

Regulatory Reform of Korea for Foreign-Invested Companies

Office of the Foreign Investment Ombudsman

Dec 18th, 2023



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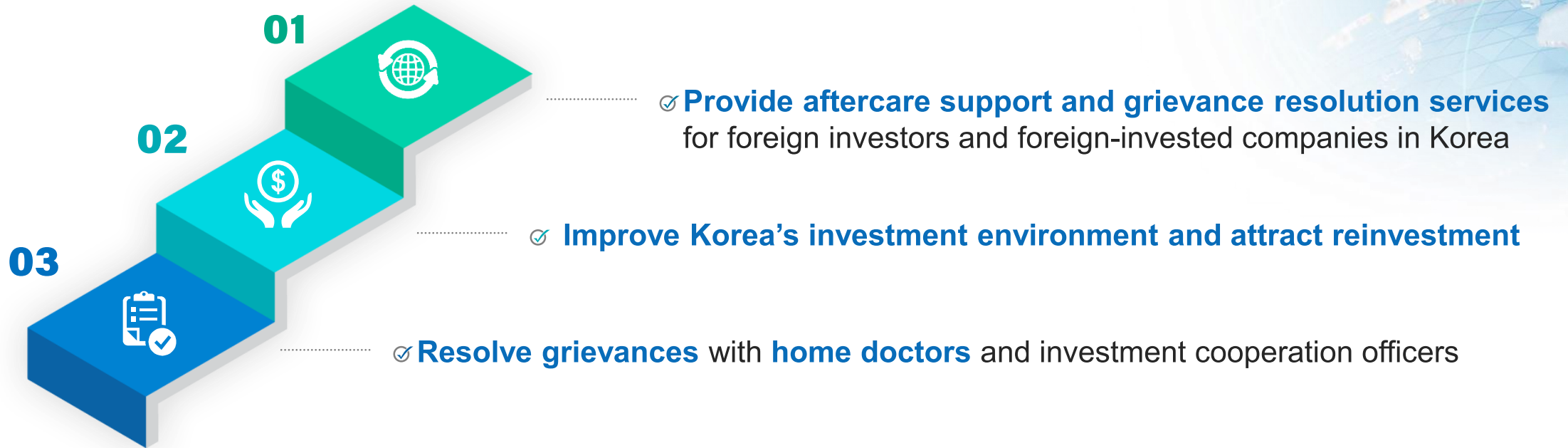


