

### 3. The Republic of Korea

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#### 3.1 Consumer Protection Law regarding B2C

##### 3.1.1 Legal Framework

###### ■ Comprehensive consumer protection laws

###### (1) Consumer Protection Act<sup>1</sup>

The Korean government has taken steps to protect consumers from unfair business practices including protecting consumers from fraudulent and deceptive practices through the **Consumer Protection Act**.

Article 15 of the Consumer Protection Act forbids unfair actions and practices of business that are thought to possibly disturb consumer's rational selection or in some way damage consumers.

The Consumer Protection Act for the protection of consumers' fundamental rights prescribes business obligations to the preventive standards concerning danger and injury, for the standards of labeling and advertisements, for mandatory recalling and discarding of dangerous goods and services.

The Consumer Protection Act (Article 12) prescribes measures necessary for the government to deal with consumer complaints and redress quickly and fairly. The government has established the **Consumer Damages Compensation Regulations** in accordance with the Act to facilitate the fair resolution of disputes between businesses and

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<sup>1</sup> "INVENTORY OF CONSUMER PROTECTION LAWS, POLICIES AND PRACTICES APPLIED TO ELECTRONIC COMMERCE", p.p.34-37, OECD (DSTI/CP(2000)5/FINAL), 28-Feb-2001.

consumers.

## (2) Consumer Protection Guidelines for Electronic Commerce<sup>2</sup>

The **Consumer Protection Guidelines for Electronic Commerce**, which were developed based on the **OECD Guidelines For Consumer Protection In The Context Of Electronic Commerce**, also has been in effect since January 2000. Model contract terms in the field of electronic commerce were also enacted in 2000. The government is in the process of enacting new laws related to distance selling and electronic funds transfer in the near future.

A **Working Group for e-Commerce and Consumer Protection** run by the Ministry of Finance and Economy (MOFE) was created to co-ordinate consumer policy for electronic commerce. The **Cyber Consumer Center** (CCC, <http://www.econsumer.or.kr/new/main8.html>) also was established in July 2000 as a part of the **Korea Consumer Protection Board** (KCPB), a non-profit consumer organization whose budget is subsidized fully by the central government. The KCPB's role has focused on research, survey, comparative testing, consumer redress, dispute resolution, providing consumer information and education. The KCPB has been running an online consumer redress system for consumers who have complaints or injuries in the process of electronic transactions. The KCPB also translated the OECD guidelines into Korean and distributed them to related consumer organizations, government agencies, mass media and educational bodies.

The CCC was launched to more systematically promote these tasks. While consumers' complaints related to online shopping will continue to be received by the KCPB, the CCC is responsible for studying potential amendments to the Door-to-Door Sales Act; regulation against unsolicited e-mails in electronic commerce; consumer affairs and electronic money; free gifts for promotion by Web retailers and related consumer damage; types of consumer complaints in electronic commerce and their prevention.

## (3) The Bill for Protection of Customers in Electronic Commerce<sup>3</sup>

This bill was prepared by the Korean Fair Trade Commission in order to protect consumers engaging in electronic commerce and telecommunication purchases. This bill includes provisions relating to telecommunication sales that were moved from the

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<sup>2</sup> "FIRST REPORT: GOVERNMENT AND PRIVATE SECTOR INITIATIVES TO PROMOTE AND IMPLEMENT THE OECD GUIDELINES FOR CONSUMER PROTECTION IN THE CONTEXT OF ELECTRONIC COMMERCE", p.p.19, OECD (DSTI/CP(2000)7/FINAL), 28-Feb-2001.

<sup>3</sup> This section was written by Kim & Chang.

Door-to-Door Sales Act and includes new provisions about electronic commerce sales. This bill also has provisions relating to limitation of effectiveness of electronic documents, collection and use of personal information, and business entities' responsibilities as well as other matters. This draft bill is currently being debated in the National Assembly.

#### (4) Standard Terms and Conditions on the Use of Internet Cyber-mall<sup>4</sup>

The Fair Trade Commission approved the Standard Terms and Conditions to specify rights and responsibilities between businesses and consumers in electronic commerce.

##### (i) Standard Terms and Conditions on the Use of Internet Cyber-mall (Fair Trade Commission Standard Terms and Conditions 10023)

###### Article 1 (Purpose)

The purpose of this Terms and Conditions is to prescribe the rights, duties and responsibilities of cyber-malls and their users in using the Internet related services (heretofore referred to as 'services') provided by the \_\_\_\_\_ cyber-malls (heretofore referred to as 'malls') of \_\_\_\_\_ company (electronic commerce enterprise).

(※ The electronic commerce using PC communication shall apply this Guideline mutatis mutandis as long as they are similar in nature)

###### Article 15 (Protection of information of personal information)

① Malls, when they collect information on users, shall collect the minimum information necessary for the fulfillment of purchase contract. The following items are mandatory and others are optional:

1. Name
2. Residence registration Number (in case of members)
3. Address
4. Telephone Number
5. Wanting ID (in case of members)
6. Password (in case of members)

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<sup>4</sup> This section was written by Professor Hyung Nam Moon & Yong Jae Kim, Graduate School of Information & Communication, Sookmyung Women's University.

② Malls, in case they collect personal information allowing the identification of person, shall necessarily get the consent of users.

③ The personal information provided by users shall not be used for other purpose and given to the third party without users' consent; the problems occurred by it shall be the malls' responsibility.

④ Malls, in case they have to get the consent of users in accordance with Paragraphs 2 and 3, shall specify or notify, in advance, the matters prescribed in Article 16 ③ of the Act on Promotion of Information and Communications Network Utilization and Information Protection, ETC. such as identification of the person in charge of managing personal information (unit, name, telephone number, and other contact information), the purpose for collection and use of information, the matters related to the provision of information to the third party (the person who information is provided, purpose of provision and content of information to be provided) and the users can withdraw the consent anytime.

⑤ Users can request to read and correct the personal information kept by the malls anytime and the malls shall have the responsibility to take necessary measures without delay. In case users request for correction, the malls shall not use the personal information until the correction is made.

⑥ Malls shall minimize the number of persons accessing the information to protect personal information and shall be responsible for the damages on users occurred by loss, theft, leakage and alteration of users' personal information including credit card number and bank account number.

⑦ Malls or the third parties received personal information from the malls shall discard the relevant personal information without delay when the purpose for the collection and reception of personal information is met.

