

Environmental Legal Update

Winter 2021

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Regulatory Update on Product Packaging and Resource Recycling Requirements

We write to provide you an update on recent legislative development to expand the scope of wastes subject to the Extended Producer Responsibility (the “EPR”) system in Korea. On July 21, 2021, the Ministry of Environment (the “MOE”) issued a legislative notice of a proposed amendment to the Enforcement Decree of the Act on Promotion of Saving and Recycling of Resources. The proposed amendment adds 17 types of plastic wastes to the scope of the EPR system, which would require manufacturers and importers of the relevant products and packaging materials to collect and recycle a certain amount of wastes generated from their products and packaging materials. If the manufacturers and importers do not comply with this requirement, they will be required to pay a “recycling charge” which is more than the costs to be incurred to recycle the relevant wastes. The 17 types of plastic wastes that were newly added to the EPR list were originally under the list of wastes controlled and managed under the “voluntary agreement” system, a voluntary system that facilitates business and the government’s collaboration to meet certain environmental goals.

Among the 17 types of plastic wastes to be added to the EPR system, four types – which the MOE finds more readily recyclable – will be added to the EPR system starting from January 2022 and the other 13 types will be added to the EPR system from January 2023. The 17 types are as follows:

- 4 types of plastic wastes that will be subject to the EPR system from January 2022
 - Plastic film for industrial use
 - Plastic film for agricultural use
 - 20 categories of household products (e.g., airtight storage containers for kitchen use)
 - Replaceable filters for water purifiers
- 13 types of plastic wastes that will be subject to the EPR system from January 2023
 - Pallets
 - Safety nets (e.g., a net to prevent falling accidents)
 - Fishing nets
 - Ropes
 - Polyethylene pipes
 - Artificial lawn
 - Plastic shipping boxes
 - Profiles
 - PVC pipes
 - Floor materials
 - Heat insulating materials for buildings
 - Electricity power and telecommunication cables
 - Automobile maintenance parts

(*Please note that the standard cost of recycling, which serves as a basis for calculating the “recycling charge” for those manufacturers/importers who fail to meet the EPR requirement varies from KRW 327/kg (approx. 28 cents/kg) for household products to KRW 685/kg (approx. 58 cents/kg) for electricity power and telecommunication cables.)

With the addition of the 17 types of plastic wastes, the EPR system under the Recourse Recycling Act will govern 29 types of wastes in total: four types of packaging material wastes (paper packs, glass bottles etc.), eight types of product wastes (fluorescent lamps, buoys for fish farming etc.), and the 17 types of plastic wastes to be added if the proposed amendment passes. Please note that electronic and electric product wastes that must be recycled are separately provided under another statute, the Act on Resource Circulation of Electrical and Electronic Equipment and Vehicles (providing 50 types of wastes as wastes that must be recycled, such as heat exchanger, display devices and solar panels).

The proposed amendment imposes a more stringent requirement to collect and recycle plastic wastes that have been originally controlled and managed as wastes subject to “wastes charges.” This is in line with the current government’s ongoing initiative to re-assign wastes subject to “wastes charges” to wastes subject to the voluntary agreement system, and finally to the EPR system (*i.e.*, the strongest regulatory system on the scale). The proposed amendment is part of the government’s continued effort to promote efficient use of more resources by recycling materials, which have been treated as wastes under relevant statutes.

Since the proposed amendment may be finalized and promulgated soon, continued monitoring on further legislative development is advised.

Relaxed Environmental and Chemical Regulations

Recently, the Korean government declared its plan to relax certain environmental and chemical regulations when it announced the results of regulatory improvements made based on the general public's suggestions through the Innovation Policy Platform.

Specifically, the regulations to be relaxed include: (i) simplified documentary requirement for new chemical registration/reporting procedures in consideration of imported quantities and risks; (ii) adjustment of the grace period for submitting the Material Safety Data Sheet (the "MSDS"), thereby providing identical grace period to both manufacturer/importer of chemicals and manufacturer of intermediate products; and (iii) lowering the total permissible level of hydrocarbon emissions in consideration of the type of petrochemical storage facility and the properties of stored substances therein.

According to the press release by the Office for Government Policy Coordination, the specific details of each of the above plans are as follows.

