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Announcement of Proposed Subordinate Regulations for the Act on Special Measures for Strengthening Competitiveness of the National High-Tech Strategic Industries

On March 23, the Ministry of Trade, Industry and Energy ("**MOTIE**") announced the proposed Enforcement Decree and Enforcement Rules (the "**Proposed Subordinate Regulations**") of the Act on Special Measures for Strengthening the Competitiveness of National High-Tech Strategic Industries (the "**Special Act**"), with a public comment period from March 23 to May 2.

The Proposed Subordinate Regulations, prepared after consultation with various relevant industries and ministries, clarify the governance structure, requirements, and procedures for designation of national high-tech strategic technologies ("**Strategic Technologies**"), provide details regarding available government support, and include documents and forms to be submitted for protection of strategic technology and receiving support under the Special Act. The following summarizes the major points of the Proposed Subordinate Regulations for your reference.

1. **Specification of matters necessary for the composition and operation of the National High-Tech Strategic Industry Commission and the Technology Coordination Commission**

The Special Act newly established the National High-Tech Strategic Industry Commission as a control tower for policies on national high-tech strategic industries, and government members of the Commission include minister-level officials such as the Minister of Strategy and Finance; the Minister of Education; the Minister of Science and ICT; the Minister of MOTIE; the Chairperson of the Financial Services Commission; and the Director of the National

Intelligence Service (Article 12(1) of the Proposed Enforcement Decree).

Further, government members of the High-Tech Strategic Technology Coordination Commission (the "**Technology Coordination Commission**"), which is in charge of review of designation of strategic technologies, include vice-ministerial-level officials such as the Vice-Minister of Strategy and Finance, the Vice-Minister of MOTIE, the Deputy Director of the National Intelligence Service, the Commissioner of the Korean Intellectual Property Office, and the Minister of the Defense Acquisition Program Administration. If recommended by a member of the Technology Coordination Commission from MOTIE, a person with special knowledge and experience in the technology subject to the review may also become a member of the Technology Coordination Commission (Article 16(2)).

2. Scope of Strategic Technologies

MOTIE designates Strategic Technologies (1) through individual applications or (2) based on an annual survey of relevant companies and central administrative agencies conducted by MOTIE regarding the demand for strategic technologies (Articles 21(3) and 16(4)). Unlike the Industrial Technology Protection Act, under which national core technologies are designated by the Minister of MOTIE or the head of a relevant central administrative agency, the Special Act allows individual companies to apply for designation of technologies as Strategic Technologies as well.

While specific Strategic Technologies have yet to be designated, the Proposed Subordinate Regulations further explain how Strategic Technologies will be selected. In addition to the factors set forth in the Special Act (i.e., (1) the impact on the industrial supply chain and national/economic security, (2) growth potential and technical difficulty, (3) the ripple effects on other industries, (4) industrial importance, and (5) the impact on the national economy, such as export and employment), the Proposed Subordinate Regulations add the following factors for designation of Strategic Technologies: (1) the level of the technology within the country (e.g., existence of patents) and the stage of industrialization, (2) the size of trade and the structure of the international industrial supply chain, and (3) other matters deemed necessary for the protection and promotion of strategic technologies (Article 21(1)). Thus, technologies in an industry with a large market size, or technologies at an advanced level within the country may be designated as Strategic Technologies.

Interestingly, while in principle the designation of particular technologies as "strategic technologies" should be publicly disclosed, the Proposed Subordinate Regulations provide that designations may not be disclosed if the disclosure would pose a high risk of technology leakage (Article 21(4)). It is not clear how exactly such a "high risk" would be determined, but this raises the possibility that a company may not actually be able to determine on its own whether or not its technology constitutes a designated "strategic technology," and may need to submit an application to MOTIE to verify this information.

