Regulatory Information Update
The Office of the Foreign Investment Ombudsmans provides the latest updates on Korea’s foreign investment regulations.

Amendment to the 2016 Foreign Investment Promotion Act

The Foreign Investment Promotion Act (the “Act”) was amended on January 27, 2016 and will take effect as of July 28, 2016. The amendment has contributed to regulatory easement by combining the various provisions governing foreign investment reports that are currently regulated separately for each type of investment, and abolishing the requirements of stock transfer report, licensing agreement report and capital goods disposition report, among others.

The amendment also aims to remedy legal imperfections, as it adds civil petitions to be handled in bulk for the purpose of management efficiency and convenience for the addressees of the legislation. It also newly allows trustees to cancel registration or revoke permission of foreign capital-invested companies, imposes penalty surcharges against cases of exceptional negotiated contracts and sets forth other matters. With the pre-announcement of legislation planned in March or April for the Enforcement Decree and the Enforcement Rule of the Act to prepare for the implementation on July 28, please do not hesitate to let the Ombudsman Office know, should there be any opinions otherwise in connection with the amendment.

Foreign Investment Promotion Act
[Enforced on July 28, 2016] [Act No. 13854 partially amended on January 27, 2016]

A. Combination of the provisions on foreign investment report; separation of the provisions on foreign investment permission for defense industry companies
(Article 2(1), Article 5, Article 6)
- Foreign investment reports that previously varied depending on investment types are now combined to allow reporting with a single form, while the provisions regulating foreign investment permission are separated for defense industry companies with different characteristics to enhance convenience of the addressees of the legislation.

B. Improvement of follow-up management of foreign investments
(Article 21(3)(4), Article 22, Article 37)
- Improvements are made to stipulate registration of changes and allow canceling registration or revoking permission of a foreign capital-invested company after verifying related information within the government, in the cases where a foreign capital-invested company reports business closure under the Value-Added Tax Act, or a foreign investor transfers or reduces his/her entire stock holdings, or pretends as if the payment of the object of investment is made, while providing the grounds for the Minister of Trade, Industry and Energy to request verification of the information in question from the Minister of Justice and the Commissioner of the National Tax Service. Other improvements include rational follow-up management such as imposing penalty surcharges against transferring, lending, etc. of registration certificates.

C. Abolition of requirement of report in relation to disposition of capital goods subject to tax reduction and exemption
(Article 22(1)(2) deleted, Article 21(3))
- Disposition of capital goods was previously subject to a report by a trustee and also a report under the Tax Act. The amendment improves such redundant regulation by making the report under the Tax Act the only requirement, and lets foreign capital-invested companies register changes only in cases where the capital goods fall under the requirement of such registration, thereby enhancing the efficiency in the course of follow-up management.

D. Abolition of Foreign Investors’ Stock Transfer Report System and supplement of related procedures
(Article 23 deleted, Article 3(4), Article 21(3), Article 22(1))
- The requirement of reporting stock transfers by foreign investors is to be abolished and replaced by such requirements as a foreign investment report and registration of changes, and notification of the stock transfer to the relevant Ministry. In addition, the amendment delegates that the Enforcement Decree shall determine the procedure of inducing convenience in fund repatriation for the addressees of the legislation.

E. Abolition of Licensing Agreement Report System
(Applicable provisions in Article 25, Article 26 and Article 28 deleted)
- Regulation is eased by abolishing the requirement concerning reporting on licensing agreements that lack effectiveness, and the reporting and investigation system with regards to those who have introduced technology into Korea.

F. Reasonable improvement of civil petitions to be handled in bulk and addition of related affairs
- The amendment aims to comprehensively refer to the provisions of individual laws so that the Foreign Investment Promotion Act may automatically reflect any expanded civil petitions affairs to be handled in bulk as a result of an amendment to individual laws. At the same time, it aims to include parts of the affairs other than those set forth in individual laws into the civil petitions that must be handled in bulk, in consideration of the characteristics of each license affair.

G. Reasons for exception in negotiated contracts to be reflected in upper-level laws; imposition of penalty surcharges against their non-performance
(Subpara-graphs under Article 13(2) newly inserted, Article 37(1)(3))
- The amendment stipulates exceptional cases of any negotiated contract in legislations to ensure predictability and sets forth the imposition of penalty surcharges in the case of their non-performance to secure effectiveness in performing the laws and decrees.

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