Foreign Investment Ombudsman

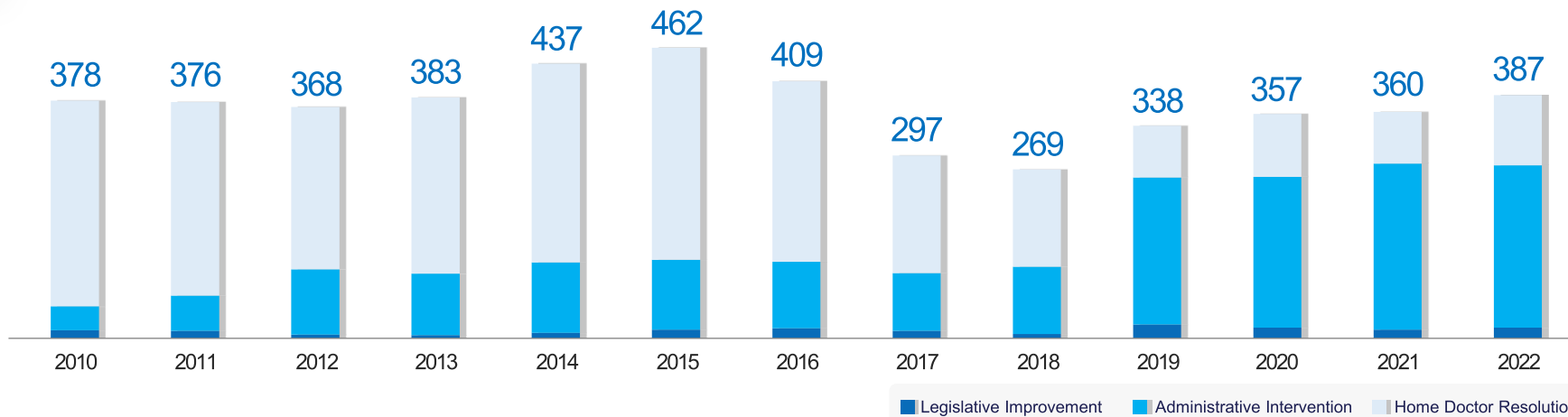


Foreign Investment Ombudsman

Role of the Office of the Foreign Investment Ombudsman



Number of Resolved Grievances by Year



405
Cases In 2023

FOREIGN INVESTMENT
OMBUDSMAN



Regulation Improvement in 2023



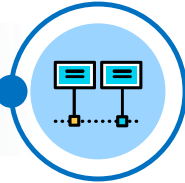
Regulation Improvement in 2023

1 Overview of Activities



→ Background

- ✓ Promote the improvement of regulations affecting foreign investment
- ✓ Attract high-quality investment and attain reinvestment



→ Period

- ✓ the whole year of 2023



→ Purpose

- ✓ Identify issues and difficulties of foreign-invested companies to create more business-friendly environment

Unresolved issues from 2022



- ✓ Follow-ups 132 cases
- ✓ Monitoring changes 11 cases
- ✓ More consultation

Review of policy proposals



- ✓ Suggestions from foreign chambers and companies (annually about 150 proposals in average)
 - SJC Policy Proposals (around 42 items)
 - ECCK White Paper (around 100 items)

Identify grievances

- ✓ Meetings
- ✓ Site visits
- ✓ Survey
- ✓ Ombudsman's website, etc.

1 Overview of Activities

➔ Undertake a differentiated procedure to facilitate the process of improving regulations (Aug. 2023)

Procedure



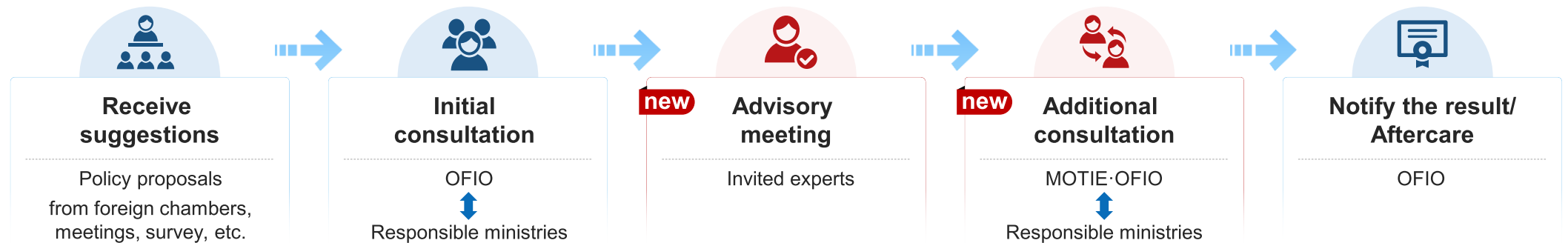
➔ Introduce a new stage **by inviting experts, to deliberate the review** of the responsible ministries

➔ The experts **examine and provide advice** on the ministry's review

➔ Depending on the outcome of Step 2, for **an item requiring further review**, conduct **additional consultations** with responsible ministries, or, for **an item that needs to maintain** the current system, notify the outcome to the ministries and close the discussion

☑ If necessary, another means, such as a **special task force by the government** or **Foreign Investment Ombudsman's recommendation**, may be implemented

Process of improving regulations for foreign-invested companies



2 Basic Directions in Improving Regulation

01

Policy suggestions from foreign chambers and companies

Thorough review to encourage practical outcomes

IPR

✓ Progress is being made by reflecting the proposals

Pharmaceuticals

✓ Further reviews and actions will be delivered to facilitate the development of new and innovative drugs