Simplified documentary requirement for new chemical registration/reporting procedures

- Pursuant to the Act on the Registration and Evaluation, etc. of Chemicals (the "K-REACH"), chemical substances to be imported or manufactured in quantities greater than 0.1 ton/year are required to be registered, whereas those to be imported or manufactured in quantities less than 0.1 ton/year are required to be declared. However, as there have been criticisms that such standards are excessively stringent, the Korean government announced that it will (i) simplify the submission requirement on test results for the registration of new chemical substances with low risk of environmental hazardousness, which are to be imported or manufactured in quantities greater than 0.1 ton/year and less than 1 ton/year; and (ii) exempt the submission of detailed composition information for substances (except MSDS), which are to be imported for R&D purposes at quantities less than 0.1 ton/year.
- It is expected that a proposed amendment to the Enforcement Rules of K-REACH, which reflects the abovementioned changes, will be released in around April 2022.

Adjustment of the grace period for submitting MSDS

- In line with the amended Occupational Safety and Health Act (the "OSHA") which went into effect on January 16, 2021, submission of MSDS upon manufacturing or importing chemical substances became mandatory. However, for those who prepared and provided MSDS to their customers in accordance with the former version of OSHA prior to January 16, 2021, a different grace period (1~5 years) is provided depending on the quantities manufactured and/or imported per year.

- In situations where (i) specific raw materials are imported and sold to a manufacturer of intermediate products and (ii) the quantity of the intermediate products manufactured exceeds that of the raw materials imported and/or manufactured, the applicable grace period for the intermediate products may be shorter than the grace period for the raw materials. In this regard, there have been criticisms that there is a practical difficulty for manufacturer of intermediate products to adhere to its obligation to submit the MSDS within the prescribed period.
- To address this issue, the Korean government announced that it will extend the grace period for manufacturers of intermediate products for submission of MSDS until the maximum period, i.e., by January 16, 2026. However, where the manufacturers of intermediate products received MSDS from the manufacturer and/or importer of the corresponding raw materials, the existing standards for grace period will continue to apply (i.e., grace period in accordance with the manufactured quantity of the intermediate products).
- The abovementioned changes have been reflected in the partial amendment to the Enforcement Rules of OSHA, which was proposed on August 19, 2021. As such, there is a need to closely monitor whether/how the proposed amendment to the Enforcement Rules of OSHA actually becomes promulgated.

Lowering the total permissible level of hydrocarbon emissions

- In response to the criticism that the total permissible level of hydrocarbon emissions for petrochemical storage facilities are rather unreasonable, the Korean government announced that it will relax certain emissions limits in consideration of the type of the petrochemical storage facilities and the properties of the stored substances, as set forth below. These changes have also been reflected in the amended Enforcement Rules of the Clean Air Conservation Act (the “CACA”) which became effective on October 14, 2021.
 - For fixed roof type storage facilities, the permissible level of hydrocarbon emissions is 200ppm or lower. However, where the hydrocarbon concentration is mitigated by 95% or greater by way of connecting storage facility’s internal floating roof type to a preventive facility, the aforementioned permissible emissions level will not apply.
 - For internal floating roof type storage facilities, the total hydrocarbon concentration in exhaust gas is required to be mitigated by 90% or more, or at 50ppm or lower, by installing a preventive facility. However, where such facility was installed prior to July 16, 2019, the applicable standards will be relaxed based on the level of risk, and a certain grace period will also be provided.
- Furthermore, the Korean government has announced that it will provide additional, reasonable emissions limits with respect to polyolefin-type substances by June 2022.

Proposed enactment of the Enforcement Decree of the Carbon Neutrality Framework Act

On November 11, 2021, the Ministry of Environment (the “MOE”) announced the proposed enactment of the Enforcement Decree of the Framework Act on Carbon Neutrality and Green Growth (“Carbon Neutrality Framework Act”) (the “Proposed Enforcement Decree”). The Proposed Enforcement Decree aims to provide details required for the execution of items prescribed in the Carbon Neutrality Framework Act, which was legislated on September 24, 2021. These details can be broadly classified into (i) reduction of greenhouse gas (“GHG”) and strengthening of climate change response; (ii) elimination of economic, environmental, and social inequalities that can arise during transition to a carbon neutral society; and (iii) establishment, promotion, and activation of green technology and industry. The specific details are as follows.

Reduction of GHG and strengthening of climate change response

- **Setting the mid-to-long term GHG reduction goal at 40% (Articles 3 – 5)**: The mid-to-long term GHG reduction goal (Nationally Determined Contributions; “NDC”) for the achievement of carbon neutrality by 2050 (i.e., achievement of zero domestic GHG net emissions) is set as a reduction of 40% by 2030 compared to 2018. This explicitly reiterates the 2030 NDC announced by the government in the recent cabinet meeting held on October 27, 2021. The 2050 Carbon Neutrality Green Growth Committee will annually review the implementation status of the yearly NDC goal and disclose the result thereof.
- **Implementation of the climate change impact assessment scheme (Articles 21 – 23, [Table 2])**: The climate change impact assessment involves analysis of potential impacts of the key government plans and businesses on the climate and *vice versa*. Businesses that intend to engage in matters that are subject to the climate change impact assessment are required to conduct analysis/evaluation, taking into account of expected GHG emissions, reduction method, risks of climate change, and adaptation method, etc. In this regard, the Proposed Enforcement Decree designates specific businesses subject to the climate change impact assessment as follows.