#### Article 21(Resolution of Dispute)

① Malls shall establish and operate a damage compensation processing unit to deal with reflecting the opinions and complaints raised by the users compensating the occurred damages.

② Malls shall process the complaints and opinions submitted by the users as a priority. However, in case an immediate processing is not possible, they shall

notify the reasons and processing schedules to the users immediately.

③ The dispute occurred between malls and users may be resolved by the mediation of the Electronic Commerce Mediation Committee established in accordance with Article 28 of the Framework Act on Electronic Commerce and Article 15 of the Enforcement Ordinance of the Act.

#### Article 22 (Jurisdiction and Conforming law)

① A lawsuit on electronic commerce dispute occurred between Mall and its users shall be submitted to the competent court prescribed in the Civil Procedure Act.

② Korean Law shall be applied to an electronic commerce lawsuit occurred between Mall and its users.

### ■ Other laws, guidelines and activities concerning consumer protection

#### (5) Framework Act on Electronic Commerce<sup>5</sup>

The **Framework Act on Electronic Commerce** : This Act was established for validating online transactions through electronic documents for securing their safety and trust, and for fair trade.

- To validate electronic documents and signatures as effectively as paper documents, its signatures and seals, and to establish transaction principles according to the Act.
- To establish comprehensive systematic and technological terms in order to remove dangers and uncertainties from e-commerce including personal data protection, the private free use of passwords, **promotional policies for consumer protection** and to secure trust.
- To extend the government's role in the promotion of e-commerce and to support private free e-commerce.

#### (6) Monopoly Regulations and Fair Trade Act / Fair Labeling and Advertising Act<sup>6</sup>

The **Monopoly Regulations and Fair Trade Act** includes marketing provisions that prohibit the following unfair practices considered to hinder free and fair transactions:

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<sup>5</sup> "INVENTORY OF CONSUMER PROTECTION LAWS, POLICIES AND PRACTICES APPLIED TO ELECTRONIC COMMERCE", p.p.34-37, OECD (DSTI/CP(2000)5/FINAL), 28-Feb-2001.

<sup>6</sup> "INVENTORY OF CONSUMER PROTECTION LAWS, POLICIES AND PRACTICES APPLIED TO ELECTRONIC COMMERCE", p.p.34-37, OECD (DSTI/CP(2000)5/FINAL), 28-Feb-2001.

- Actions that unfairly set and maintain the price of goods and services and efforts to unfairly control the sale of goods and services.
- Actions that decide the sales or payment conditions of goods in advance, actions which restrict production, delivery from a warehouse, shipment, sales of goods and services, and actions which limit trade zones or correspondents.
- Actions to maintain the resale price.
- Actions to attract customers unjustly, actions to indicate unfair labeling and other anomalous actions concerning sales.

The **Korean Fair Trade Commission** introduced two separate articles concerning labeling and advertising practices within the **Monopoly Regulations and Fair Trade Act** and, in July 1999, implemented the **Fair Labeling and Advertising Act**. These efforts were intended to correct unfair labeling and advertising practices (including fraud and deception) and to ensure that consumers are provided with accurate and useful information. The law includes the following important provisions:

- Strengthens the requirements for comparative advertisements in order to forbid unfair labels and advertisements including falsities, overstatement, deceit, and slander as well as to revitalize comparative advertisements. (Article 13)
- Introduces a Mandatory Disclosure System on pertinent information concerning goods and services for consumers. (Article 140)
- Introduces the Advertisement Substantiation System to make it possible to request information concerning the facts in an advertisement's contents, if necessary. (Article 15)
- Within the order system, it empowers the government to temporarily halt unfair labeling and advertisements that urgently need correction. (Article 19)

#### (7) Door-to-door Sales Act<sup>7</sup>

Distance selling is regulated in accordance with the **Door-to-door Sales Act**. The Act regulates door-to-door selling and multi-level marketing as well as distance selling. The Act has been revised four times, most recently in May 1999.

The Act prescribes several regulations for consumer protection including the following:

- Distant sellers shall indicate for advertisement; i) the name of the firm, the address

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<sup>7</sup> "INVENTORY OF CONSUMER PROTECTION LAWS, POLICIES AND PRACTICES APPLIED TO ELECTRONIC COMMERCE", p.p.34-37, OECD (DSTI/CP(2000)5/FINAL), 28-Feb-2001.

and phone number; ii) kinds and contents of goods and services; iii) sale price of goods and services; iv) shipment time of goods and services; v) delivery time of goods and services; vi) terms of subscription periods and delivery expenses. They shall not indicate any false description.

- Consumers may cancel subscription within 20 days after they receive goods or services: i) in cases where goods are damaged during their delivery; ii) in cases where goods or services differ from those advertised; iii) in cases where goods or services arrive later than advertised; iv) in cases where subscriptions are made without the mandatory indications advertised.

#### (8) Standardized Contract Act<sup>8</sup>

Most contracts now are standard form contracts. These contracts are set by one party and offered to the other party on an all-or-nothing basis. The adhering party does not have the option to negotiate for different terms and, as a practical matter, would not incur the opportunity costs of negotiation. Persons generally agree to be bound by standardized terms by signature or some other tangible sign of assent. Principles of contract law require enforcement of standardized terms regardless of a party's actual consent or knowledge of terms. Against this background, the Standardized Contract Act was enacted to protect the party that did not draft the contract in certain circumstances.

The Standardized Contract Act require that the drafter show the terms of the standard form contract, and give a copy of the terms to the non-drafting party if such party so requests, as well as explain the material terms of the standard form contract. If the above conditions are not satisfied, then all or a portion of the terms in the standard form contract term may not be made a part of the agreement between the parties depending on the circumstances.

Some of the other important provisions in the Standardized Contract Act specify that if the meaning of a term in a standard form contract is ambiguous, then such term should be interpreted in the non-drafting party's favor. Also, if a term in a standard form contract is unfair and violates the principle of good faith, then it shall be null and void. Related to the above, if a standard form contract term is unfairly disadvantage to a customer, then it is to be deemed to be unfair.

#### (9) Installment Transaction Act<sup>9</sup>

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<sup>8</sup> This section was written by Kim & Chang.

<sup>9</sup> This section was written by Kim & Chang.

This Act attempts to provide protections for the customers of a seller of goods by requiring certain information to be provided to the customers in the contract. Some of the more relevant provisions provide (i) that the seller is to indicate the type and content of goods, price of the goods, each amount of allotment, and number of installment payments to the customer so as to ensure that the customer understands the terms of the contract, (ii) that the installment sales contract should include information such as the names of the seller and buyer, the type and content of goods, delivery time, price of goods, amount of allotment, customer's right of withdrawal, and termination conditions of the contract, as well as other terms.