Eco-friendly area

✓ Positively deliberated to enhance the national competitiveness of Korea



**Grievance
cases**

01



**Stronger penalties
for intellectual property
right Infringement**

02



**Prevent the distribution
of counterfeits
in online market**

03



**Improve the risk sharing
agreement to better reward
innovative drugs**

Case 1 / Stronger penalties for intellectual property right infringement

Issue

Concern



Issue

- Despite the stipulated legal penalties, the actual sentences in Korea for IP infringement is comparatively lower to other countries
 - Undermine IPR(intellectual property right) protection



Suggestion

- Amend the sentencing guideline for IP infringement

Outcome; ACCEPTED

KIPO proposed to the Supreme Court to revise the sentencing guideline for IP infringement (Apr. 2023), and the 9th Sentencing Commission has adopted this subject as a revision item (Jun. 2023)



Case 2 / Prevent the distribution of counterfeits in online market



Issue Concern



Issue

- Online markets and social media are being used as primary channels for counterfeit goods, exposing consumers more easily to such products



Suggestion

- Establish a legal ground to adequately prevent the sale and distribution of counterfeits

Outcome; LONG-TERM REVIEW

KIPO is expected to insert requirements for online market operators to prevent counterfeits within the respective acts, and to ensure that systems are in place to protect the rights of consumers and trademark owners, by reflecting opinions of industry players and overseas cases

Case 3 / Improve the risk sharing agreement to better reward innovative drugs



Issue Concern



Suggestion

→ Request to cover medicine that results in clinically meaningful improvement in the quality of life compared to existing treatments, under the risk sharing agreement(RSA)

Outcome; ACCEPTED

MOHW recognized the value of innovative drugs for irreversible diseases* that significantly damage the quality of life, and insert such drugs in the coverage of the RSA (Sep. 2023)

* e.g. severe eosinophilic asthma

2 Basic Directions in Improving Regulation

02

Difficulties arising from unclear regulations

- ✓ Unclear regulations → Different interpretations and confusions among stakeholders
- ✓ More efforts will be made to provide a clear guidance and coherent interpretation of regulations, to address any difficulties experienced from the field



**Grievance
cases**

04



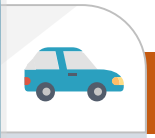
**Clarify modification report procedures
for vehicle energy efficiency
testing facilities**

Case 4 / Clarify modification report procedures for vehicle energy efficiency testing facilities



Issue

→ For automobile manufacturers, it is not clear whether reports for changes in facility to test energy consumption efficiency can be replaced with verification results from the ME. This can lead to a lack of timely reflection of the changes made



Suggestion

→ It is recommended that if a report is made to the ME regarding changes in testing facilities, MOTIE's reporting requirements should be considered fulfilled

Outcome; CLARIFY

MOTIE verified that the manufacturers may request to the MOTIE to substitute the report requirement with the confirmation result from the ME (Nov. 2023)



2 Basic Directions in Improving Regulation

03

Better business and living environment for foreign business

✓ Improve finance, environment, and certification system



✓ Harmonize with international standards



✓ Settlement and living environment



Grievance cases

05



Ease qualifications to submit MSDS data and to apply for non-disclosure review

06



Ease the KRW loan-to-deposit regulations

07



Improve the foreign exchange transaction reporting system

08



Exclude taxation on company-provided housing for foreign workers with flat tax rate

Case 5 / Ease qualifications to submit MSDS data and to apply for non-disclosure review

Issue

Concern



Issue

- When producing chemical products under OEM contracts, although a client is planning and developing the chemical product, only a consignee who directly produce the products was allowed to submit Material Safety Data Sheets(MSDS) and to apply for non-disclosure reviews



