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KFTC PROPOSES AMENDMENTS TO CARTEL LENIENCY RULES

On September 23, 2026, the Korea Fair Trade Commission (the “**KFTC**”) announced proposed amendments to the Enforcement Decree (the “**Enforcement Decree**”) of the Monopoly Regulation and Fair Trade Act (the “**MRFTA**”) and the Guidelines for the Implementation of the Leniency Program for Cartel Participants (the “**Leniency Guidelines**”). The proposed amendments aim to reduce leniency benefits for applications submitted after a KFTC investigation has begun, to better encourage earlier leniency applications, and to increase restrictions on leniency benefits for repeat cartel offenders.

The proposed amendments introduce the following key changes:

- Reduced leniency benefits for first-ranked leniency applicants who file for leniency after the commencement of a KFTC investigation
- Reduced leniency benefits for repeat cartel offenders, by extending the period and scope of applying the reduced benefits
- Expanded applying reduced leniency benefits to cover successors to businesses involved in prior cartels
- Clarification of the criteria for repeat cartel violations and revisions to criminal referral provisions

I. REDUCED LENIENCY BENEFITS FOR APPLICATIONS SUBMITTED AFTER THE KFTC INVESTIGATION BEGINS

Under the current rules, while the first-ranked leniency applicant before a KFTC investigation begins is designated a “self-reporter” and the first-ranked applicant after investigation begins is designated a “cooperating party,” both are equally entitled to full immunity from administrative fines.

The proposed amendments would introduce a distinction based on the timing of the application. While the first-ranked applicant that reports a cartel before an investigation begins would continue to receive full immunity, the first-ranked applicant that cooperates after an investigation has begun would receive only a 75% reduction in administrative fines (Article 51(1)(2) of the proposed Enforcement Decree). By linking leniency benefits more closely to the timing of an application and its contribution to the KFTC’s investigation, the proposed amendments seek to encourage businesses to come forward before an investigation begins. If the amendments take effect, businesses would need to apply for leniency before a KFTC investigation begins and qualify as the first-ranked applicant to receive full immunity from administrative fines.

This change makes early detection and prompt decision-making particularly important for companies. Businesses should strengthen their compliance programs, including internal reporting channels and regular compliance reviews, to identify potential cartel conduct

before a KFTC investigation begins. They should also establish clear internal reporting and decision-making procedures to promptly investigate suspected cartel conduct and assess whether to apply for leniency while full immunity remains available.

While first-ranked applicants would still face 25% of the applicable fines after an investigation begins, businesses should not be discouraged from seeking leniency at that stage. Instead, they should carefully consider the conduct covered by any potential application, as well as its content and scope. In addition, to avoid retroactive application of the reduced leniency benefits to existing applicants, the proposed amendments are expected to include transitional provisions providing that the new rules would apply only to leniency applications filed after the amendments take effect.

II. REDUCED LENIENCY BENEFITS FOR REPEAT CARTEL OFFENDERS

Under the current rules, businesses that have previously received leniency or been sanctioned by the KFTC for cartel conduct are ineligible for leniency if they engage in another cartel within five years of the KFTC decision for the previous cartel. The proposed amendments would further tighten these rules by introducing partial restrictions on leniency benefits for repeat cartel violations occurring after five years but within ten years, while also broadening the scope of applying the existing restrictions.

1. Extension of the Restriction Period

Currently, repeat cartel offenders are ineligible for leniency if they engage in another cartel within five years of receiving leniency or being sanctioned by the KFTC. After five years, the ordinary leniency rules apply without any additional restrictions based on the prior cartel conduct.

Under the proposed amendments, businesses that engage in another cartel after five years but within ten years would receive only half of the reduction or exemption otherwise available under the ordinary leniency rules (Article 51(3) of the proposed Enforcement Decree). The changes are summarized in the table below.

REPEAT CARTEL VIOLATION	CURRENT RULES	PROPOSED AMENDMENTS
Within 5 years	No leniency available	No leniency available
After 5 years but within 10 years	No leniency benefit restrictions for repeat cartel violations (ordinary leniency rules apply)	Only 50% of the otherwise applicable reduction or exemption: • First-ranked applicant (before investigation): Full immunity → 50% reduction • First-ranked applicant (after investigation): 75% → 37.5% reduction • Second-ranked applicant: 50% → 25% reduction

REPEAT CARTEL VIOLATION	CURRENT RULES	PROPOSED AMENDMENTS
After 10 years	No leniency benefit restrictions for repeat cartel violations (ordinary leniency rules apply)	No leniency benefit restrictions for repeat cartel violations (ordinary leniency rules apply)

2. Broader Scope of Leniency Benefit Restrictions for Repeat Cartel Offenders

Under the current rules, leniency is denied to (i) businesses that engage in another cartel within five years of receiving leniency, regardless of whether the new cartel is related to the previous one, and (ii) businesses previously sanctioned by the KFTC for cartel that engage in another cartel within five years “in violation of the earlier corrective order”.

“In violation of the earlier corrective order” meant that under the existing rules, the restrictions on leniency benefits were only applicable to repeat cartel offenders within the same market or product. The proposed amendments would remove this requirement, extending the benefit restrictions to subsequent cartel conduct even where it involves different products or markets from those covered by the previous KFTC sanctions (Articles 51(2)(2) and 51(3)(1) of the proposed Enforcement Decree).

Businesses operating across multiple markets or business divisions should therefore review their company-wide history of cartel sanctions, rather than focusing solely on the division or market involved in the suspected cartel conduct.

