MAJOR AMENDED PROVISIONS OF THE ENFORCEMENT DECREES AND ENFORCEMENT RULE OF FIPA

The Enforcement Decree (partially amended by Presidential Decree No. 25655, October 15, 2014; hereinafter, the “Enforcement Decree”) of the Foreign Investment Promotion Act (FIPA) and the Enforcement Rule (partially amended by Ordinance of the Ministry of Trade, Industry and Energy No. 90, November 6, 2014; hereinafter, the “Enforcement Rule”) of the Act, currently in force, provide measures for alleviating the burden on foreign investors and foreign-invested companies and schemes to promote foreign investment in higher value-added businesses in Korea, which are expected to be useful in performing tasks related to foreign investment. Major amended provisions in this regard are as follows:

1. Employment record is added to the criteria for determining exemption rates for rents on state-owned land, etc. (Article 19 (6) and (7) of the Enforcement Decree)

   **Background:** Exemption rates for rents on state-owned land, etc., in a foreign investment zone were determined mainly on the basis of the amount of investment, so the effect of creating jobs following investment was insignificant. As the importance of creating jobs has been increasingly emphasized, it has become necessary to prepare a scheme to boost the effect of creating jobs.

   **Amendment:** Not only the investment amount but also the employment record are now reflected in determining exemption rates for rents on state-owned land, etc. Therefore, the exemption rates have been changed.

2. Establishment of regulations on designation and support of regional headquarters and research and development facilities

   **Background:** Former standards, procedures, etc. for the recognition and designation of regional headquarters and research and development (R&D) facilities were vague and had limitations to be used as incentives for promoting global enterprises’ investments in Korea.

   **Amendment:** The standards, procedures, etc. for the recognition and designation of regional headquarters and R&D facilities are now prescribed in detail, and the expansion of relevant motivational policies, such as various incentives, are expected to promote the invitation of foreign investment.

3. Relaxation of the duty to report on disposal of tax-exempt capital goods (Article 29 (1) of the Enforcement Decree)

   **Background:** Under the Customs Act, a person shall perform the duty to report the disposal of tax-exempt capital goods in advance to the Minister of Trade, Industry and Energy, even where the person has disposed of tax-exempt capital goods with the approval or confirmation of the head of a customs office. Consequently, problems such as the double imposition of duties and criminal penalties on foreign investors and foreign-invested companies have arisen.

   **Amendment:** New provisions for exceptions will exempt a person from the duty to report the disposal of capital goods, where the person has disposed of capital goods with the approval or confirmation of the head of a customs office, and lessen such burdens.

4. Extension of the period for examining and verifying capital goods eligible for tax exemption (Newly inserted Article 38 (3) of the Enforcement Rule)

   **Background:** If a person failed to file an application for examining and verifying capital goods before customs clearance, the person was not allowed to file an application for exemption from customs duty and not exempted from customs duty, even where the capital goods were eligible for tax exemption.

   **Amendment:** The difficulty that foreign investors and foreign-invested companies had in applying for tax exemption because of their ignorance of the relevant procedure is somewhat mitigated by allowing them to file an application for examining and verifying whether relevant capital goods are eligible for tax exemption, within 15 days from the date of acceptance of the relevant import declaration, if the goods have not been taken out from a bonded area.

5. Extension of the period for submitting evidentiary documents accompanying reports on foreign investment (Articles 2 (1), 3 (1), and 5 (2) of the Enforcement Rule)

   **Background:** It was intended to alleviate burdens on foreign investors and foreign-invested companies by minimizing documents to be submitted at the time of reporting foreign investment.

   **Amendment:** The deadline for submitting documents except evidentiary documents essential for identifying nationality when reporting foreign investment is now extended until the time of registration of the relevant foreign-invested company. In the cases of reporting foreign investment in the form of a long-term loan, the relevant loan agreement may be submitted any time before the loan is remitted.

6. Extension of the period for reporting foreign investment upon acquiring shares through mergers, etc. (Article 4 of the Enforcement Rule)

   **Background:** Although a report on foreign investment through a merger or any similar cause or event is an ex post facto report, it has been suggested that it is necessary to consider the period required for a change in management, decision-making, etc.

   **Amendment:** The period for filing an ex post facto report upon the acquisition of shares, etc. through a merger or any similar cause or event is extended from within 30 days to 60 days.