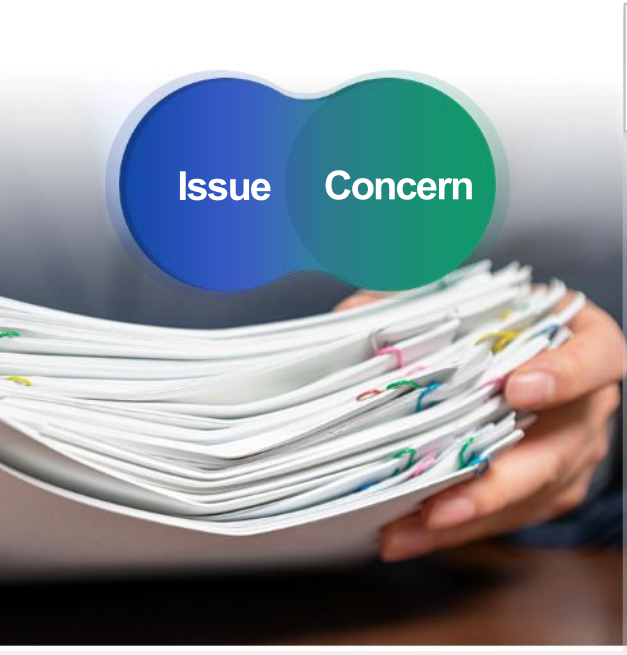
Concern

- This resulted in the client having to disclose trade secrets, like the full composition of the product, to the manufacturer

➤ Outcome; ACCEPTED

MOEL amended the 「Standard for classification, labeling, and MSDS of chemical substances」 in Feb. 2023 to allow clients in OEM production to directly prepare, submit, and request confidential assessments of MSDS

Case 6 / Ease the KRW loan-to-deposit ratio regulations



Issue

→ Considering the unique business model and stable funding from headquarters, foreign bank branches in Korea request exemption or an increased allowance ratio in the KRW loan-to-deposit ratio(LDR), and an expanded scope of KRW deposits in terms of funding



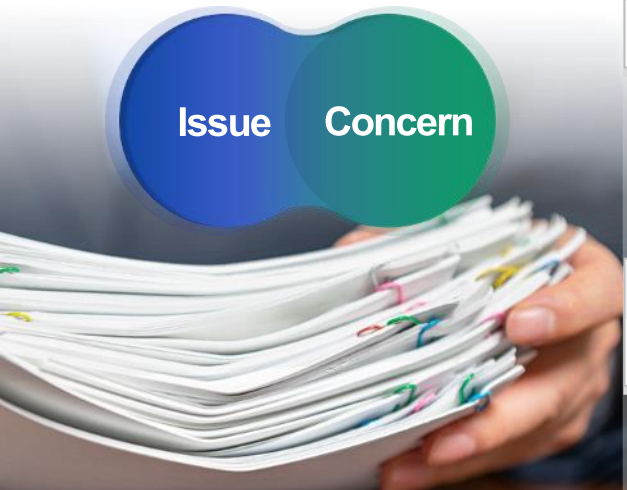
➤ Outcome; ACCEPTED

FSC amended Article 26 of the Banking Supervision Regulation in Feb. 2023

Ease the criteria for the KRW LDR

Expand the scope of recognizing KRW deposits

Case 7 / Improve the foreign exchange transaction reporting system



Issue

- Excessive regulations and complicated reporting requirements related to foreign exchange transactions
 - Hinder corporate activities

Suggestion

- Relax the foreign exchange regulations and reduce reporting items



Outcome; ACCEPTED

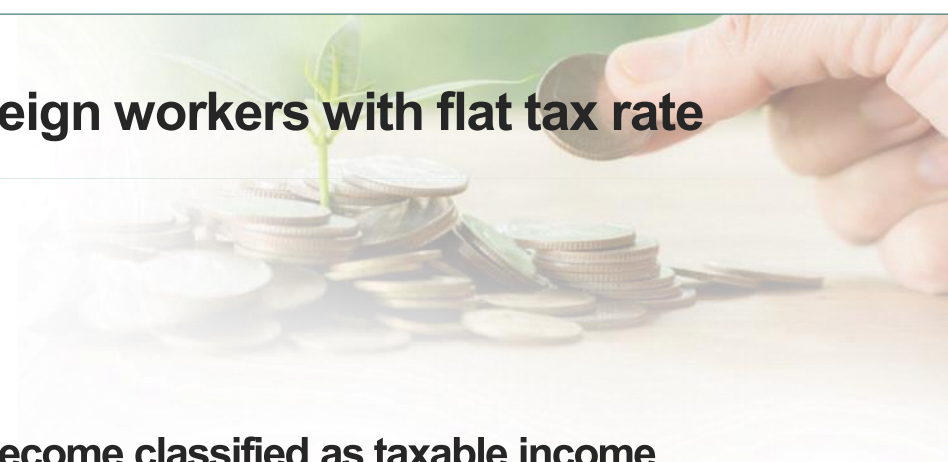
MOEF announced and implemented the amended Foreign Exchange Transaction Regulations in Jul. 2023