Further, other provisions of the Act provide that the customer may withdraw its acceptance of the contract within seven days from the delivery date of contract document, and in the case where the customer did not receive such contract document, seven days from the delivery date of goods.

### **3.1.2 Organizations<sup>10</sup>**

#### (1) Government

##### (i) Korea Consumer Protection Board

**<http://www.cpb.or.kr>**

The Korea Consumer Protection Board(KCPB) is a purpose-specific public-service corporation operating under the Ministry of Finance and Economy(MOFE) and established July 1st 1987 in accordance with the revised Consumer Protection Act. The KCPB has the objectives of protecting the basic rights of consumers, promoting the rationalization of patterns of consumption and contributing to the sound development of.

##### (ii) Consumer Policy Division, Ministry of Finance and Economy

**<http://www.sobija.go.kr>**

The information provided is:

- Policy on consumers
- Information on daily living
- Consulting and compensation for damages
- Price

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<sup>10</sup> This section was written by Professor Hyung Nam Moon & Yong Jae Kim, Graduate School of Information & Communication, Sookmyung Women's University.



- Laws and public announcement

(iii) Fair Trade Commission

<http://www.ftc.go.kr>

(2) Private Sector

(i) Korea National Council of Consumer Organizations

<http://www.consumernet.or.kr>

Work Programs:

- Education
- Consumer Complaints Service
- Testing and Management of a Laboratory
- Research and Survey
- Publication
- International Relationships
- Campaigns
- Monitoring
- Relations With Government and industry

(ii) Citizens' Alliance for Consumer Protection of Korea

<http://www.cacpk.org>

Purpose:

To establish consumer rights and enhance the quality of life through voluntary consumer movement.

An independent, professional, non profit-making, non-political, and Council member of CI.

Work Program:

- COMPLAINT service
- CONDUCTING research & surveys on various consumer related problems/issues
- COUNSELLING consumers about their rights/legal assistance
- LOBBYING /PROMOTING policy implementation for consumer protection
- TRAINING/ EDUCATING consumer/ opinion leaders & the general public on drug use, breastfeeding, legal issues, general consumer issues , energy conservation etc.

(iii) Seoul Young Men's Christian Association - [www.ymca.or.kr](http://www.ymca.or.kr)

(iv) Korean Federation of Housewives Clubs

<http://www.jubuclub.or.kr>

Work Programs

- Improvement of health
- Program to revive home
- Safety promotion program
- Increase of opportunity for the elders and women to participation
- Improvement of environment
- Cyber activities
- Increase of employment opportunity for women
- Programs to protect women's rights

(v) Green Consumers Network

<http://www.gcn.or.kr>

(vi) Korea Federation of Life Cooperatives

<http://www.co-op.or.kr>

(vii) Korea Cyber Guard Association

<http://www.wwwcap.or.kr>

(viii) Korea Consumption Research Center

<http://www.sobo112.or.kr>

(ix) Consumers Union of Korea

<http://www.consumersunion.or.kr>

The Consumers Union of Korea concentrates on improving consumers' awareness to make consumption more reasonable and wise.

Work Programs:

- Operation of Consumer Information Center
- Education
- Operation of Laboratory for Goods Test
- Market Research and Research on the Perception of Consumers
- Monitoring of media and TV advertisement
- Regular Holding of Forums

(x) Korea Association of Life Cooperative

<http://www.coop.co.kr>

It is an association organized by local life cooperatives to realize a healthy society.

Policies:

- Operation by members' fee
- Establishment and support of new cooperatives
- Establishment of Pan-Korea Joint Distribution Center
- Program to innovate distribution
- Support for autonomous activities of cooperatives
- Various programs to guarantee the safety of foods

### **3.1.3 Consistency between the OECD guideline and legal concept in the country<sup>11</sup>**

In general, they are consistent. The reason lies in the fact that the detailed regulations related to electronic commerce such as the Guidelines on the Consumer Protection in Electronic Commerce were established on the basis of the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce.

### **3.1.4 Choice of Law and Jurisdiction of the court<sup>12</sup>**

Amended Private International Law (effective of July 1, 2001) provides that in case where the counter-party of a certain customer has undertaken advertising activities or other activities related to its business in Korea, and the customer has engaged in certain minimum activities to establish a basis for having Korean law apply, then, even though both parties have agreed on a different governing law, the mandatory provisions of Korean law (the law of the customer's habitual residence) for the protection of customers shall apply to the relationship between the both parties.

### **3.1.5 Disclosure for Foreign Countries**

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<sup>11</sup> This section was written by Professor Hyung Nam Moon & Yong Jae Kim, Graduate School of Information & Communication, Sookmyung Women's University.

<sup>12</sup> This section was written by Kim & Chang.

(1) Cyber Consumer Center (CCC) Website<sup>13</sup>

<http://www.econsumer.or.kr/new/main8.html>

The CCC Website was developed as a hub-site for electronic commerce and consumer protection in Korea and includes tips for online shoppers, academic articles for researchers, educational materials for businesses and updates on new policy trends for government officials. Online consumer education programs comparable to teaser sites of the U.S. FTC will also be developed. The Ministry of Commerce, Industry and Energy (MOCIE) designated the CCC as one of the 41 Electronic Commerce Resource Centers (ECRC) across the nation. The centres provide training and education to SMEs involved in electronic commerce.

Given the difficulties of participating in the bilateral co-operative projects as a result of the language barrier, the CCC also is exploring practical ways to increase international co-operation with neighboring countries.

## **3.2 Personal Information Protection Law in Public Sector regarding B2C**

### **3.2.1 Legal Framework**

#### **■ Comprehensive personal information protection law in private sector**

(1) Guidelines on the Protection of Personal Information<sup>14</sup>

The Ministry of Information and Communication (MIC) set up a **Personal Data Protection Center** (<http://www.cyberprivacy.or.kr/>) in April 2000. The Ministry issued guidelines in May 2000 on privacy. The guidelines requires consent before collecting “sensitive information” such as political orientation, birthplace, and sexual orientation, and ISPs wishing to collect information about users under 14 must obtain parental consent. ISPs must display their privacy policies and establish security policies. The Ministry said it was planning to develop legislation in late 2000 that would incorporate the guidelines. A study by the **Korea Information Security Agency (KISA)**, <http://www.kisa.or.kr/en-kisa/> in November 1999 found that most sites were collecting information but were lacking adequate privacy policies. The existing national ID card

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<sup>13</sup> “FIRST REPORT: GOVERNMENT AND PRIVATE SECTOR INITIATIVES TO PROMOTE AND IMPLEMENT THE OECD GUIDELINES FOR CONSUMER PROTECTION IN THE CONTEXT OF ELECTRONIC COMMERCE”, p.p.19, OECD (DSTI/CP(2000)7/FINAL), 28-Feb-2001.

