



MERGER CONTROL IN KOREA Vol. 14 – KFTC Publishes Proposed Acquire Rules

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On September 9, 2026, the Korea Fair Trade Commission (the “KFTC”) published a proposed amendment to its Merger Notification Guidelines (the “Proposed Amendment”). The Proposed Amendment would bring certain “acquire” transactions, involving the organized transfer of personnel, within the scope of reportable business transfers, and would supplement the rules on calculating the transfer price and on when such a transaction is deemed implemented.

The public comment period closed on September 30. The Proposed Amendment will be finalized upon deliberation and approval by the KFTC’s plenary meeting, and will take effect upon promulgation. It will apply to business combinations whose notification-triggering event occurs on or after the effective date.

Overview

In [Merger Control in Korea Vol. 13](#), we noted that acquires do not fit neatly into any category of reportable business combination under the Monopoly Regulation and Fair Trade Act. The closest candidate, a business transfer, requires the transferred object to be capable of operating as an independent business unit, a standard personnel-based arrangements would ordinarily struggle to meet.

The Proposed Amendment would bring acquires within merger review as a business transfer and allow various forms of consideration paid to the transferor to be aggregated in calculating the transfer price. However, it retains the existing notification thresholds and does not address compensation paid directly to transferred personnel.

1. When May Personnel Constitute a “Business”?

The Notification Guidelines currently define a transferable “business” as an organized collection of property rights functioning as an organic whole, including sales rights (with related organizations and personnel), intellectual property

rights and valuable assets related to permits and licenses. The Proposed Amendment would add that organized personnel may themselves constitute a “business” if, together with their technology or knowledge, they can perform “core functions” of the business activity. The Proposed Amendment does not, however, set clear criteria for what constitutes “organized personnel” capable of performing “core functions.” These are likely to be clarified through KFTC practice

On the other hand, a business transfer is reportable only if it covers all or a “material part” of the transferor’s business, which requires both a qualitative and a quantitative requirement to be met. The qualitative requirement is currently satisfied where the transferred portion can operate as an independent business unit or its transfer substantially reduces the transferor’s revenue. The Proposed Amendment would add a third case: where the transfer enables the transferee to conduct the same business activity previously conducted by the transferor.

2. How Will the Transfer Price Be Calculated?

The quantitative requirement is met where the transfer price is at least KRW 10 billion or at least 10% of the transferor’s total assets at the end of the preceding financial year.

As we noted in Vol. 13, consideration in an acquihire is often not paid as a single “transfer price” under one comprehensive business transfer agreement. Instead, value is spread across employment arrangements, IP licenses, non-compete releases for transferred personnel, and technology cooperation agreements.

The Proposed Amendment would include in the transfer price any monetary payment or economic benefit paid to the transferor as consideration for the transaction, regardless of characterization, such as consideration for waiving rights relating to the transferred personnel and IP license fees needed to conduct the business.

However, because the rule covers only consideration paid “to the transferor,” salaries, signing bonuses, and retention awards paid directly to hired personnel would be difficult to include. A transaction in which most of the consideration goes to the personnel is therefore unlikely to meet the quantitative requirement.

3. When May an Acquihiire Be Considered Implemented?

For transactions subject to pre-closing notification, parties may not implement the transaction before KFTC clearance. The Proposed Amendment would provide that, for transactions involving organized personnel, the transferor’s discontinuation of the relevant business activity may constitute implementation.

This reflects the fact that key personnel may move, and be paid directly by the transferee, before the transferor is paid in full. Parties will therefore likely be restricted from moving personnel before KFTC clearance to the extent that it causes the transferor to discontinue the business. It remains unclear whether a gradual transfer of personnel with the effect of the transferor’s business not being discontinued but substantially diminished would be prohibited, so parties should

review the scope and timing of personnel moves and their effects on the transferor's business against the KFTC's review timeline.

4. Existing Notification Thresholds Still Apply

The Proposed Amendment does not create a standalone category of reportable acquisitions. Instead, it brings certain acquisitions within the existing business-transfer framework, and the existing notification thresholds must still be met.

Under the Size-of-Parties threshold, one party must have worldwide assets or turnover of at least KRW 300 billion and the other at least KRW 30 billion. Where a foreign company is involved, the Korean turnover requirement of KRW 30 billion must also be satisfied to establish the requisite Korean nexus. Where the Size-of-Parties threshold is not met, the alternative Size-of-Transaction threshold requires a transaction value of at least KRW 600 billion (based on the transfer price in the case of a business transfer) and substantial business activities by the target in Korea.

As we anticipated in Vol. 13, these requirements may significantly limit the Proposed Amendment's reach, particularly for acquisitions of startups or targets lacking a sufficient Korean nexus. And because payments to personnel are excluded from the transfer price, the Size-of-Transaction threshold, rarely invoked since its introduction in 2021, is unlikely to fill the gap.

Final Remarks

The Proposed Amendment confirms that organized personnel may constitute a transferable business and aggregates consideration paid to the transferor regardless of label. Its reach, however, will be limited by the existing thresholds and by the exclusion of payments made directly to personnel.

Where an acquisition is subject to pre-closing notification, parties should review the implementation schedules of all related agreements, including employment, license, and asset transfer agreements, considering not only payment timing but also when personnel actually move, so that no act amounting to implementation occurs before clearance.

Shin & Kim will continue to monitor the finalization and implementation of the Proposed Amendment. Please feel free to contact us should you have any questions concerning Korean merger control regulations.

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