed

(1) Goals

The Pharmaceutical Industry Fair Trade Guidelines which are in the form of a standard contract were enacted on December 28, 2012 in order to prevent unfair pharmaceutical contracts between pharmaceutical companies (in particular, between a supplier and a distributor).

(2) Main Contents

Provisions deemed to be potentially unfair	Relevant Articles	Improvements
Prohibition on dealing with competing goods	Article 10	1) Restriction on research/development or production within the contract period is prohibited. 2) Restriction on dealing with competing goods after the expiration of the contract is prohibited * The term "competing goods" means drug products with same ingredients and effects
Minimum purchase/sales target	Article 14	Immediate termination of a contract for not meeting purchase or sales goals is prohibited.
Forced purchase of raw materials	Article 3	Exclusive purchase of raw materials is permitted only under limited circumstances, e.g., where it is necessary for quality assurance.
Supply of goods	Article 4	Purchase forecast order submitted in advance does not constitute a commitment to purchase, and may be adjusted according to the market demand at the time of purchase.
Transfer of improved technology	Article 12	Unconditional royalty-free license of independently developed follow-up technology is prohibited.
Performance reporting requirements	Article 7	Excessive reporting requirements that may interfere with management are prohibited.
Others	Articles 2, 5 and 14	Provisions for re-sale rights, determination of resale price, termination notification requirement and remedies for breaches etc.

(Continued)

The Guidelines for Patent License Agreements to Be Repealed

(1) Goals

On January 17, 2012, the Guidelines for Patent License Agreements were enacted to protect medium- or small-sized businesses with limited legal resources.

(2) Main Contents:

Provisions that will be repealed concern ① royalties, ② evidence requirements concerning royalties, ③ raw material purchase, ④ restrictions on the territory, ⑤ restrictions on the price and quantity of goods, ⑥ restrictions on dealing with competing products/technology, ⑦ obligations to deal with other products/technology, ⑧ technical improvement, ⑨ effects of patent invalidation, and ⑩ agreement not to challenge patent invalidity.

Implications

Abolishment of "positive" regulations under the fair trade industry guidelines including the two afore-mentioned guidelines for the pharmaceutical industry is expected to encourage and increase autonomous corporate activities. In particular, the repeal of the Pharmaceutical Industry Fair Trade Guidelines which are in the form of a standard contract and have been criticized as overly burdensome to suppliers and patentees is expected to increase the autonomy of contracts.

However, the repeal of these guidelines is simply the KFTC's efforts to improve and streamline the existing regulations. The MRFTA and other relevant laws still regulate illegal activities and companies still need to carefully review which business activities are allowed or prohibited under the current legislation.

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