<sup>14</sup> David Banisar, “PRIVACY & HUMAN RIGHTS 2000”, Electronic Privacy Information Center / Privacy International.

number is widely used on the Internet by e-commerce sites and free web sites.

**Korea has adopted the OECD Guidelines** on the Protection of Privacy and Transborder Flows of Personal Data.

(2) Act on Promotion of Information and Communications Network Utilization and Information Protection, ETC.<sup>15</sup>

Pursuant to the Act on Promotion of Information and Communications Network Utilization and Information Protection, ETC. (the “APICN”), which was amended and promulgated as of January 16, 2001 (effective as of July 1, 2001), any telecommunication service provider and any other entity that provides information using the telecommunication service provided by such telecommunication service providers (referred to as the “Provider”, collectively) shall be subject to the same restrictions as set forth in the Framework Act on Electronic Commerce.

In addition, the Provider shall inform the customers of the person in charge of the personal information and his contact information and collect only the minimum amount of information necessary for the purpose of such collection of information. Also, the APICN provides that once the telecommunication service provider reaches its objective in collecting the information, it must immediately destruct all information so collected; provided, however, the collected information may be utilized, without any specific consents from the customers, for the purpose of statistical data, academic research, or market research materials, whereby the customers are not individually identifiable.

In this regard, pursuant the APICN, any telecommunication service provider that uses or discloses to a third party the personal information so obtained from its customers for any purpose beyond the scope of purpose or usage it had informed the customers will be subject to criminal sanctions such as an imprisonment term for up to 5 years or a fine up to fifty (50) million Won. The most noticeable distinction between the Framework Act on Electronic Commerce and the APICN is that the Framework Act on Electronic Commerce does not provide for the penalty provisions.

In addition, the APICN further stipulates that, in case the Provider collects personal information from juveniles under age of fourteen, the Provider is required to obtain prior consent from each of the juveniles’ legal representative such as their parents.

As a related matter, in the event a Provider intends to assign its rights and obligations with

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<sup>15</sup> This section was written by Kim & Chang.

respect to the personal information collected from its customers to a third party in relation to a transfer of all or any part of its business operation or a merger into the other party, the parties (i.e., the assignor and the assignee) must give notices to the customers of the assignor on such business transfer or merger, as the case may be, as well as certain items as set forth in the APICN such as the contact information of new person in charge of the customers' information and the assignee's purpose of use of such personal information, etc. In the event any of the parties mentioned-above fails to comply with the above requirements, the violation may result in a fine up to five (5) million Won.

#### ■ **Other laws, issues and activities concerning personal information protection**

##### (3) Framework Act on Electronic Commerce<sup>16</sup>

Interest in promotion of electronic commerce has been a major impetus for recent developments. In May 1998 the Ministry of Commerce, Industry and Energy (MOCIE) proposed a set of guidelines for electronic commerce legislation, including protecting privacy in the digital trade environment. The **Framework Act on Electronic Commerce** was approved in January 1999. Chapter III of the Act requires that “electronic traders shall not use, nor provide to any third party, the personal information collected through electronic commerce beyond the alleged purpose for collection thereof without prior consent of the person of such information or except as specifically provided in any other law.” Individuals also have rights of access, correction and deletion and data holders have a duty of security.

##### (4) Standard Terms and Conditions on the Use of Internet Cyber-mall<sup>17</sup>

Please see the section “3.1.1(4) Standard Terms and Conditions on the Use of Internet Cyber-mall”.

##### (5) Constitution<sup>18</sup>

The **Constitution** provides for protection of privacy and secrecy of communications. Article 16 states, “All citizens are free from intrusion into their place of residence. In case of search or seizure in a residence, a warrant issued by a judge upon request of a

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<sup>16</sup> David Banisar, “PRIVACY & HUMAN RIGHTS 2000”, Electronic Privacy Information Center / Privacy International.

<sup>17</sup> This section was written by Professor Hyung Nam Moon & Yong Jae Kim, Graduate School of Information & Communication, Sookmyung Women's University.

<sup>18</sup> David Banisar, “PRIVACY & HUMAN RIGHTS 2000”, Electronic Privacy Information Center / Privacy International.

prosecutor has to be presented.” Article 17 states, “The privacy of no citizen may be infringed.” Article 18 states, “The privacy of correspondence of no citizen shall be infringed.”

#### (6) Protection of Communications Secrets Act / Telecommunications Business Act<sup>19</sup>

Wiretapping is regulated by the **Protection of Communications Secrets Act**. It requires a court order to place a tap. Intelligence agencies are required to obtain permission from the Chief Judge of the High Court or approval from the President for national security cases. Article 54 of the **Telecommunications Business Act** prohibits persons who are (or have been) engaged in telecommunication services from releasing private correspondence. There were 2,103 cases of wiretapping in the first half of 1999, down from the 6,638 taps in 1998, of which 1,073 were “emergency taps” conducted without prior court permission; 6,002 taps in 1997; and 2,067 in 1996. The police also issued 93,000 requests for information to telecommunications providers in the first half of 1999, up from 63,000 in the same period in 1998.

#### (7) Use and Protection of Credit Information Act<sup>20</sup>

Credit reports are protected by the **Use and Protection of Credit Information Act** of 1995.

#### (8) Electronic National Identification Card Project / a law on the ID card project<sup>21</sup>

In 1997, the government proposed an “**Electronic National Identification Card Project**.” The plan was based on a smart card system and according to a local human rights group would “include **universal ID card, driver’s license, medical insurance card, national pension card, proof of residence, and a scanned fingerprint**, among other things.” The government was scheduled to issue cards to all citizens by 1999. In November 1997, **a law on the ID card project** passed the National Assembly. In December 1997, Kim Dae Jung, a former dissident, won the Presidential election. He had publicly opposed the ID card project in his campaign and the project was publicly withdrawn. However, activists believe that government agencies are continuing to quietly develop the proposals. In 1999, the government began replacing existing cards with a

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<sup>19</sup> David Banisar, “PRIVACY & HUMAN RIGHTS 2000”, Electronic Privacy Information Center / Privacy International.

