

Amendments to the Enforcement Decree of the Financial Investment Services and Capital Markets Act with respect to the share plan for a domestic employee of a multinational company

2024.03.21

The Financial Investment Services and Capital Markets Act (“FSCMA”) sets forth general framework for securities transactions in Korea. According to FSCMA, any investor who desires to sell foreign currency securities in an overseas securities market must carry out such a sale through a Korean licensed broker. However, there had not been a clear regulatory interpretation as to how such restriction would apply to a domestic employee who desires to sell foreign-listed shares obtained as a part of his or her stock option plan.

On June 19, 2023, the Financial Supervisory Service of the Republic of Korea (“FSS”) issued a formal interpretation (“FSS Interpretation”) confirming that a domestic employee may be sanctioned for violating (i) the FSCMA and (ii) the Foreign Exchange Transaction Act if he or she (i) sells foreign-listed shares through an overseas broker or (ii) deposits funds arising out of the sale of foreign-listed shares in an overseas financial institution. According to the FSS’ Interpretation, a domestic employee is required to (i) open an account with a domestic broker, (ii) deposit the foreign-listed shares to be sold with a foreign depository linked to the Korean Securities Depository and (iii) sell the foreign-listed shares through such a domestic broker.

On December 29, 2023, however, the Korean Financial Services Commission issued an advance notice of proposed amendments to regulations related to FSCMA that would exempt a domestic employee of a multinational corporation from the requirements of the FSS Interpretation described above.

On March 5, 2024, the amended enforcement decree of the FSCMA and the amended Supervisory Regulations on Securities Company Business were promulgated and became effective. As a result of such amendments, the FSS Interpretation does not apply to a domestic employee of a multinational corporation when selling his or her foreign-listed shares obtained as a part of a stock option plan in an overseas securities market.

Key Contacts

Tae-Yong Seo

Partner

+82-2-316-4096

tyseo@shinkim.com

Abraham Sung Shin

Senior Foreign Attorney

+82-2-316-1794

sshin@shinkim.com