

NEWSLETTER

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Antitrust & Competition Group

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Bill to Amend the Monopoly Regulation and Fair Trade Act Passed by the National Assembly

In August 2018, the Korea Fair Trade Commission (the **KFTC**) drafted a bill to substantially amend the Monopoly Regulation and Fair Trade Act (the **MRFTA**) and submitted the amendment bill to the National Assembly in November 2018. However, only certain portions of the amendment bill which dealt with procedural regulations were passed by the National Assembly on April 29, 2020, and the remaining portions of the amendment bill automatically expired without further action at the end of the term of the 20th National Assembly in May 2020.

Against this backdrop, at the end of August 2020, the KFTC again pushed for amendment of the MRFTA (the **Amended MRFTA**) and submitted the corresponding bill to the National Assembly; this bill was essentially the same as the amendment bill that had expired earlier this year, but the provision on the abolishment of the KFTC's exclusive right of criminal referral was removed from the Amended MRFTA during the National Policy Committee's review process. The bill was passed by the National Assembly on December 9, 2020, to come into effect one-year from the date of its promulgation.

I. Key Aspects of Amended MRFTA

Certain key amendments of the Amended MRFTA are as follows:

1. Details of key amendments

Reinforcement of cartel regulation on information exchange (Article 40)	<ul style="list-style-type: none"> ■ Adds as a form of illegal conduct, 'exchange of information such as price and output that restricts competition in a certain area of trade'. ■ Stipulates that an agreement shall be presumed when there is external conformity of conduct among business entities, and information necessary in this regard has been exchanged.
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Expansion of entities subject to the private profit-taking regulation (Article 47)	<ul style="list-style-type: none"> ■ Unifies the standard for the shareholding ratio of an owner's family subject to the regulation from the current '30% for a listed company and 20% for an unlisted company' to 20%, regardless of whether the company is listed. ■ Entities of which the above companies hold more than 50% shares are also subject to the regulation. ※ <i>The companies that would newly be subject to the regulation under the Amended MRFTA should establish in advance the legitimacy of the internal trading between affiliates and consider taking measures such as suspending the transaction or modifying the trading terms, if necessary.</i>
Strengthening of regulation on the shareholding ratio of the holding company (Article 18(2) & (3))	<ul style="list-style-type: none"> ■ Raises the shareholding ratio requirement for the subsidiaries or second-tier subsidiaries, with respect to newly established holding companies or entities newly converted into a holding company. ■ Raises the shareholding ratio from the current 20% to 30% for listed companies and from the current 40% to 50% for unlisted companies.
Stipulation of public notice related to foreign affiliates (Article 27 & 28)	<ul style="list-style-type: none"> ■ Exempts the public notice requirement for large-scale internal transactions with foreign affiliates. ■ Imposes the following obligations on the owner of a company: (i) obligation to notify publicly the status of the foreign affiliate of which the owner and the owner's family holds 20% or more shares and (ii) obligation to notify publicly the status of shareholding and cross-shareholding of the foreign affiliate that has directly or indirectly invested into the Korean affiliate.
Supplementation of merger report threshold (Article 11(2))	<ul style="list-style-type: none"> ■ Reporting obligation triggered when (i) the transaction amount (acquisition amount) exceeds a certain amount, and (ii) the counterparty to the merger or its affiliate's activity in Korea is substantial, even when the target company's total amount of assets/sales turnover does not meet the current reporting threshold of KRW 30 billion. ※ <i>Requirements (i) and (ii) above will be further defined through amendment of the Enforcement Decree of the MRFTA.</i>

2. Details of key amendments to provisions on enforcement

Increase of the upper limit of fines	<ul style="list-style-type: none"> ■ Doubles the upper limit of administrative fines for each type of violation. ※ <i>Cartel 10% → 20%</i> ※ <i>Abuse of market dominance 3% → 6%</i> ※ <i>Unfair trade practice 2% → 4%</i>
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Implementation of individual's claim for injunctive relief (Article 108)	<ul style="list-style-type: none"> ■ Injunctive relief from the court for claims relating to unfair trade practices (excluding unfair support) is now a remedy available to a damaged party when the need for remedy is great. ※ <i>Civil actions regarding unfair trade practices are expected to increase as a result of the amendment.</i>
Modification of provisions on criminal penalty (Article 124 & 125)	<ul style="list-style-type: none"> ■ Removes criminal penalty provisions for conduct (e.g., mergers and acquisitions, certain unfair trade practices, certain prohibited conduct for business entities' organization, and resale price maintenance) where criminal penalties have been rarely imposed and are unlikely to be imposed in the future.
Creation of corporation's obligation to submit materials in the lawsuit for damage claim (Article 111)	<ul style="list-style-type: none"> ■ Enables the courts to order submission of materials in lawsuits for damage claims involving cartel or unfair trade practices (excluding unfair support).

II. Implications

As the Amended MRFTA passed the National Assembly and will now come into effect, the extent and frequency of KFTC enforcement activities are expected to increase significantly which may give rise to greater burden on companies. Therefore, we recommend companies to review and strengthen as necessary the relevant internal compliance training and compliance system to minimize any potential risk of violating the MRFTA.

We hope the above is helpful. If there are any questions and/or legal advice or assistance is required, please contact Lee & Ko's Antitrust & Competition Group.

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