3. Establishment of basis for business support in case of emergency measures to stabilize supply and demand

In the event emergency measures are implemented to ensure stable supply and demand of strategic technology due to, e.g., natural disasters or drastic changes in international trade conditions, the Proposed Subordinate Regulations provide a legal basis for the government to provide necessary support to relevant business operators within budgetary limits (Article 19). Accordingly, business operators of Strategic Technology-related items may be provided with support for (1) costs required to change their production plans, (2) compensation for losses incurred from the establishment, implementation and change of supply plans (e.g., prioritized domestic supply), (3) costs required for transportation, storage, reserve and transfer, and (4) costs required for maintenance of logistics and distribution structures and improvement and expansion of related facilities for supply and demand.

4. Protective measures for Strategic Technology

Unlike the Industrial Technology Protection Act, the Special Act provides a basis for designating positions and professionals for handling Strategic Technologies (hereinafter "**Professionals**") and taking stronger protective measures to retain such Professionals and to prevent leakage of strategic technologies.

The Proposed Subordinate Regulations provide that the terms and conditions of an employment-related agreement between a Strategic Technology holder and a Professional may include (1) provision of information regarding a job change or start-up establishment, (2) penalties for violation of the agreement, and (3) overtime work plans for development, promotion and protection of Strategic Technology, thereby providing the legal grounds for the Strategic Technology holder to receive the above information from its resigning Professional even when one of its Professionals resigns to become employed by another company (Article 30(2)).

In addition, the Proposed Enforcement Decree provides a legal basis for applying to the Korea Immigration Service for the provision of entry/departure information regarding professionals if there is a reason to suspect the leakage of strategic technology, even without their consent, which may be used to detect potential leakage of technology in advance (Article 30(3)).

5. Support for Strategic Technology-related industries

A. Support for Specialized Strategic Industry Complexes

The Proposed Subordinate Regulations specify the requirements and documents to be submitted for the designation of a specialized complex for strategic industries (a "**Specialized Complex**") under Article 16(1) of the Special Act (Article 34(1) and (3) of the Proposed Enforcement Decree). The head of a relevant central administrative agency, the mayor/governor of a city/province, and other enterprises or trade associations related

to strategic industries may apply for the designation of a Specialized Complex, and any person who intends to apply for the designation of a Specialized Complex must submit an application for designation and a plan for the development of the Specialized Complex to the Minister of MOTIE. Upon receipt of the application for designation, the Minister of MOTIE must determine whether to grant the designation after deliberation by the Commission, and then notify the head of the relevant central administrative agency or the mayor/governor of the results of the determination (Article 34(6) of the Proposed Enforcement Decree).

If an area has already been previously designated as a specialized complex for the materials, components and equipment industries (an "MCE Specialized Complex") under Article 45 of the Act on Special Measures for the Strengthening of Competitiveness of the Materials, Components and Equipment Industries, and is now the subject of an application for designation as a Specialized Complex, the Proposed Subordinate Regulations allow the applicant to simply supplement its plan for promotion of the MCE Specialized Complex for use in applying for designation as a Specialized Complex, rather than preparing a plan for the development of the Specialized Complex from scratch (Article 34(4) of the Proposed Enforcement Decree).

The Proposed Subordinate Regulations also specify (1) support for infrastructure installation costs for roads and facilities (e.g., electricity supply facilities) (Article 38(1)); (2) support for operation of a Specialized Complex and occupant enterprises in the Specialized Complex (the "Occupant Enterprises"), including (i) site development, (ii) rent reduction/exemption, (iii) residential support for employees and (iv) projects for productivity improvement (e.g., technology development and joint cooperation) and export promotion (Article 38(2)); (3) support for costs necessary for maintenance, repair and improvement of industrial infrastructure facilities installed in the Specialized Complex (Article 40); (4) support related to the use of state-owned and public property by Occupant Enterprises (Article 41); and (5) expeditious processing of 24 types of complaints by Occupant Enterprises (Article 42).

B. Assistance to companies related to Strategic Industries

The Proposed Subordinate Regulations specify support for small and mid-sized enterprises in strategic industries, including (1) support that the government may provide in the course of litigation related to strategic industries, (2) industry-academia-research cooperation related to strategic industries, and (3) support for moving into a Specialized Complex (Article 43).