<sup>20</sup> David Banisar, “PRIVACY & HUMAN RIGHTS 2000”, Electronic Privacy Information Center / Privacy International.

<sup>21</sup> David Banisar, “PRIVACY & HUMAN RIGHTS 2000”, Electronic Privacy Information Center / Privacy International.

plastic card.

(9) Act on the Protection of Personal Information Managed by Public Agencies<sup>22</sup>

The **Act on the Protection of Personal Information Managed by Public Agencies** of 1994 sets rules for the management of computer-based personal information held by government agencies and is based on the OECD privacy guidelines. Under the Act, government agencies must limit data collected, ensure their accuracy, keep a public register of files, ensure the security of the information, and limit its use to the purposes for which it was collected. The Act is enforced by the Minister of Government Administration.

(10) Act on Disclosure of Information by Public Agencies<sup>23</sup>

The **Act on Disclosure of Information by Public Agencies** is a freedom of information act that allows Koreans to demand access to government records. It was enacted in 1996 and went into effect in 1998. The Supreme Court ruled in 1989 that there is a constitutional right to information “as an aspect of the right of freedom of expression, and specific implementing legislation to define the contours of the right was not a prerequisite to its enforcement.”

### 3.2.2 Organizations<sup>24</sup>

(1) Ministry of Information and Communication

<http://www.mic.go.kr>

(2) Korea Information Security Agency

<http://www.kisa.or.kr>

(3) Personal Data Protection Center

<http://www.cyberprivacy.or.kr>

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<sup>22</sup> David Banisar, “PRIVACY & HUMAN RIGHTS 2000”, Electronic Privacy Information Center / Privacy International.

<sup>23</sup> David Banisar, “PRIVACY & HUMAN RIGHTS 2000”, Electronic Privacy Information Center / Privacy International.

<sup>24</sup> This section was written by Professor Hyung Nam Moon & Yong Jae Kim, Graduate School of Information & Communication, Sookmyung Women's University.



### **3.2.3 Consistency between OECD guideline and legal concept in the country<sup>25</sup>**

#### **Generally consistent.**

The Act on Promotion of Information and Communications Network Utilization and Information Protection, ETC. and the Guidelines on the Protection of Personal Information were prepared in accordance with the OECD Principles on the Protection of Privacy.

### **3.2.4 Choice of Law and Jurisdiction of the Court**

Please see “3.1.4 Choice of Law and Jurisdiction of the court”.

### **3.2.5 Disclosure for Foreign Countries<sup>26</sup>**

(1) Electronic Commerce Mediation Committee in accordance with the Framework Act on Electronic Commerce

<http://www.kiec.or.kr>

(2) Consumer Dispute Mediation Committee in accordance with the Consumer Protection Act

(Korea Consumer Protection Board)

<http://www.cpb.or.kr>

(3) Consumer World (Fair Trade Commission)

<http://www.consumer.go.kr>

(4) Ministry of Information and Communication

<http://www.mic.go.kr>

(5) Korea Information Security Agency

<http://www.kisa.or.kr>

(6) Personal Data Protection Center

<http://www.cyberprivacy.or.kr>

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<sup>25</sup> This section was written by Professor Hyung Nam Moon & Yong Jae Kim, Graduate School of Information & Communication, Sookmyung Women's University.

<sup>26</sup> This section was written by Professor Hyung Nam Moon & Yong Jae Kim, Graduate School of Information & Communication, Sookmyung Women's University.

(7) eTrust Mark

Korea Institute for Electronic Commerce

<http://www.kiec.or.kr>

(8) Korea Consumer Protection Board

<http://www.cpb.or.kr>

### 3.3 Web Site Trust Mark System

(1) eTrust Mark<sup>27</sup>

<http://bestmall.kiec.or.kr/>



#### Description

The eTrust Mark is operated by Korean Institute for Electronic Commerce (KIEC). The KIEC gives eTrust mark to the commercial web sites who passed the evaluation on consumer protection and various levels of clients service.

#### Commencement year

February 1999.

#### Fee

300,000 won per year.

#### Redress & Enforcement

Only enforcement is withdrawal of the mark. eTrust marks are effective for one year. Application and accreditation are available at any time of the year.

#### Issues covered

The evaluation criteria includes:

- Capacity and stability of the system
- Accessibility to the goods information
- Appropriateness of the goods information

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<sup>27</sup> SOURCE: eTrust's website: <http://bestmall.kiec.or.kr/>

- Availability and stability for order
- Availability and stability for dispute resolution
- Availability for distribution, change orders, refundment.
- Originality

## Members

About 116 Sites

(2) i-Safe Mark<sup>28</sup>

<http://www.isafe.or.kr/>



## Commencement year

July 2000.

## Description

The seal is granted by the Korea Association of Information & Telecommunication (KAIT).

## Fee

Certification process costs \$500.

## Redress & Enforcement

Company contracts to affirm commitment to the Code. The seal programme reserves the right to withdraw the logo upon investigation of a compliant.

## Security

There are no specific undertaking mentioned on the site for confidentiality of customer and data transaction.

## Issues covered

The code contains various privacy-related & consumer protection rules.

## Members

33 Companies (in November 2000).

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<sup>28</sup> Global Business Dialogue on Electronic Commerce (GBDe), "Trustmark", September 26 2000 (except "members").  
i-Safe's website: <http://www.isafe.or.kr/isafe/jsp/cooperate/cooperate5.jsp#> ("members")

## 3.4 Regulations on Domain Name

### 3.4.1 ccTLDs administration organization

#### The Korea Network Information Center (KRNIC)

<http://www.nic.or.kr/www/english>

#### Main Activities of the KRNIC:<sup>29</sup>

- Develop a stable policy regarding domain names and IP addresses.
- Improve education and distribution policy of Internet protocol addresses (IP/AS).
- Encourage Internet use by developing and providing various Internet-related services.
- Reinforce advertising activities to encourage the use of Internet.
- Provide customer-oriented, high-quality service.

