Abolition of Foreign Investor Registration Requirement

I. FSC Announces Abolition of Foreign Investor Registration Requirement

On January 25, 2023, the Financial Services Commission (the “FSC”), along with the Financial Supervisory Service (the “FSS”) and other relevant authorities, announced the “Improvement Measures for Foreign Investors’ Access to Korean Capital Markets.” These improvement measures will change the 30-year-old requirement for foreigners’ investments in listed securities that have been in place since its implementation in 1992. The change is significant in that it reflects regulatory reforms recommended by MSCI (Morgan Stanley Capital International) through its “Global Market Accessibility Review (June 2022).”

Below is an overview of the foreign investor registration requirement under the pre-amendment Financial Investment Services and Capital Markets Act (the “FSCMA”) and the abolition of this requirement.

II. Foreign Investor Registration Requirement under Pre-Amendment FSCMA

The foreign investor registration requirement under the pre-amendment FSCMA is as follows:

- The Presidential Decree under the FSCMA and the Investment Rules require a foreign investor who intends to invest in or dispose of shares on the KRX KOSPI Market or the KRX KOSDAQ Market (including shares being issued or sold for initial listing on the KRX KOSPI Market or the KRX KOSDAQ Market) to register its identity with the FSS prior to making any such investment or disposal unless it has previously registered. However, the registration requirement does not apply to foreign investors who (i) acquire converted shares by exercising rights attached to securities offered by Korean companies outside Korea (including upon exercise of rights attached to convertible bonds, bonds with warrants, exchangeable bonds, depositary receipts, distribution depositary securities and any other similar securities or certificates) with the intention of selling such converted shares within three months from the date of acquisition of the converted shares or (ii) acquire or dispose of shares outside the KRX KOSPI Market or the KRX KOSDAQ Market in connection with a foreign direct investment under the Foreign Investment Promotion Act of Korea. Upon registration, the FSS will issue to the foreign investor an investment registration certificate, which must be presented each time the foreign investor opens a dealing account or a brokerage account with an investment dealer or an investment broker licensed in Korea. Foreigners eligible to obtain an investment registration certificate include foreign nationals who have not been residing in Korea for a consecutive period of six months or more, foreign governments, foreign municipal authorities, foreign public institutions, international financial institutions or similar international organizations, corporations incorporated under foreign laws and any person in any additional category designated by a decree promulgated under the FSCMA.

- Upon a purchase of shares through the KRX KOSPI Market or the KRX KOSDAQ Market by a foreign investor with a designated investment account at a foreign exchange bank in accordance with the Presidential Decree under the FSCMA and Investment Rules, no separate report by the investor is required because the investment registration certificate system is designed to control and oversee foreign investment through a computer system. However, a foreign investor’s acquisition or sale of shares outside the KRX KOSPI Market or the KRX KOSDAQ Market (as discussed above) must be reported by the foreign investor or its standing proxy to the Governor of the FSS at the time of each such acquisition or sale; provided, however, that a
A foreign investor must ensure that any acquisition or sale by it of shares outside the KRX KOSPI Market or the KRX KOSDAQ Market in the case of trades in connection with a tender offer, odd lot trading of shares, trades of shares of a public service corporation for which the aggregate foreign ownership limit has been reached or exceeded or any other case set forth in the Investment Rules is reported to the Governor of the FSS by the investment dealer or investment broker engaged to facilitate such transaction.

- A foreign investor may appoint a standing proxy among the Korea Securities Depository, foreign exchange banks (including domestic branches of foreign banks), investment dealers, investment brokers and collective investment companies (“financial investment firms”) (including domestic branches of foreign financial investment firms) and internationally recognized custodians which will act as a standing proxy to exercise shareholders‘ rights or perform any matters related to the foregoing activities if the foreign investor does not perform these activities itself. Generally, a foreign investor may not permit any person, other than its standing proxy, to exercise rights relating to its shares or perform any tasks related thereto on its behalf.

III. Overview of Improvement Measures for Foreign Investors’ Investments

The Presidential Decree under the FSCMA described above and the rules thereunder have required a foreign investor to register with the FSS in order to invest in securities listed on the Korean stock market. This requirement has caused inconvenience to foreign investors by requiring them to submit a number of notarized and translated documents, including the investment registration application form, identification documents, and the standing proxy agreement. On the other hand, developed countries such as the U.S. and Japan do not have such registration requirement for foreign investors, and thus global investors have made continuous requests to improve Korea’s foreign investor registration requirement.

The abolition of the foreign investor registration requirement will allow foreign investors to invest in listed Korean securities by using their legal entity identifiers (“LEIs,” standardized ID assigned to corporate entities) or passport numbers (in the case of individuals) without having to go through a pre-registration process. For foreigners who have already been registered as foreign investors with the FSS, they will be allowed to continue to use the “investment registration numbers” issued to them at the time of registration.

IV. Timeline and Anticipated Effect of Improvement Measures

The amendment to the Presidential Decree under the FSCMA, which includes the abolition of the foreign investor registration requirement, was promulgated on June 13, 2023. In line with the transitional period under the addenda, the provisions on the foreign investor registration requirement will take effect on December 14, 2023, i.e., six months from the enforcement date.

Other measures listed in the Improvement Measures for Foreign Investors’ Access to Korean Capital Markets that require amendment to the Regulations on Financial Investment Business to be implemented— e.g., increasing the scope of over-the-counter transactions subject to ex-post report and improving the utilization of omnibus accounts – will be implemented simultaneously with the abolition of the foreign investor registration requirement.

These regulatory improvements are expected to significantly streamline foreigners’ investment in KRX-listed securities.

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* The opinions expressed in this article are the author’s own and do not reflect the views of KOTRA.