Legal Update

YOON & YANG
법무법인(유) 화우

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Preannouncement of the amendment of the Foreign Exchange Transactions Act

The Ministry of Strategy and Finance (the "MSF") made a preannouncement of "the amendment of the Foreign Exchange Transactions Act" (the "Amendment") on June 14, 2016.

The MSF, as part of its project called the "Reform of Foreign Exchange System," which it has carried out since last year, introduced the Amendment as a follow-up measure to the amendments to the Enforcement Decree of the Foreign Exchange Transactions Act and the Foreign Exchange Transactions Regulations made in March 2016, which are focused on <u>(i) expansion of the scope of business for non-bank financial institutions and (ii) permission of foreign exchange transfers of a small amount for non-financial companies via agreements with banks.</u>

The detailed contents of the Amendment, which has been preannounced, are as set forth below.

1) Enhancement of autonomy and convenience in foreign exchange transactions

A. Under the current Foreign Exchange Transactions Act, reporting requirements for capital transactions and the mandatory confirmation of supporting documents by banks are exempted only with respect to transactions of an amount under USD 2,000 within the annual limit of USD 50,000. Under the Amendment, the transactions that are exempted from mandatory confirmation by foreign exchange agencies and requirements of reporting by those engaged in foreign exchange transactions are modified from the existing "minor transactions, etc." to "transactions determined and notified by the Ministry of Strategy and Finance for stabilization of foreign exchange supply and demand and promotion of foreign transactions." Thereby, <u>a legal basis for further expansion of the scope of transactions exempted from mandatory confirmation and reporting has been established</u> (Articles 10(1), 16, and 18(1) of the Amendment).

B. Under the current Foreign Exchange Transaction Act, acquisition of foreign real estate is subject to reporting and unless such reporting was confirmed by the authority the transactions could not be made. Also, with respect to foreign investments, reporting requirements apply in principle but transactions within the annual limit of USD 50,000 are allowed to be reported on ex post facto basis within 1 month. (Article 18(3) of the Amendment)

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C. And, under the Current Foreign Transactions Act, foreign claims owed by foreign debtors exceeding USD 50,000 are required to be retrieved to Korea within 3 years from the date of maturity or fulfillment of conditions. However, the Amendment suggested that such regulations be abolished and introduced a safeguard measure in cases of foreign exchange crisis. (Article 6 of the Amendment).

2) Expansion of the scope of foreign exchange business for non-financial companies

The Amendment allows non-financial companies to independently engage in certain foreign exchange business (including currency exchange and foreign exchange remittance) if they satisfy certain requirements and are registered with the MSF. (Article 8 of the Amendment)

In other words, according to the current Foreign Exchange Act, only financial companies are allowed to engage in foreign exchange business, and for cross-border payments and receipts of foreign currencies may only be handled by the banks. However, in the future, non-financial companies, including fintech companies, may also engage in foreign exchange business including foreign exchange remittances without cooperating with the banks.

<Scope of Foreign Exchange Business Allowed>

	Before Amendment	After Amendment
Financial Companies, Etc.	Foreign exchange business directly relating to company's business under the law under which the company was established (Amended on March 2016)	Same as the left
Non-financial companies	Currency exchange	Currency exchange, foreign exchange remittance + α (business to be added by the Enforcement Decree)

3) Countermeasures for enhancement of autonomy

A. In order to prevent disruption in the foreign exchange market, foreign exchange agencies' obligations to maintain sound order and grounds for punishment for violation are newly added (Articles 10(2) and 27 of the Amendment).

B. As for the Macro-Prudential Stability Levies, a basis for adjusting its rate downward is established. (Article 11-2 of the Amendment)

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C. Penalties and administrative fines are adjusted according to the seriousness of violation of the Foreign Exchange Transactions Act (Articles 27 – 32 of the Amendment). Sanctions are adjusted reasonably by strengthening penalties on serious crimes such as breach of the duty of maintaining order in the foreign exchange market (imprisonment of up to 5 years/administrative fines not exceeding KRW 500 million), increasing administrative fines for violation of reporting requirements on untypical and capital transactions and violation of *ex post facto* reporting requirements, and imposing administrative fines instead of criminal punishments on minor violations of procedures.

D. Further, under the Amendment, re-registration of foreign exchange business after violation of the Foreign Exchange Transactions Act is restricted (Article 12 of the Amendment); a legal ground for imposing administrative dispositions such as suspension of business is newly established (Article 12 of the Amendment); and concurrent imposition of more than one administrative disposition such as warning, suspension of transaction, and administrative fines is allowed (Article 19 of the Amendment). And, a statute of limitations (5 years) for administrative fines including warning and suspension of transaction has been adopted (Article 19 of the Amendment).

5) Prospect of Future and Schedule of Further Proceedings

The MSF will finalize the Amendment and submit the final Amendment to the National Assembly by September for legislation.

The Amendment is expected to simplify procedures of foreign exchange transactions in a great deal. Moreover, as non-financial companies such as fintech companies will be allowed to engage in foreign exchange business, the competition among the financial industry to provide better foreign exchange services will be intensified and as a result of such competition, the cost of foreign exchange transactions are expected to be lowered.

For more information, please visit the website of the MSF (http://english.mosf.go.kr/).

Wonil kim wonilkim@yoonyang.com	TEL. +82-2-6003-7511
Myung Soo Lee leems@yoonyang.com	TEL. +82-2-6003-7095
Soonghee Lee shlee@yoonyang.com	TEL. +82-2-6003-7507
Ju Yong Lee jylee@yoonyang.com	TEL. +82-2-6003-7546

YOON & YANG LLC
19th Fl., ASEM Tower, 517 Yeongdong-daero,
Gangnam-Gu, Seoul, Korea 06164
Tel: +82-2-6003-7000 Fax: +82-2-6003-7800
http://www.yoonyang.com www.hwawoo.com

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