#### Types of 2nd level Domain and Qualification for Application<sup>30</sup>

2nd Level Domain	Function, Field and Region	Qualification for Application
ac	College or university/graduate school	under the Education act
co	Enterprise/ commercial organization	Enterprise established for purpose of profit
or	Non-profit organizations	Non-profit organization/group
go	Government organization	Administrative/legislative/judicial organization
ne	Network	Organization providing network
re	Research institute	Organization or group established for purpose of research
es	Elementary school	under the Education Act
ms	Middle school	under the Education Act
hs	High school	under the Education Act
sc	Other school	Other school excluding elementary, middle and high school
seoul	Seoul Special Metropolitan City	Organization or group, etc. located in the relevant region
pusan	Pusan Metropolitan City	
taegu	Taegu Metropolitan City	
incheon	Incheon Metropolitan City	
kwangju	Kwangju Metropolitan City	

<sup>29</sup> <http://www.nic.or.kr/center/english/center3.html>

<sup>30</sup> <http://www.nic.or.kr/www/english/domain/attach1.html>

taejon	Taejon Metropolitan City	
ulsan	Ulsan Metropolitan City	
kyonggi	Kyonggi Province	
kangwon	Kangwon Province	
chungbuk	Chungbuk Province	
chungnam	Chungnam Province	
chonbuk	Chonbuk Province	
chonnam	Chonnam Province	
kyongbuk	Kyongbuk Province	
kyongnam	Kyongnam Province	
cheju	Cheju Province	
pe	Personnel	personnel

### 3.4.2 Regulations on Domain Name

#### (1) Korea ccTLD registration policy<sup>31</sup>

Reception and restrictions policy on application for registration of Korea ccTLD are found the Article 12 and 13 of the Domain Name Registration Rules issued by the KRNIC. This policy is based on the “first-come, first-served” basis.

#### Article 12 (Restrictions on Application for Registration)

- ① Foreign corporations or organizations without an office in the Republic of Korea, and foreigners without domiciles in the Republic of Korea shall be denied the right to apply for Registration of Domain Names.
- ② Applicants applying for registration of domain names to whom the following Subparagraphs apply may be denied application for registration.
  - 1. Applicants with domain names using a 2nd level domain contrary to the qualifications for application for 2nd level domain prescribed in [Attachment 1]
  - 2. Applicants with domain names contrary to public order or morality or detrimental to the basic order of democracy
  - 3. Domain names withheld by the center pursuant to Article 8.
- ③ For personal domain names, only 1 domain name may be applied for per person

#### Article 13 (Reception of Applications for Registration)

<sup>31</sup> “The domain name registration rules”, KRNIC, <http://www.nic.or.kr/www/english/domain/rule3.html>

① The applications for registration in Article 10 shall be received by the Center with the exception of applications corresponding to the situations in the following subparagraphs.

- 1. Where the applicant does not agree to these rules.
- 2. Where mandatory items to be stated in the application for registration of domain names are omitted
- 3. Where an application is filed for Registration of Domain Names where another person has registered the domain name or is in the process of applying for the registration.

② If the Center has received an application for registration pursuant to the provisions of Paragraph 1, it shall be accepted and processed in the order received, and the number of the receipt shall be sent to the applicant via E-mail.

## (2) Regulations on domain name<sup>32</sup>

On the basis of the Trademark Act, it is protected just like an application of trademark.

**Domain Name Dispute Mediation Committee;** In accordance with the Regulation on the Registration of Domain Name, it was established on August 2001, but it will start operation from December 2001.

### (i) Legal Procedure to Resolve Disputes

#### **Overview**

The best method to resolve the dispute between trademark and domain name is by a lawsuit. In Korea, in case there is a dispute between the owner of trademark and other's domain name, the owner of trademark can start a lawsuit to the competent court for legal decision.

In case a lawsuit is started, the substantive legal base that the owner of trademark, etc. can rely on include: (1) Article 66(violation of trademark right) of the Trademark Act, (2) Article 2 (Effectuation of Unfair Competition Activity) of the act on the Prevention of Unfair Competition, and (3) Article 23 (Use of Other's Trademark for Illegal Purpose) of the Commerce Act.

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<sup>32</sup> This section was written by Professor Hyung Nam Moon & Yong Jae Kim, Graduate School of Information & Communication, Sookmyung Women's University.

## (ii) Administrative Dispute Resolution Procedure

### **Background on the Emergence of Administrative Procedure for the Resolution of Dispute on Domain Name**

With the increase of commerce through the Internet, the disputes related to domain name in gradually increasing. There is a limit in time and cost to resolve all these disputes through a lawsuit. Also, with the borderless characteristic of the Internet, it is difficult to choose legal authority and authority law and to realize the execution of legal decision.

Therefore, by preparing an administrative procedure for the resolution of domain related disputes rapidly and inexpensively, it is intended to facilitate the convenience of the parties to a dispute. On this matter, there emerged an international discussion and WIPO recommended ICANN to establish a mandatory administrative procedure to prevent a vicious registration of domain name. Consequently, ICANN adopted the Uniform Domain Name Dispute Resolution Policy(UDRP) and prepared an economical and rapid dispute resolution procedure on August 1999.

UDRP is applied to the dispute resolution of highest domain names (for example, .com, org, net), which are managed by ICANN, and regulation on the processing of domain dispute and procedural rules are prescribed. On the other hand, the handling of dispute on the national domain of each country (in case of Korea, kr) is delegated to each country. In Korea, with the leadership of the Korea Internet Information Center, the regulation on the handling of dispute on .kr domain is being prepared.

#### **Chanel.co.kr Case [Korea]**

Other than the Chanel company registered Chanel.co.kr domain name to the Korea Internet Information Center, opened a homepage called "Chanel International," and sold adult items and lingeries, etc. online. The court ruled that the activity was against "the activity of confusion on business entities" in the Act on Prevention of Unfair Competition.

Though it is recognized that the Prohibition of registration and use of homepage or domain name of Chanel Trademark, it was not accepted and the case is in process.

#### **himart.co.kr Case [Korea]**

In this case, the shop(himart.co.kr) has sold electronics through the Internet and has had similar name with the well-known electronics distribution company called HI-MART. The provisional disposition of prohibition of use was decided because there is the possibility of confusion on the origin of goods in everyday trade society.

#### **viagra.co.kr [Korea]**

It is decided that though other person is using viagra, which is the trademark of Pfizer, as its domain name, there is no possibility of consumers' confusion on this matter because viagra.co.kr was selling totally different items from Viagra's items.