III. EXTENSION OF APPLYING LENIENCY BENEFIT RESTRICTIONS TO SUCCESSORS OF BUSINESSES INVOLVED IN PRIOR CARTELS

Under the current rules, it is unclear whether leniency restrictions for repeat cartel offenders apply to an entity that takes over a business previously involved in cartel conduct through a corporate restructuring or business transfer. In particular, a history of prior sanctions does not constitute “rights and obligations” that transfer through a spinoff-merger or similar transaction. Accordingly, there was no clear legal guidance on whether such sanctions carried over automatically to a newly established company or a business transferee. Consistent with this approach, the KFTC has, in at least one case, declined to take into account sanctions previously imposed on a surviving company when assessing whether a newly established company resulting from a corporate spinoff qualified as a repeat cartel offender.

The proposed amendments would clarify that these restrictions also apply to entities that take over such businesses through a merger, corporate spinoff, spinoff-merger or business transfer (Article 51(4) of the proposed Enforcement Decree).

Businesses considering mergers or acquisitions should therefore review the target business’s history of cartel sanctions and leniency applications as part of their legal due diligence to assess whether any leniency restrictions could apply following the transaction.

IV. CLARIFICATION OF REPEAT CARTEL VIOLATIONS AND REVISIONS TO THE LENIENCY GUIDELINES

The KFTC has also proposed amendments to the Leniency Guidelines to clarify what constitutes a repeat cartel violation and align the relevant provisions with the Enforcement Decree and the MRFTA.

1. Clarification of What Constitutes a Repeat Cartel Violation

The proposed amendments clarify that a repeat cartel violation includes entering into and implementing a new cartel agreement or continuing an existing cartel after (i) being sanctioned by the KFTC or (ii) receiving leniency (Article 6-5 of the proposed Leniency Guidelines). This appears intended to resolve potential disputes over whether ongoing cartel conduct constitutes a “new” violation where such conduct continues (i) in areas that could have been covered by an earlier corrective order at the time KFTC sanctions were imposed or (ii) in other business areas outside the scope of a leniency determination at the time leniency was granted.

However, the proposed amendments may raise additional questions for the following reasons: (i) existing Article 44(2) of the MRFTA provides for leniency benefit restrictions where a business engages in cartel conduct “anew” (in other words, the conduct newly starting) after receiving leniency, and treating cartel conduct that was already ongoing at the time leniency was granted as “new” conduct could be viewed as expanding the interpretational scope of the statutory language; and (ii) the heightened culpability associated with engaging in cartel conduct despite a prior sanction or grant of leniency arguably arises from a new conduct undertaken after such sanction or grant of leniency (as opposed to conduct that is already ongoing). Accordingly, debate over the validity, legality and scope of application of the proposed provision may continue even after it takes effect.

Nevertheless, from a conservative perspective, businesses should take into account, among other relevant considerations, the possibility that the proposed amendments may restrict leniency benefits not only where they enter into new cartel agreements after receiving sanctions or leniency, but also where they continue cartel conduct (but not yet discovered by the KFTC) that began before such sanctions or leniency.

2. Revisions to Provisions on Leniency Restrictions and Criminal Referral Provisions

The proposed amendments would remove the provisions governing leniency restrictions for businesses previously sanctioned for cartel conduct from the Leniency Guidelines (Article 6-3), as these restrictions would now be expressly set out in the Enforcement Decree.

The proposed amendments would also remove the provisions concerning exemptions from criminal referrals for businesses granted leniency status, including exceptions to such exemptions (Article 17 of the Leniency Guidelines), to align the Guidelines with the scope of authority delegated under Articles 44(1) and 44(5) of the MRFTA.

V. EXPECTED TIMELINE

The proposed amendments to the Enforcement Decree are open for public comment from September 23 to November 2, 2026, while the proposed amendments to the Leniency Guidelines are open for public comment from September 23 to October 13, 2026.

The KFTC plans to review the comments received and complete the amendment process, including the necessary legislative review procedures, in the first quarter of 2027.

VI. PRACTICAL IMPLICATIONS

The proposed amendments place greater emphasis on early leniency applications and impose stricter benefit restrictions on repeat cartel offenders, including businesses that take over operations previously involved in cartel conduct. In light of these changes, businesses should review their compliance programs and consider the following measures.

1. Businesses That Suspect Potential Cartel Conduct

- Strengthen internal reporting channels and monitor communications with competitors to identify potential cartel conduct at an early stage.
- Establish procedures for preserving relevant documents, promptly investigating suspected violations and making timely decisions on whether to apply for leniency before a KFTC investigation begins.
- Assess the potential benefits of leniency in light of the timing of the application and the applicant's ranking.

2. Businesses with a History of Cartel Sanctions or Leniency

- Review the causes of previous cartel violations and the effectiveness of measures implemented to prevent recurrence, and strengthen compliance programs where necessary.
- Extend compliance reviews beyond the business divisions previously involved in cartel conduct, with particular attention to competitor communications, pricing decisions and bidding practices across the business.
- Reinforce employee training on cartel prevention and improve internal reporting procedures to ensure that potential violations are promptly escalated.

3. Businesses Considering Mergers or Acquisitions

- Review the target business's history of cartel sanctions and leniency as part of legal due diligence.
- Assess whether past cartel conduct involving the target business could restrict leniency if further cartel violations occur following the transaction.
- Address any cartel-related risks identified during due diligence in the transaction terms and implement appropriate compliance training and monitoring measures following the acquisition.

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