



Implications of the Amended Enforcement Decree of the Foreign Exchange Transactions Act and the Regulations

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At the Cabinet meeting on June 27, 2023, the Korean government deliberated and passed partial amendments to the Enforcement Decree of the Foreign Exchange Transactions Act (the “Enforcement Decree”). The amendments, among others, decrease the penalty amount and raise the threshold for imposition of punitive measures associated with procedural violations of the Act. In addition, the amendment to the Foreign Exchange Transactions Regulations, which increases the amount of overseas remittance that may be made without evidentiary documents to USD 100,000, also became final and conclusive. The amendments to the Enforcement Decree and the amendment to the Foreign Exchange Transactions Regulations (together, the “Amendments”) have come into effect and are enforceable from July 4, 2023.

The key aspects of the Amendments and their implications for transactions that may require compliance with the Foreign Exchange Transaction Act are discussed below.

1. Key Takeaways

A. Amendment to the Enforcement Decree of the Foreign Exchange Transactions Act

Main contents	Details
Raise threshold for procedural violations that are subject to punitive measures and decrease the penalty amount	<ul style="list-style-type: none">• Increase the threshold applicable to violation of the capital transaction reporting obligation, which would result in a warning from “not more than USD 20,000” to “not more than USD 50,000”.• Significantly increase the threshold amount for procedural violations that would be subject to punitive measures: Violation of the capital transaction reporting obligation: KRW 1 billion ⇒ KRW 2 billion Reporting of irregular payments, etc.: KRW 2.5 billion won ⇒ KRW 5 billion

	<ul style="list-style-type: none"> • Reduce the penalty amount for the violation of an ex post facto reporting from KRW 7 million to KRW 2 million.
Allow securities finance company to participate in the foreign exchange swap market	<ul style="list-style-type: none"> • List the “securities finance company”, as defined under the Financial Investment Services and Capital Markets Act, as a counterparty to a foreign exchange broker allowing them to participate in the foreign exchange swap market.

B. Amendment to the Foreign Exchange Transactions Regulations

Main contents	Details
Relax requirements for submission of evidentiary documents for overseas remittance and the relevant reporting	<ul style="list-style-type: none"> • Increase the threshold of overseas remittance amount that would require a submission of evidentiary documents and ex-ante reporting of the capital transactions, from USD 50,000 to USD 100,000 per year.
Expand companies’ autonomy in raising and managing foreign currency and simplify regulatory supervision and reporting requirements	<ul style="list-style-type: none"> • Increase the annual aggregate threshold for reporting of large-scaled foreign currency borrowings to the Ministry of Economy and Finance and the Bank of Korea from USD 30 million to USD 50 million. If the aggregate amount of foreign currency borrowings is within USD 50 million in a year, ex-post reporting to the foreign exchange bank is required. • Abolish restrictions on overseas entities financing locally and integrate them as finance loans and debt guarantees; expand companies’ autonomy in managing foreign currency funds by relaxing restrictions on domestic deposits of borrowings from overseas; allow overseas borrowings sourced locally to be brought into Korea, which was not allowed before. • Change ad-hoc basis reporting of overseas direct investment to regular reporting to be done once a year and simplify the contents to be covered
Permit comprehensive financial investment business entities to provide general currency exchange services to the public	<ul style="list-style-type: none"> • Allow comprehensive financial investment business entities (9 securities companies) to provide general currency exchange services to the public (individuals and companies), thereby promoting competition among financial institutions regarding foreign exchange; Previously, only 4 securities companies with equity capital of KRW 4 trillion or more and with short-term financial business licenses had been allowed to provide currency exchange services to companies
Allow foreign investors to have a foreign exchange transaction with 3rd party without having to open an additional account	<ul style="list-style-type: none"> • Allow foreign investors to transact with banks other than its custodian bank for foreign exchange so that foreign investors can also enjoy lower commissions without having to open an additional account; Previously, foreign investors were able to invest in domestic assets by exchanging

	funds only at a custodian bank in which they opened an investment account.
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2. Implications

On February 10, 2023, the Korean government announced its Plan to Reform the Foreign Exchange System to relax regulations on foreign exchange transaction procedures. This is based on the perception that since the enactment of the Foreign Exchange Transactions Act in 1999, foreign exchange transactions have exponentially grown in volume and complexity. Requiring prior reporting of foreign exchange transactions, maintaining strict sanctions for procedural violations of the laws and complex reporting and compliance procedures in the context of such growth are thought to place a significant burden on the daily foreign exchange transactions.

The reform will take place step by step, as an effort to improve the foreign exchange system at fundamental level. The reform has taken its first step with the adoption of the Amendments. We note, however, that a number of restrictions will remain in effect until the reform is complete. For companies engaging frequently in foreign exchange transactions, the changes in the Foreign Exchange Transaction Act and related decrees and regulations should be carefully monitored to take advantage of the reforms and to ensure they are in compliance with the most current regulatory requirements as they evolve.

If you have any questions or need assistance regarding the above, please feel free to contact us.

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