

FSC INTRODUCES MEASURES TO FACILITATE CORPORATE MERGER AND ACQUISITION ACTIVITIES

The FSC announced a set of measures aimed at facilitating corporate merger and acquisition activities on May 8. In the second half of this year, the FSC also plans to announce additional policy agenda items for facilitating corporate M&A activities through coordination with the Ministry of Justice.

Corporate M&As are an important mechanism to boost management efficiency and reorganize the structure of an enterprise. They also help to increase the overall productivity of an economy as well as its recovery from a downturn. However, the corporate M&A market saw a significant decline recently due mainly to the worsening of macroeconomic conditions. Against this backdrop, the FSC prepared plans to (a) seek regulatory improvements on corporate M&As, (b) strengthen support for corporate restructuring through M&As, (c) support strategic M&A activities in line with industrial restructuring demand, and (d) make domestic rules on corporate M&As more congruent with global standards.

KEY DETAILS

Seek regulatory improvements on corporate M&As to propel growth momentum

Authorities plan to make improvements to some of the regulations that have been identified as unreasonable including those on public tender offer, corporate mergers and credit offering by investment banks. First, when making a public takeover bid, the burden of securing funds beforehand will be eased. A loan commitment from a trustworthy acquiring financial institution or an investment agreement from a limited partner will be recognized as an admissible document showing financial capability of a tender offeror. Second, in a spin-off or a post-spin-off merger, the process of converting CBs (convertible bonds) and BWs (bonds with warrants) will be streamlined as the electronic securities depository (Korea Securities Depository) will be allowed to get investor information directly from securities firms and process conversion of CBs and BWs electronically. Third, investment banks will be able to more actively offer credit to businesses for the purpose of refinancing their M&A-related debt as refinancing loans from investment banks will be recognized under the “additional credit offering limit” which allows investment banks to extend credit of up to 100 percent of their equity capital.

Strengthen support for corporate restructuring through M&As

First, authorities will make adjustment to the mandatory bid rule currently in place to ensure that it places no constraints to carrying out corporate M&A activities in a prompt and efficient manner. Second, authorities plan to set up additional corporate

restructuring innovation funds worth KRW1 trillion in 2023 to provide liquidity to corporate M&A activities. The Korea Asset Management Corporation (KAMCO)'s own business assistance program in conjunction with the investment from the corporate restructuring innovation fund will support the normalization of reorganized businesses.

Support strategic M&As in line with industrial restructuring demand

The role of policy finance will be strengthened in providing support for strategic M&A activities in future strategic sectors to help boost the global competitiveness of promising businesses. First, support for investment and loan programs as well as various consulting services (market research, overseas networking, takeover strategy planning, etc.) will be provided to facilitate companies to acquire technological competitiveness via a takeover of a foreign tech company or business expansion overseas. Second, a special lending program (KRW300 billion) and an investment fund (KRW100 billion) for SMEs will be created at the Industrial Bank of Korea to promote smaller-scale M&A activities by startups and SMEs. Third, authorities plan to offer new policy finance programs in support of business reorganization and restart of struggling enterprises.

Make domestic rules on corporate M&As more consistent with global standards

First, authorities plan to make relevant disclosure items more specific to enhance transparency in corporate disclosures regarding the process of mergers and the details of deliberation by company boards. With regard to the duty of having an external evaluation by a third party (accounting firm) in a merger between a listed company and an unlisted company, a more specific set of rules of conduct will be established for the third party performing the review to ensure the appropriateness of the merger price. For a merger between non-affiliated entities, the method of calculating the merger price will be decided on an autonomous basis on the assumption that the duty of external evaluation by a third party is observed. However, in order to prevent regulatory evasion, this will apply to mergers taking place between companies that have been non-affiliated entities to each other for at least a year.

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