Increase in threshold for prior reporting requirement for capital transactions

The burden of engaging in foreign currency loan is alleviated as the threshold for reporting large-scale foreign currency loan is increased

Resolve inconvenience of foreign exchange transactions

Case 8 / Exclude taxation on company-provided housing for foreign workers with flat tax rate



Issue

→ Due to the revision of the Income Tax Act, the benefits from company-provided housing become classified as taxable income



Concern

→ This resulted in foreign workers under a flat tax rate facing increased income tax due to these benefits being included in their taxable income

Outcome; ACCEPTED

MOEF released the revised tax reform proposal for 2023, which excludes the benefits of company-provided housing for foreign workers under the flat tax rate from their taxable income

Enforcement Decree of the Income Tax Act and the Restriction of Special Taxation Act



2 Basic Directions in Improving Regulation

04

Continuous follow-up and monitoring

- ✓ For the cases that discussions are in early stage or that require further comprehensive reviews



**Grievance
cases**

9



**Rationalize the standards
for average greenhouse
gas emission
for heavy duty vehicles**

10



**Fermented alcoholic
beverages and volume-
based fee system**

11



**Disclose monthly (or quarterly)
power grid related
information for onshore and
offshore wind power**

Case 9 / Rationalize the standards for average greenhouse gas emission for heavy duty vehicles



Issue Concern



Issue

- For the reduction target of average greenhouse gas emissions for heavy-duty vehicles, it is recommended to calculate the industrial average of greenhouse gas emissions and provide the same reduction target based on the industrial average to manufacturers
- It is requested to apply the calculation method harmonized with overseas standards

Outcome; LONG-TERM REVIEW

ME to ensure smooth implementation of the guideline* from 2026, plans to consult with relevant ministries to comprehensively discuss and set rational standards for emission calculation methods

* 'Guideline for Application and Management of Standard of Average Energy Consumption Efficiency and Permissible Levels of Greenhouse Gas Emissions for Heavy Duty Vehicles'

Case 10 / Fermented alcoholic beverages and volume-based fee system



Issue Concern



Issue

- Request to include fermented alcoholic beverages (fruit liquor) and general distilled beverages into the volume-based fee system, such as the high-end wine and champagne markets that have recently shown growth

Outcome; LONG-TERM REVIEW

MOEF explained that, before amending the Liquor Tax Act, industry-wide consultations are necessary as there are differences in the level of tax burden between alcoholic beverages



Case 11 / Disclose monthly (or Quarterly) power grid related information for onshore and offshore wind power



Issue Concern



Issue

- For better predictability of business environment, it is requested that substation and transmission network information, grid information, etc. be disclosed for monthly or quarterly

Outcome; LONG-TERM REVIEW

MOTIE is deliberating measures to enhance the calculation method for grid's spare capacity and to disclose it to business operators, while the Korea Electric Power Research Institute is conducting the research by 2024

Further review of improvements in the scope, range, and methods of disclosing grid information will be carried out



Way Forward





Way Forward

Continuous Improvement of the Foreign Investment Environment

- ✓ Gather feedback and suggestion through various channels such as foreign chambers of commerce, roundtable meetings, and on-site visits, with an aim to resolve their difficulties and grievances



- ✓ Improve predictability of foreign investment-related regulations by sharing information about regulatory and institutional changes





Ministry of Trade,
Industry and Energy



kotra
Korea Trade-Investment
Promotion Agency

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THANK YOU

