

Legislative Amendments for Launch of the KONEX

The Financial Services Commission, the Korea Exchange and other capital market regulators have been working diligently to lay the legislative ground-work necessary for the launch of Korea's third stock market – the Korea New Exchange (“KONEX”). Scheduled for opening in the second-half of 2013, the KONEX will be a stock market for small and medium-sized companies and ventures, and will assist such companies to more easily raise direct financing from the capital market. The following are the legislative amendments that have been made or announced to be made in preparation for the launch of the KONEX:

1. Amendments to KOSDAQ's Listing Regulations and Operation Regulations (March 22, 2013)

KOSDAQ's Listing Regulations and Operation Regulations have been amended to establish the KONEX within the KOSDAQ, and introduce new provisions for the following: (i) appointment of designated advisors (to act as contact points for communications, filings, reporting and public disclosure between companies and the KONEX), (ii) submission by designated advisors of listing eligibility reports for listing applications, (iii) eased financial/non-financial requirements for listing, (iv) limited types of bid/ask prices (only designated bid/ask prices and market bid/ask prices have been introduced), (v) a system and requirements for liquidity providers (only designated advisors are permitted to act as liquidity providers), (vi) price volatility limits (+/- 15% per day), (vii) a single price auction scheme (which can be converted to a continuous auction scheme for shares with sufficient liquidity), (viii) systems for after-hours closing price and block trades in the market, (ix) a competitive bidding system to foster de-concentration of equity interests and improve M&A market functions (where a trade is executed upon a purchaser's bid in response to a seller's request, designating the securities, number, price and other terms of sale), and (x) a base deposit requirement (KRW 300 million or more, from which a sophisticated investor will be exempted).

2. Announced Amendments to the Enforcement Decree of the Financial Investment Services and Capital Markets Act (March 26, 2013)

In order to ease KONEX-listed companies' public disclosure obligations in respect of securities issuances, small and medium venture capital partnerships, Korean venture funds and new technology project investment partnerships, among others, will be excluded from calculations of the number of persons to be deemed as solicited for offering, for purposes of determining whether or not a registration statement must be filed for the relevant issuances and sales of securities. In addition, to reduce the procedural burdens of implementing mergers involving KONEX-listed companies, the special provisions applicable to mergers involving listed companies will be eased in case of mergers between KONEX-listed companies and unlisted companies.

3. Announced Amendments to the Enforcement Decree of the Act on External Audit of Stock Companies (April 4, 2013)

A company intending to list its stock is required to be audited by an external auditor designated (based on selection criteria such as size and audit quality of accounting firm) by the Securities & Futures Commission (the "SFC") before the listing. However, a company intending to list its stock on the KONEX will be exempted from such requirement for audit by a SFC-designated external auditor (provided, however, that, such audit requirement will apply if a KONEX-listed company grows and desires to be listed on the KRX or the KOSDAQ). Further, in lieu of the Korean International Financial Reporting Standards (K-IFRS), the Generally Accepted Accounting Principles of Korea (K-GAAP) used by unlisted companies will apply to KONEX-listed companies.

4. Announced Amendment to the Regulations on Issuance, Public Disclosure, Etc. of Securities (May 8, 2013)

(i) The criteria for re-sales deemed as public offerings of securities will not apply to companies listed on the KONEX, and (ii) personal investment partnerships, sophisticated angel investors (the eligibility criteria for which are being prepared by the Small and Medium Business Administration), individual investors with base deposits of KRW 300 million or more, and certain other types of investors will be further excluded from calculations of the number of persons to be deemed as solicited for offering for purposes of determining whether or not the filing of a registration statement is required in respect of relevant issuances and sales of securities.

For additional information, please contact the following professionals at Shin & Kim.

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