

When a foreign investor acquires a domestic company, should he/she file a report on business combination?

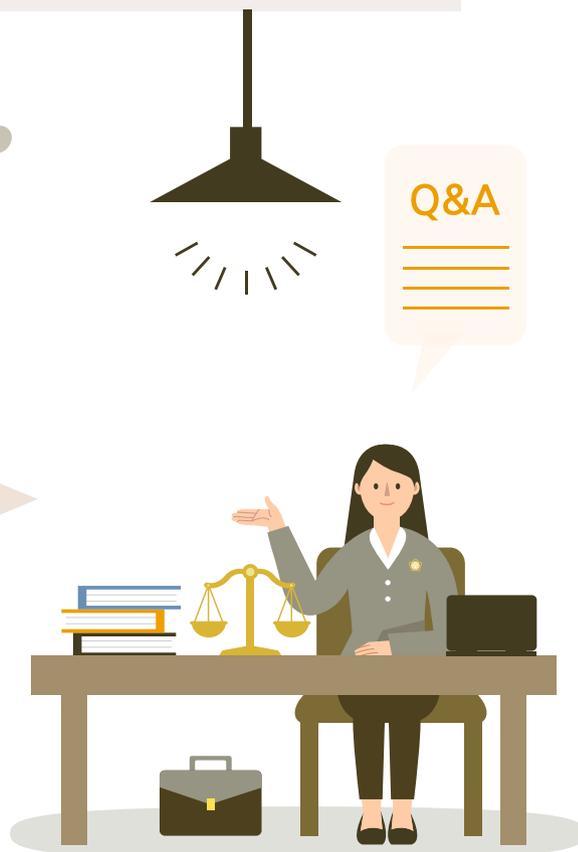
Every month, Invest Korea provides answers to some frequently asked questions submitted by foreign-invested companies in Korea and potential investors.

Q.

When a foreign investor acquires a domestic company, should he/she file a report on business combination?

A.

When a foreign investor meets the criteria of a “company required to report its business combination”, he/she shall report its business combination in the same manner as a domestic company under Article 12 of the Monopoly Regulation and Fair Trade Act. Since any business combination that restricts competition is prohibited, all cases of business combination should be examined, in principle. However, in order to reduce unnecessary burden on corporations and raise administrative efficiency, the reporting requirement is imposed only on business combinations meeting certain criteria in terms of size.



Reasons



- Companies required to report their business combination
 - Reporting company (foreign investor): A company whose total assets or sales are KRW 300 billion or more
 - Merged company (domestic company): A company whose total assets or sales are KRW 30 billion or more (A business combination by a company whose total assets or sales are KRW 30 billion or more of another company whose total assets or sales are KRW 300 billion or more is also subject to the reporting requirement. The total assets or sales of a company that retains the status of a subsidiary both before and after the business combination should be added.)
- Business combinations required to be reported
 - Acquisition of stocks: Where a company acquires 20 percent or more (or 15 percent or more in the case of a listed corporation) of the total number of stocks (excluding non-voting stocks) issued by another company (including in the case when it becomes the largest shareholder by acquiring the stocks of that company additionally)
 - Concurrent holding of executive position: Where an executive officer of a large company concurrently holds an executive office position in another company
 - Merger: In the case of a merger of a company
 - Acquisition of business: In the case of acquisition of a business by transfer
 - Participation in company establishment: Where a company becomes the largest shareholder by participating in the establishment of a new company

* When the total assets or sales of a foreign investor are not less than KRW 300 billion, its business combination can be reported after it is executed. It should be noted, however, when the total assets or sales of a foreign investor is not less than KRW 2 trillion, its business combination should be reported before the execution of the business combination (prohibition of execution). Even when a prior report is required for a business combination, a delegated agency including a foreign exchange bank can receive a notification of foreign investment. (It does not violate the prohibition of execution.)

If you have further questions please contact



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