#### **Others**

Though there were such dispute cases as freetel.co.kr, microsoft.co.kr, hite.co.kr, sindoricoh.co.kr, seripark.co.kr, and knk.co.kr, all were resolved before legal suit through mutual agreement in advance.

### **3.5 Electronic Authentication Business**

#### **3.5.1 Legal Framework<sup>33</sup>**

##### **(1) Digital Signature Act**

The **Digital Signature Act** 1999 (“DSA”) was passed on February 1999 and came into force on 1 July 1999. The aim of the DSA is to provide an outline of the requirements and procedures for digital signature authentication and licensing of certification authorities.

Under the Act, the Minister of Information and Communication will designate and appoint certified authentication institutes. A certified authentication institute will then be responsible for the issuance of encryption keys, issuance of certificates of authentication to its subscribers and safekeeping of encryption keys.

Article 3 of the DSA states that electronic signatures are generally presumed to be valid signatures.

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<sup>33</sup> “APEC E-com Legal Guide: Republic of Korea”, contributed by Jeannie Smith, Baker & McKenzie Hong Kong, January 2001, [http://www.bakerinfo.com/apec/koreaapcc\\_main.htm#7](http://www.bakerinfo.com/apec/koreaapcc_main.htm#7)



Article 4 of the DSA provides that the **Minister of Information and Communication** may license an entity to become a licensed certification authority.

Article 15 of the DSA provides for the licensed certification authority to issue certificates to potential applicants.

Article 26 of the DSA provides that a certified authentication institute is liable to compensate parties for damages which result from the institute conducting its business.

In July 1999, the 'Digital Signature Act' was put into force to secure safe usage of digital signatures using asymmetric encryption method. Meanwhile, the 'Korea Certification Authority Central (KCAC)' -the most authoritative certification authority in Korea- was established at the **Korea Information Security Agency (KISA, <http://www.kisa.or.kr/en-kisa/>)** to provide assistance and to foster nationally verified authorities. Many policies are being promoted to activate the use of digital signatures, and efforts to raise work efficiency using the digital signature have begun in each field of society.

## (2) Framework Act on Electronic Commerce<sup>34</sup>

The **Framework Act on Electronic Commerce** ("FAEC") provides guidelines for establishing the legal validity, enforceability and admissibility of electronic signatures in Korea.

Article 6 of the FAEC provides that electronic signatures are generally recognized as valid signatures. However, electronic signatures must be authenticated by a certified authentication administrative body before being recognized as a valid signature.

Article 13 of the FAEC provides that any and all ecommerce entities are required to take proper measures in order to protect information that is processed, transmitted or kept by such entities from unauthorized use, access or disclosure.

Article 18 of the FAEC provides that ecommerce entities may use encryption to secure the safety and reliability of ecommerce.

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<sup>34</sup> "APEC E-com Legal Guide: Republic of Korea", contributed by Jeannie Smith, Baker & McKenzie Hong Kong, January 2001, [http://www.bakerinfo.com/apec/koreaapec\\_main.htm#7](http://www.bakerinfo.com/apec/koreaapec_main.htm#7)

### **3.5.2 Body which grants a license, accreditation or registration of CAs based on the law**

(1) Related organizations<sup>35</sup>

#### **Ministry of Information and Communication (MIC)**

**<http://www.mic.go.kr>**

The MIC designates licensed CAs.

#### **Korea Information Security Agency (KISA)**

**<http://www.kisa.or.kr/en-kisa/>**

The KISA evaluates licensed CAs.

A candidate for the Licensed Certification Authority shall submit an application along with the relevant documents to the Ministry of Information and Communication, completing the requirements specified in the Digital Signature Act and the related law.

The application will be received and evaluated by the Ministry of Information and Communication, then the actual survey will be entrusted to the Korea Information Security Agency.

Korea Information Security Agency evaluates the candidate with the following items.

- Subscriber identification and management facilities
- Digital signature key management facilities
- Certificate management facilities
- Digital signature algorithm
- Point identification devices
- Protection Facilities
- Certification Practice Statement etc

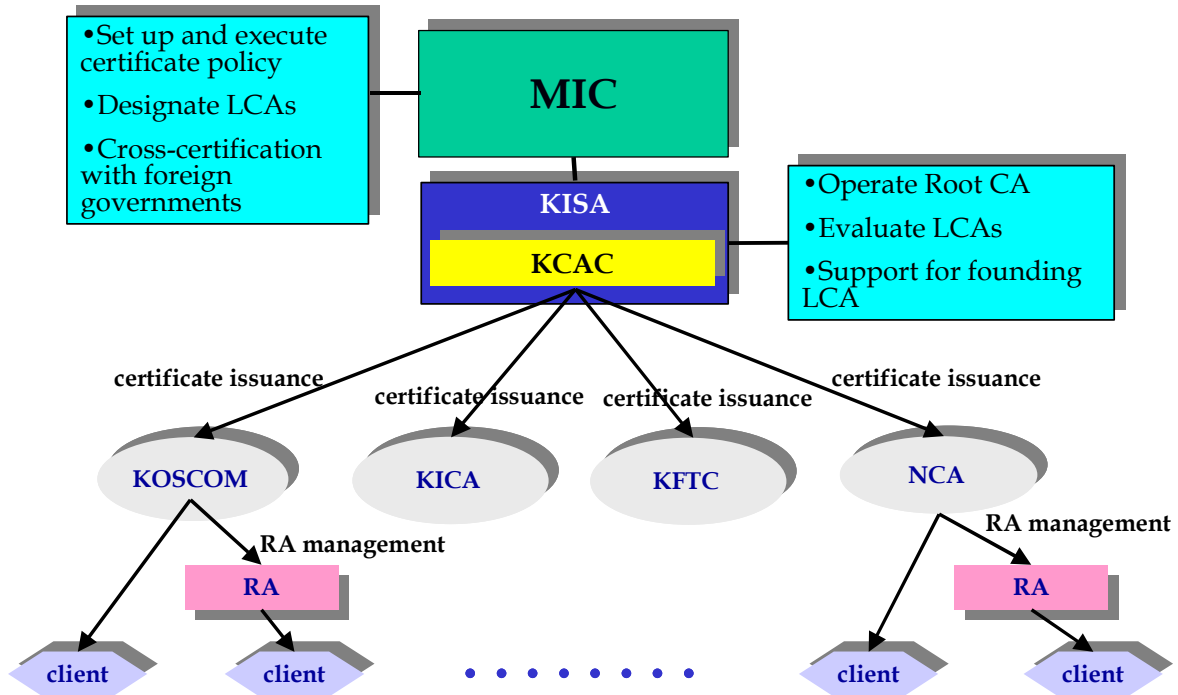
Korea Information Security Agency notifies the result of an actual survey to the Ministry of Information and Communication.

