

NEWSLETTER

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Intellectual Property Group

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Korea Implements New Act on Special Measures for Strengthening and Protecting Competitiveness of National High-Tech Strategic Industries

Korea's *Act on Special Measures for Strengthening and Protecting Competitiveness of National High-Tech Strategic Industries* (the **Special Act**) has been implemented with its accompanying Enforcement Decrees and Enforcement Rules. The Special Act aims to: (1) maintain national and economic security; (2) protect and foster strategic technologies; and (3) enhance the competitiveness of Korea's high-tech industry.

1. Entities Subject to Application and Scope of Application (enacted on February 3, 2022 and enforced as of August 4, 2022)

Key Provision	Important Details
Definition of Strategic Technology and Strategic Industry (Article 2)	<ul style="list-style-type: none"> A national high-tech strategic technology (strategic technology) refers to technology that significantly impacts national and economic security, including the stability of supply chains, where the technology has ramifications for other related industries and the nation's economic activities (<i>e.g.</i>, export and employment). A national high-tech strategic industry (strategic industry) refers to an industry that researches, develops, and commercializes strategic technologies, or produces and commercializes products and services based on strategic technology.
Relationship to other Acts (Article 4)	<ul style="list-style-type: none"> With regard to fostering strategic industries, the Special Act shall prevail over the application of other laws or regulations. If the application of other laws or regulations is shown to be more advantageous to businesses engaged in strategic

	industries, however, the other laws or regulations shall be applied.
Designation, Modification and De-Designation of Strategic Technology (Article 11)	<ul style="list-style-type: none"> ■ The Ministry of Trade, Industry and Energy (MOTIE) may designate strategic technologies through deliberation with, and resolution by, the Technology Coordination Committee (the Committee). ■ An entity that wishes to obtain a determination as to whether the technology under its possession constitutes a strategic technology may request such a determination from the MOTIE Minister.

2. Key Provisions of the Special Act

■ Korean Government-Supervised Adjustment Allowed for Supply Stabilization in Emergency Situations

In the event there is a risk of disruption to either the stable supply of strategic technologies or the smooth functioning of the industrial supply chain due to emergencies (*e.g.*, disasters or sudden changes in international trade conditions) that would significantly impede Korea's economic activities, the Korean government may intervene to make the following adjustments:

- establish, implement and modify production and supply plans;
- organize logistics and distribution systems;
- improve and expand related facilities; or
- conduct testing and performance verification on replacement items.

Under the Special Act, the Korean government may set a maximum 6-month period for engaging in adjustment activities to supervise business entities in strategic industries. (*See* Article 10(1) of the Special Act; and Article 12 of the Special Act's Enforcement Decree).

■ MOTIE Minister's Approval Required for Export of Strategic Technologies and M&A's with Holders of Strategic Technologies Overseas

If a strategic technology holder intends to either (1) export its strategic technology to a foreign company by means of sale or transfer or (2) proceed with a foreign investment involving the strategic technology (*i.e.*, cross-border M&A or joint venture), the holder must obtain approval from the MOTIE Minister. (*See* Articles 12(1) and 13(1) of the Special Act). In the event that the MOTIE Minister's approval is not properly obtained or obtained fraudulently, the MOTIE Minister may order suspension, prohibition, and restoration, and such acts may be subject to referral for criminal prosecution. (*See* Articles 12(4), 13(7), 15(v), 15(vi), 50 of the Special Act).

■ Strategic Technology Holders Must Take Protective Measures

To prevent the leakage of strategic technology, the holder of strategic technology must take specific preventative measures. Under the Special Act, the strategic technology holder should, among other things, manage the following:

- designation of protective areas;
- implementation of access control;
- inspection of personal belongings upon access;
- execution of confidentiality agreements with any personnel handling strategic technology; and
- stewardship of exiting personnel, including acknowledgement of their continuing obligations to protect confidential information related to strategic technology when leaving the company.

(See Article 14(1) of the Special Act; and Article 23 of the Special Act's Enforcement Decree).

■ **Prohibits Leaks and Misappropriation of Strategic Technology with Enhanced Penalties**

The Special Act highlights the following prohibited acts, leaks and misappropriation issues:

- obtaining, using or disclosing a strategic technology by theft, fraud, threat or other improper means;
- leaking, using or disclosing such strategic technology or allowing a third party to use the same for purposes of gaining unjust enrichment or causing losses to the strategic technology holder even when bound by the confidentiality obligation; and
- using and disclosing such strategy technology with the knowledge of violations involved (Article 15 of the Special Act).

