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REGULATORY AMENDMENTS EXPECTED TO IMPROVE FOREIGN ACCESS TO KOREAN CAPITAL MARKETS INCLUDING ABOLISHMENT OF FOREIGN INVESTOR REGISTRATION

On January 25, 2023, the Financial Services Commission (the “**FSC**”) released its proposed measures to significantly improve foreign investors’ access to Korean capital markets (the “**Release**”). More specifically, the proposed measures include the following **key takeaways**:

- (1) abolishing the foreign investor registration requirement. Previously foreign investors were required to obtain a foreign investor identification number (the “**IRC Number**”);
- (2) facilitating the use of omnibus securities account for foreign investors by abolishing mandatory requirement to file individual trading reports;
- (3) reducing restriction on off-market trading of Korean securities by foreign investors by reducing prior reporting requirements; and
- (4) increasing availability of English language disclosure.

Additional clarification to be provided in the coming months

In relation to items (1) through (3) above, the FSC is expected to make amendments to the relevant provisions in the Enforcement Decree of the Financial Investment Services and Capital Markets Act, and the Regulations and Detailed Rules on Financial Investment Services Business in the second quarter of 2023. Development of technical support for items (1) and (2) above are expected to follow in the third quarter of 2023. Full implementation is expected during 2023.

In regard to item (4) above, the FSC’s plan is to introduce mandatory English disclosure focusing on material information required for the market for large listed companies by 2024 to 2025 as the initial phase, and thereafter, expand such English disclosure to other listed companies and disclosure matters in stages. Amendments to the relevant Korea Exchange public disclosure regulations for the initial phase are expected to be implemented in 2023.

Main highlights of each of the items are summarized below:

I. Abolishing Foreign Investor Registration Requirement

Currently, foreign investors are mandatorily required to pre-register with the Financial Supervisory Services (the “**FSS**”) and obtain an IRC Number. The application process required significant supporting materials, some of which had to be notarized and apostilled or legalized, which had been criticized by some foreign

commentators as being excessive when compared to other major developed countries.

In the Release, the FSC proposed to abolish the requirement for foreign investors to pre-register and obtain an IRC Number to invest in the securities listed in Korea. Instead, securities brokers licensed in Korea will verify the identity of the foreign investors at the time of such foreign investor's first investment and handle the foreign investors' accounts using legal entity identifiers for entities, and passport numbers for individuals. Foreign investors who have previously obtained an IRC Number will continue to be permitted to use it.

II. Facilitating Use of Omnibus Accounts

Although it is currently possible for foreign investors to open and use omnibus accounts to enable consolidated trading orders, it required trading report on an IRC Number basis to be submitted immediately (usually within two days from the trading date). As such, the ultimate foreign investor was required to obtain an IRC Number, and according to the FSC's assessment, use of omnibus accounts by foreign investors have been virtually non-existent since its introduction in 2017 due to such regulatory burden.

In the Release, the FSC proposed to (other than in relation to securities issued by KEPCO and KOGAS) no longer require such mandatory immediate reporting on such trades by foreign investors, although the regulators and tax authorities may require information relating to the ultimate investor and details of trades on an as-needed basis. However, trades of securities in KEPCO and KOGAS through the omnibus account will continue to be restricted due to limitation on acquisition per entity/person for such entities. The FSC plans to have a test run period of approximately six months before formally implementing this system.

III. Reducing Restriction on Off-Market Trades by Foreign Investors

Currently, off-market trades by foreign investors are, in principle, required to obtain prior approval before the trade can be executed, and even in exceptional cases where prior approval are not required, a post-trade report is required. However, the scope of off-market trades that does not require prior approval had been limited, and even in the case of post-trade reporting, the current procedure and documentary requirements were burdensome.

In the Release, the FSC proposed to ease this burden by expanding the scope of post-trade reporting and including in such scope, cases that would have a low regulatory need for prior approval and trade types that have a high demand for off-market trades by market participants. In addition, off-market trades subject to post report with low need for documentary review may also be directly inputted into the foreign investment management system without regulatory review.

IV. Increasing Availability of English Disclosure

The Release contemplates expanding availability of English language disclosure in phases.

In the first phase, in 2024 to 2025, the FSC proposes to require large size listed companies to mandatorily provide English disclosure with focus on material information required by the market. The companies subject to such English disclosure obligation are (a) KOSPI listed companies with assets of KRW 10,000,000,000,000 or more, and (b) KOSPI listed companies with assets of KRW 2,000,000,000,000 or more but less than KRW 10,000,000,000,000, 30% of which is held by foreign investors; provided that if foreign ownership is less than

5%, such company shall not be required to file English disclosure. Of the matters required to be publicly disclosed, disclosures that would have a high English informational demand or materiality would be the subject of such English disclosure requirement. In terms of timing, such English disclosure is expected to be required to be uploaded with three business days after the relevant Korean disclosure.

In the second phase, from 2026, the plan is to expand the scope of listed companies subject to such English disclosure requirement and the scope of type of information to be made available in the English language.

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Please contact us with any queries regarding this Legal Update.

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