The Ministry of Information and Communication shall evaluate the result to make final decision, then issue the certificate of the Licensed Certification Authority to the qualified certification authority.

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<sup>35</sup> SOURCE : Website of the Korea Certification Authority Central (KCAC):  
[http://www.rootca.or.kr/eng/ca\\_en/ca\\_en.html](http://www.rootca.or.kr/eng/ca_en/ca_en.html)

(2) National PKI Scheme in Korea



Source: Korea Information Security Agency, "Korea PKI Scheme" p.p.6, Asia PKI Conference (April 16-17 2001)

**3.5.3 System of designated CAs based on the law<sup>36</sup>**

The Framework Act on Electronic Commerce and the Digital Signature Act provide that only an electronic signature that is generated with a certificate issued by Licensed Certification Authority can be deemed to be a signature or a seal that is in accord with the above laws.

However, the above-mentioned laws do not prohibit one from proving the authenticity and integrity of a questionable electronic signature based on a certificate that is issued by an unlicensed certification authority. Therefore, the signor or the counter party can attempt to demonstrate the authenticity of the electronic signature. And, if the authenticity is confirmed, then the electronic signature may be recognized as a valid signature or seal.

**3.5.4 System of International (Overseas) designated CAs based on the law<sup>37</sup>**

**Mutual authentication.**

<sup>36</sup> This section was written by Kim & Chang.

<sup>37</sup> This section was written by Professor Hyung Nam Moon & Yong Jae Kim, Graduate School of Information & Communication, Sookmyung Women's University.

Though Article 27 of the Digital Signature Act prescribes international and mutual certification, mutual certification at the international level is not in operation.

As a result, the Foreign Exchange Bank and others established Korean branch of *identrust* for international trade.

### **3.5.5 Designated CA(s) based on the law<sup>38</sup>**

Licensed CAs in accordance with the Article 4 of the Digital Signature Act is as follows:

- KOSCOM (Korea Securities Computer)

<http://www.signkorea.com>

CA: SignKorea

Licensed date: February 10, 2000

- KICA (Korea Information Certificate Authority Inc.)

<http://www.signgate.co.kr>

CA: SignGATE

Licensed date: February 10, 2000

- KFTC (Korea Financial Telecommunications & Clearing Institute)

<http://www.yessign.com>

CA: yessign

Licensed date: April 12, 2000

- NCA (National Computerization Agency)

<http://sign.nca.or.kr>

CA: NCASign

Licensed date: March 13, 2001

- KECA (Korea Electronic Certification Authority Inc.)

<http://gca.crosscert.com>

CA: CrossCert

Licensed date : November 25, 2001

### **3.5.6 Technical Requirement**

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<sup>38</sup> SOURCE : Website of the Korea Certification Authority Central (KCAC):  
[http://www.rootca.or.kr/eng/ca\\_en/ca\\_02.html](http://www.rootca.or.kr/eng/ca_en/ca_02.html)

## (1) Digital Signature Act<sup>39</sup>

### Article 2. Definition

The following definitions shall be used throughout this Act:

:

2. "Digital signature" means information, which is unique to an electronic message, created by a private key using an **asymmetric cryptosystem** such that the identity of the person generating the electronic message and any possible alteration thereof can be verified.

:

13. "Asymmetric cryptosystem" is an encryption method where the key used to encrypt information is different from the key used to retrieve the encrypted information.

:

### Article 4. Licensing of Certification Authorities

- (3) The entity that desires to be licensed as a certification authority must possess the **technical and financial capabilities, facilities and equipment prescribed by Presidential Decree and satisfy other requirements thereunder.**

### Article 8. Undertaking by Licensed Certification Authorities

- (1) Prior to commencement of certification practice, a licensed certification authority shall have its own **public key certified by the Korea Information Security Agency** (hereinafter, the "KISA") under Article 14-2 of the Basic Act on Promotion of Informationization.
- (2) A licensed certification authority shall carry out its certification practice by means of a **private key** corresponding to the public key certified in accordance with Paragraph (1) hereof.

### Article 15. Issuance of a Certificate, etc.

- (1) A licensed certification authority issues a certificate to those who desire to be issued a certificate. In such event, the licensed certification authority shall verify the identification of the applicant, taking into

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<sup>39</sup> This section was written by the Mitsubishi Research Institute, Inc.

account the scope of intended use and other considerations for the certificate.

- (2) A certificate issued by a licensed certification authority shall contain each of the following:
  1. The subscriber's name;
  2. The subscriber's public key;
  3. The type of digital signature used by the subscriber and the licensed certification authority;
  4. The serial number of the certificate;
  5. The effective period of the certificate;
  6. The name of the licensed certification authority;
  7. Matters relating to any limitation as to the scope of authorized uses;  
and
  8. Matters relating to the agency when a subscriber is acting on behalf of a third party.
- (3) Upon issuance of a certificate, a licensed certification authority shall digitally sign the certificate using a private key that corresponds to a public key certified in accordance with Paragraph (1) of Article 8.
- (4) Upon the request of an applicant for a certificate, a licensed certification authority may issue a certificate restricting the scope of users or usage.
- (5) A licensed certification authority shall determine an appropriate effective period of a certificate, taking into account the scope of intended users and usage and the integrity and reliability of the technology used.

## (2) Presidential Decree Pursuant to the Digital Signature Act<sup>40</sup>

This Presidential Decree provides the following requirements (only major ones are specified) in order to qualify as a Licensed Certification Authority:

- (1) more than twelve engineers such as a technician of information and telecommunication
- (2) more than 800,000,000KRW as capital
- (3) sufficient facilities and equipments for realizing a Public Key Infrastructure, secure management of electronic signature key and encryption algorithms, and related technical capabilities.

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<sup>40</sup> This section was written by Kim & Chang.

### (3) Substantial Investigation of Requirements<sup>41</sup>

The Korea Information Security Agency, which is a public entity established according to the Act on Promotion of Information and Communications Network Utilization and Information Protection, ETC. has been delegated by Ministry of Information and Communication to investigate applicants for Licensed Certification Authority and determine whether such applicants satisfy the requirements for a Licensed Certification Authority.

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<sup>41</sup> This section was written by Kim & Chang.