Highlights of Amendments to the Monopoly Regulation and Fair Trade Act

(National Assembly's Resolution of February 27, 2012)

On February 27, 2012, the National Assembly passed a bill to amend the Monopoly Regulation and Fair Trade Act (the "MFRTA"). The amendments include, among others, the imposition of criminal sanctions for obstruction of investigation by use of physical force, and the extension of statutory limitation periods for KFTC investigations. The amendments become effective three months after promulgation, and will have significant impact on corporations.

Highlights of the amendments are as follows.

1. Criminal Sanctions for Obstruction of KFTC Investigation by Use of Physical Force (Article 66, Item 11)

Current Regulations	Imposition of administrative fines for obstruction of KFTC investigations (up to KRW 200 million for enterprises and KRW 50 million for relevant officers or employees)
Amendment	Imposition of criminal sanctions (i.e. imprisonment, not exceeding three years and fine, not exceeding KRW 200 million) on officers or employees who reject, impede or avoid investigation by use of violent language or physical force or intentional obstruction or delay of entry by KFTC officers into relevant premises for investigation

The current MRFTA has been amended to more strictly address situations where enterprises and employees have interrupted or delayed the KFTC's on-site investigations by blocking or otherwise hindering the KFTC's investigating officers from entering their buildings and offices. The KFTC has decided to impose criminal sanctions where investigations are obstructed by use of physical force. Enterprise personnel in charge of dealing with potential KFTC investigations should be fully aware of this new amendment and be careful in responding to the KFTC's on-site investigation teams. Other types of obstructive activities or actions remain subject to fines under the current MRFTA.

2. Extension of Statutory Limitation Periods for Commencement of KFTC Investigations (Article 49)

Current Regulations	A 5-year statutory limitation period that runs from the date of termination of the violation, regardless of whether a KFTC investigation has been commenced.
Amendment	① If the KFTC has not commenced an investigation, a 7-year statutory limitation period that runs from the date of termination of the violation. ② If a KFTC investigation has been commenced, a 5-year statutory limitation period that runs from the commencement of the investigation.

Under the current MRFTA, the statutory limitation period for KFTC investigations runs for five years from the date of termination of the relevant violation, without regard to whether a KFTC investigation has been commenced. With the amendments, however, the statutory limitation period for a KFTC investigation will run for 7 years from the date of termination of the relevant violation, if no KFTC investigation has been previously commenced. Further, if the KFTC has commenced an investigation within the 7-year statutory limitation period, the statutory limitation period will be further extended up to five years from the date of commencement of the investigation. This is so that the KFTC will be able to investigate a particular case and take appropriate actions without worrying about running out of time.

3. Joint Liability for Administrative Surcharge after Corporate Split (Article 55-3)

Current Regulations	After a corporate split, the administrative surcharge liability of the predecessor company cannot be transferred to the successor company.
Amendment	If the company splits off before the administrative surcharge order is issued, the KFTC may impose the surcharge on "the predecessor company, a newly established company after corporate split or split and merger or the surviving spun-off company after split and merger."

Under the current MRFTA, if an enterprise is merged into another company before an administrative surcharge order is issued, the administrative surcharge liability is transferred to the merged company.

But this is not the case for corporate splits. Administrative surcharge liability cannot be transferred to the successor company after a corporate split. This has meant that the KFTC must impose the administrative surcharge on the predecessor company, which often lacks the capacity to pay the administrative surcharge. With the amendments, however, the KFTC will be able to impose the administrative surcharge on the successor company after corporate split. Thus, the companies should keep in mind that they may be subject to administrative surcharge liability even after a corporate split.

4. Maximum Surcharge Amount Increased for Cartels through Trade Associations

Current Regulations	Imposition of different surcharges for collusion: up to 10% of relevant revenues on cartels among enterprises, and up to 5% of relevant revenues on cartels through trade associations.
Amendment	Imposition of a raised surcharge ceiling up to 10% of relevant revenues for cartels through trade associations.

Under the current MRFTA, the KFTC's surcharge ceiling for enterprises involved in cartels through trade associations is 5% of relevant revenues. This is different from the KFTC's surcharge ceiling for enterprises involved in cartels among themselves (10% of relevant revenues). With the amendments, however, the same surcharge ceiling (10% of relevant revenues) will apply to cartels through trade associations.

If there is any question regarding the above, please contact us as set out below.

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