Strategy environment impact assessment (policy plans)	Energy development, water resources development, mountainous area development, road construction, waste processing facility installation sector
Strategy environment impact assessment (general development plans)	Energy development, industrial site/complex establishment, city development, port construction, stream use and development, road construction, waste processing facility installation sector
Environment impact assessment (development businesses)	Energy development, industrial site/complex establishment, city development, road construction, airport construction, waste processing facility installation sector

* To be enforced from September 25, 2022 or September 25, 2023 depending on the sector

- **Establishment of standards for selecting businesses subject to the government's GHG emissions management (Article 28)**: Businesses (i) whose total average annual GHG emissions is calculated to be 50,000 tCO₂-eq or greater throughout the past three years (as of January 1 of the corresponding year) across all business sites; or (ii) which own a business site whose total average annual GHG emissions is calculated to be 15,000 tCO₂-eq or greater throughout the past three years (as of January 1 of the corresponding year), are designated as businesses that are subject to the government's management with respect to GHG emissions. Specifically, the government is required to set an NDC on an annual basis and notify the businesses to be managed. Such businesses are then required to submit their implementation plans by December 31 of the corresponding year.
- **Method and procedure for overseas reduction projects (Articles 48 – 54)**: Overseas reduction project refers to technical supports, investments and purchases, etc. executed for the purpose of obtaining the GHG reduction credits pursuant to Article 6 of the Paris Agreement. The Proposed Enforcement Decree provides that (i) the head of individual authorities such as the Ministry of Trade, Industry and Energy (the "MOTIE"), the MOE, and the Ministry of Land, Infrastructure and Transport (the "MOLIT") is required to grant preliminary approval on business plans submitted by businesses that carry out overseas reduction project, through the Reduction Deliberation Committee (the "Committee") established under the Government Policy Coordination Office; and (ii) such businesses are required to monitor the GHG reduction amount and report the result to the head of individual authorities. Through this, the Proposed Enforcement Decree provides for the method and procedure for preliminary approval, verification, and reporting of the overseas reduction projects.

Elimination of economic, environmental, and social inequality that may arise during transition to a carbon neutral society

- **Impact evaluation on employment status (Article 72)**: The Proposed Enforcement Decree requires the Minister of Employment and Labor (the "MOEL") to carry out an impact evaluation on employment status every five years and establish/execute support programs for areas or industries prone to climate change risks, by reflecting the result of the impact evaluation.
- **Designation of special areas of just transition (Article 73)**: The Proposed Enforcement Decree requires the Minister of MOTIE and the Minister of MOEL to designate special areas of just transition (e.g., areas where radical changes in social/economic environment are expected or have taken place during transition to a carbon neutral society, such as a dramatic decrease in employment, recession in the local economy, change in the employment environment due to changes in the industry structure, etc.) through discussion with the head of the relevant central administrative authority and deliberation by the Committee, thereby providing for the aspects necessary for the designation, change/withdrawal, support, etc. of special areas of just transition.

Key aspects relating to the establishment, promotion, and activation of green technology and green industry

- **Standardization and conformity certification on green technology/green industry**

(Articles 82 to 84): The Proposed Enforcement Decree requires the head of central administrative authorities to initiate and support the establishment of conformity evaluation system in coordination with the international standards, standardization methods for green technology, training of experts, etc. in order to establish the foundation of standardization on green technology and green industry in the relevant sectors. In this regard, the Proposed Enforcement Decree provides details on the method and procedure for standardization supports for green technology/green industry and conformity certification of green technology, etc.

- **Operation and management of climate response fund (Articles 92 to 100):** The Proposed Enforcement Decree provides details on the operation and management of the climate response fund, including the establishment of a fund account under the Bank of Korea, and operation of the Fund Operation Committee and submission of the relevant business plans.

It is expected that the overall direction of the Carbon Neutrality Framework Act, which aims to promote harmonious development of the economy and environment in conjunction with active GHG reduction measures, will serve as the foundation for the government's climate change response policy going forward. The announcement of the proposed enactment of the Proposed Enforcement Decree will remain in place until December 22, 2021, and is expected to be promulgated after regulatory review and deliberation by the Ministry of Government Legislation (the "MOLEG").