To underscore the seriousness of these national interests, the Special Act provides for penalties more stringent than those enumerated in the earlier-implemented Act on Prevention of Divulgence and Protection of Industrial Technology (the **Industrial Technology Protection Act**) (See Article 50 of the Special Act).

■ **MOTIE's Supervision of Material Submissions and MOTIE's Authority to Conduct Inspections and Interviews**

If necessary for supervisory purposes, the MOTIE Minister may order relevant institutions, corporations or organizations associated with strategic industries to report or submit materials related to their businesses, the MOTIE Minister may also take additional necessary measures, including having MOTIE's public officials enter the strategic technology holder's offices or places of business, inspect relevant documents, or ask questions to related personnel (See Articles 45(1) and (2) of the Special Act). Any person who fails to submit or falsely submits the relevant requested materials, or who refuses, evades or interferes with entry and inspection, shall be punishable by an administrative fine not exceeding approximately USD 7,500 (corresponding to KRW 10 million). (See Article 51(1) of the Special Act).

■ **Future Support for Companies Engaged in Strategic Industries**

Under the Special Act, companies attempting to use strategic technology in strategic industries may benefit in the future by:

requesting improvement of the regulations necessary for activities related to research and development, testing, evaluation, verification and production to the MOTIE Minister (*See* Article 29(1) of the Special Act);

- receiving support from the national government and local governments for activities related to the international exchange of professionals and the conduct of international joint research (*See* Article 31 of the Special Act); and
- filing for tax reductions or exemptions associated with promoting innovation and investment in strategic industries.

3. Implications for Overseas Businesses and Cross-Border Collaborations

For international businesses, we recommend added vigilance and close attention to the Special Act's requirement for the MOTIE Minister's approval when exporting strategic technology to an overseas business or pursuing cross-border M&A transactions. From the perspective of international companies working with Korean business partners, it will be critical for a successful relationship to check in advance whether the technology owned by a Korean company falls under the definition of strategic technology. When working in strategic industry to leverage strategic technology, the MOTIE Minister's approval should be dutifully obtained to avoid disruptions and ensure a smooth transaction.

Further, an international business that intends to employ a Korean national who worked previously for a Korean company owning strategic technology should exercise particular caution during the recruitment and hiring process. Under the Special Act, the holder of strategic technology may have designated a key employee as 'special personnel' that could prevent their relocation to an overseas business in the same industry for a certain period of time. Accordingly, when international businesses proceed with recruiting 'special personnel' in Korea, we recommend comprehensive background checks to confirm whether the candidate has ever been designated as 'special personnel' and, if so, whether the possibility of additional employment contract violations could be triggered by non-compete provisions.

Moreover, powerful investigative tools are being implemented in accordance with the Special Act to protect strategic technologies owned by Korean companies. Depending on the individual circumstances, such measures will range in obtrusiveness from (a) requesting confidential business information related to the strategic technology to (b) inspection and entry by MOTIE's public officials to conduct investigations and interviews regarding the strategic technology and strategic industry.

Finally, the Special Act bans leaks and misappropriation activities related to strategic technologies irrespective of the actor. In the event of a violation being found, criminal liability may come into play. Depending on the range of conduct deemed to be a violation of the Special Act, harsh punishments may apply, including imprisonment up to 5 years or a criminal fine up to approximately USD 1.5 million (corresponding to KRW 2 billion).

Notwithstanding the foregoing, the Special Act is currently in its early phase of implementation and very few precedents addressing the Special Act exist. In the end, pragmatic experience and real-world expertise in navigating the intricacies of the MOTIE Minister's approval and Korea's contentious regulatory approval environment will be critical.

In addition to the protection of patents, trademarks, and copyrights, Lee & Ko's Intellectual Property Group provides leading-edge legal counseling based on a wealth of real-world experience. Grounded in decades of foundational expertise with protecting industrial technology and trade secrets, as well as litigating unfair competition matters, we work with our clients to address their most challenging legal needs in Korea. If you need our group's assistance with the Special Act, please contact any of the key members of Lee & Ko's Intellectual Property Group.

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