



Korean Consumer Goods & Retail Newsletter (March 2023)

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Shin & Kim's Consumer Goods & Retail practice group focusses on providing legal services to fast-moving consumer goods (FMCG) clients, in particular those who deal with alcohol, tobacco, food & beverage, cosmetics, and luxury goods. The CGR practice group has experts with decades of experience in assisting clients in issues relating to compliance, approvals/permits, intellectual property, tax, labor, product liability, data privacy, competition/unfair trade practices, environment and such other relevant areas of law.

Our practice group aims to provide regular updates to clients on important regulatory changes in Korea.

I. Permitted Price Discounts or Illegal Rebates for Alcoholic Beverages?

NTS, MOSF and businesses actively discussing impact of key amendments to regulations relating to alcoholic beverages

On December 30, 2022, the National Tax Services (NTS) consolidated 11 tax regulations relating to alcoholic beverages into four regulations. Key amendments are as follows.

For alcoholic beverages packaged with radio-frequency identification (RFID), such as certain whisky products, there are two major changes. First, the annual quantity permitted for manufacturers or importers to provide for tasting/sampling has been increased 10x to 9,000 liters (i.e., 18,000 bottles of 500ml). Second, manufacturers or importers of RFID-equipped alcoholic beverages can no longer avail themselves to the exception that allowed them to provide sales incentives up to a certain amount to wholesalers, brokers, etc.

Along with these changes, NTS announced that it will strengthen the monitoring of illegal rebates, which have been provided under the pretext of sales incentives. In this regard, major liquor associations, member companies, the Ministry of Strategy and Finance, and NTS are actively discussing the boundary between illegal rebates and permitted price discounts. We understand that a written guideline setting out the criteria for permitted price discounts is being prepared. This issue warrants a close monitoring.

II. Accessible Labelling for Food Products to be Voluntary

The proposal was to amend the Act on Labelling and Advertising of Food (the “Labelling Act”) to make the inclusion of Braille and audio/sign-language video conversion codes compulsory when labelling (“Accessible Labelling”) certain food products. However, the Labelling Act was amended by the National Assembly’s Health and Welfare Committee on February 24, 2023 without making Accessible Labelling compulsory for food products. We note that it is compulsory for medicine from July 2024.

The differential treatment between food and medicine is due to, among other reasons, limited display area, the prevalence of small and medium enterprises, and the ongoing potential business impact for food businesses in complying with the compulsory Accessible Labelling requirements. According to the Bill passed by the National Assembly’s Health and Welfare Committee it appears food businesses that voluntarily provide Accessible Labelling will be able to benefit from certain administrative or financial incentives.

In July 2022, the Ministry of Food and Drug Safety published the Guidelines on Braille Labelling of Food to define the method of Braille labelling, but a more specific guideline is set to be released once the amendment to the Labelling Act is effected.

We expect this amendment to be passed by the provisional National Assembly in March. Notwithstanding, Accessible Labelling is compulsory for medicine only and not food products, it will be important to track whether Accessible Labelling will become relevant to food products once the reasons for removing compulsory Accessible Labelling have been addressed.

III. Deposit Refund for Highest Recyclability Grade Packaging

On December 21, 2022, the Ministry of Environment (“MOE”) announced that it would refund 50% of the contributions under the Extended Producer Responsibility (EPR) scheme to companies that manufacture or import PET bottle packaging that are classified as the highest recyclability grade packaging materials.

EPR refers to a system of recycling where recycling obligations are imposed on manufacturers, importers or sellers of paper packs, glass bottles, metal cans, PET bottles and such used for product packaging in accordance with the Act on the Promotion of Saving and Recycling of Resources. Instead of attending to its recycling obligations, businesses may pay certain contributions to recycling cooperatives. According to the MOE, 65 manufacturers and importers of PET bottle packaging are entitled to an average refund of KRW 16 million.

This refund announced on 2022 will be given for PET bottles only. The MOE mentioned that this refund will be expanded to other types of packaging. Businesses that have EPR obligations including businesses that package and sell products using OEM-manufactured packaging may be able to save costs by sourcing the highest recyclability grade packaging.

IV. 'Act on the Promotion of Transition to a Circular Economy and Society'

The Act on the Promotion of Transition to a Circular Economy and Society, which replaces the Framework Act on Resources Circulation (the "Circular Economy Act") was passed on December 31, 2022. The Circular Economy Act will become effective from January 1, 2024 to promote the efficient use of resources in the entire process of production, distribution, consumption and recycling, to reduce waste generation and to promote circular use of resources.

In particular, the Circular Economy Act requires producers or importers of certain products to comply with (i) prescribed use of recycled raw materials and achievement of product durability, (ii) reduction of packaging materials, and (iii) certain requirements on reparability. All relevant details are to be determined by the MOE.

Business operators should keep track of these important developments.

V. KFTC Adds More Business-Friendly Procedures in Revisions to Enforcement System

On February 16, 2023, the Korea Fair Trade Commission announced the Revision of the Law Enforcement System. It includes the revision of case handling procedures and standards, increased case handling capacity, and organizational reform plan to enhance the predictability, efficiency, and expertise of KFTC's law enforcement from a business operator's perspective. In particular, the revision of case handling procedures and standards may have a substantive impact on many CGR businesses.

1) Setting limitations on KFTC's investigation right for better predictability

1. **(Greater detail in formal inspection request)** Need to explicitly state the transaction sector, type and period relating to the relevant violation in the formal inspection request issued for on-site inspection.
2. **(New objection procedure for collected materials)** Introduces a new formal procedure requesting return of materials collected beyond the scope of inspection.
3. **(No priority for inspecting legal/compliance departments)** Prohibits placing a higher priority in inspecting legal and/or compliance departments in an inspection.

2) Ensuring due process

1. **(New procedure for preliminary opinion hearing)** Introduces an official face-to-face meeting step between the company under inspection and the case manager (i.e., the head of bureau/division) to avoid ambiguity or misrepresentation relating to underlying facts and issues.
2. **(More opportunities for pleading)** To ensure the right to be heard, requires at least two deliberation hearings to be

conducted for a case that meets certain criteria (in terms of the case's scale and nature).

3. **(Better case search database)** Reforms the “my case search function” to enable the claimant and the company under inspection to check online who is in charge of the case and the progress.

3) Measures to expedite resolutions.

1. **(Focused management of long-term cases)** Establishes a case management system by phase (stages: monitor, attention, and alert) for long-term cases and cases that are nearing expiry of the relevant statute of limitation and creates an evaluation category for department heads for meeting case processing deadlines.
2. **(Promotion of alternative resolution)** For cases that require urgent remedial measures due to the contentious nature between the parties, an alternative resolution method* will be recommended to facilitate a swift resolution.
3. **(Transfer of simple disciplinary cases to local governments)** Conduct that can be handled by a simple confirmation of underlying facts* will be transferred to local governments for administration and disposition (i.e., imposition of fines) to expedite the process.

* Includes compliance support, mediation and consent-based resolution.

* Such as:

(Franchise issues) failure to provide information disclosure and/or franchise agreement, or failure to include any mandatory clause in such agreement.

(Agency issues) Failure to deliver, execute, or preserve relevant agreement.

For the Korean version of this newsletter, please refer to the following link : [\[click\]](#)

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