

# **Foreign Exchange Transactions Act of South Korea**

**Act No.5550, Sep.16,1998**

## **CHAPTER Ⅱ GENERAL PROVISIONS**

### Article 1 (Purpose)

The purpose of this Act is to contribute to the sound development of the national economy by striving to facilitate foreign transactions, to maintain the balance of international payments and to stabilize the currency value through guaranteeing the freedom of foreign exchange transactions or other foreign transactions and vitalizing the market functions.

### Article 2 (Objects of Application)

(1) This Act shall apply to the following matters:

1. Foreign exchange in the Republic of Korea, foreign exchange transactions performed in the Republic of Korea, or other acts related thereto;
2. Transactions, payment or receipt between the Republic of Korea and a foreign country, or other acts related thereto (including those which are performed in a foreign country and which have an effect in the Republic of Korea);
3. Transactions by a private person having a domicile or residence in a foreign country and a juristic person locating a main office in a foreign country which are indicated with the currency of the Republic of Korea or in which payment is able to be made with such currency, or other acts related thereto;
4. Acts which a private person having a domicile or residence in the Republic of Korea, or his agents, employees or other employed persons perform in connection with his property or affairs in a foreign country; or
5. Acts which representatives, agents, employees or other employed persons of a juristic person locating a main office in the Republic of Korea perform in connection with the property or affairs of the juristic person in a foreign country.

(2) The scope of "other acts related thereto" as referred to in paragraph (1) 1 through 3, shall be prescribed by the Presidential Decree.

### Article 3 (Definitions)

(1) The definitions of the terms used in this Act shall be as follows:

1. The term "domestic currency" means won currency which is the legal tender of the Republic of Korea;
2. The term "foreign currency" means any currency other than domestic currency;
3. The term "means of payment" means those as referred to in any of the following items:
  - (a) Government notes, bank notes, coins, checks, postal money orders, or letters of credit;
  - (b) Bills of exchange, promissory notes and other instructions of payment as prescribed by the Presidential Decree; or
  - (c) Vouchers, plastic cards or other articles in which the property value is inputted with electronic or magnetic methods and which many and unspecified persons are able to use for payment among them in lieu of currency, which are prescribed by the Presidential Decree;
4. The term "means of foreign payment" means foreign currency, means of payment indicated with foreign currency, or other means of payment which are able to be used in a foreign country without regard to the indicated currency;
5. The term "means of domestic payment" means any means of payment other than means of foreign payment;
6. The term "precious metals" means gold or ingots intermixed with gold, non-negotiable gold coins, or other products and processed articles which are chiefly made of gold;
7. The term "securities" means those as referred to in any of the following items:
  - (a) State and local bonds, debentures, and all other kinds of bonds;
  - (b) Stocks and quotas accruing from investments;
  - (c) Deeds vesting rights to those as referred to in items (a) and (b);
  - (d) Beneficiary certificates and interest coupons; or
  - (e) Other securities or deeds which are similar to those as referred to in items (a) through (d) and which are prescribed by the Presidential Decree;

8. The term "foreign currency securities" means securities indicated with foreign currency, or those which are able to be paid for in a foreign country;
9. The term "claims" means pecuniary claims which accrue from all kinds of deposits, trust, guarantee, lending and borrowing, etc. and which do not fall under subparagraphs 1 through 8;
10. The term "foreign currency claims" means claims indicated with foreign currency, or those which are able to be paid for in a foreign country;
11. The term "foreign exchange" means the means of foreign payment, foreign currency securities and foreign currency claims;
12. The term "residents" means any private person who has a domicile or residence in the Republic of Korea, and any juristic person whose main office is located in the Republic of Korea;
13. The term "nonresidents" means any private person and any juristic person other than residents: *Provided*, That branch offices, local offices or other offices of nonresidents located in the Republic of Korea, shall be deemed to be residents notwithstanding whether such offices have an agent's authority by law;
14. The term "foreign exchange affairs" means those as referred to in any of the following items:
  - (a) Issuance or purchase and sale of foreign exchange;
  - (b) Payment, collection and receipt between the Republic of Korea and a foreign country;
  - (c) Deposits, lending and borrowing of money, or guarantee with residents which is indicated or paid for with foreign currency;
  - (d) Deposits, lending and borrowing of money or guarantee with nonresidents; or
  - (e) Other affairs which are similar to those as referred to in items (a) through (d) and which are prescribed by the Presidential Decree;
15. The term "financial institutions" means institutions as referred to in subparagraphs 1 through 13 of Article 38 of the Act on the Establishment, etc. of Financial Supervisory Organizations, and other persons who conduct financial business and affairs related to finance and who are prescribed by the Presidential Decree;

16. The term "direct overseas investments" means the following transactions, acts or payment by residents:

- (a) Transactions or acts which are performed in order to establish continuous economic relations with a juristic person organized under the Acts and subordinate statutes of a foreign country (including a juristic person in course of organization) through acquiring securities issued by such a juristic person or lending money to such a juristic person, and which are prescribed by the Presidential Decree; and
- (b) Disbursement of funds which is performed in order to establish, enlarge or increase business offices in a foreign country and which is prescribed by the Presidential Decree.

17. The term "derivative financial transactions" means any transaction performed in the financial futures market or other similar transactions as prescribed by the Presidential Decree;

18. The term "capital transactions" means the following transactions or acts:

- (a) Transactions related to the generation, alteration or extinction of claims due to contracts for deposits, trust, lending and borrowing of money, guarantee of debts, or purchase and sale of means of foreign payment or claims between a resident and a nonresident (excluding transactions as referred to in item (f));
- (b) Transactions which are related to the generation, alteration or extinction of claims due to contracts for deposits, trust, lending and borrowing of money, guarantee of debts, purchase and sale of means of foreign payment, claims or others, or services between residents, and in which payment is able to be made with foreign currency (excluding transactions as referred to in item (f));
- (c) Acquisition of securities or any right related thereto by residents from nonresidents or *vice versa* (excluding transactions as referred to in item (f));
- (d) Issuance or collection of securities by residents in a foreign country, that of foreign currency securities by residents in the Republic of Korea, or that of securities by nonresidents in the Republic of Korea;

- (e) Issuance or collection of securities indicated or paid for with domestic currency by residents in a foreign country;
- (f) Derivative financial transactions between residents (limited to any transaction related to foreign exchange) or between a resident and a nonresident;
- (g) Acquisition of immovables in a foreign country or any right related thereto by residents, or acquisition of immovables in the Republic of Korea or any right related thereto by nonresidents;
- (h) Giving and receiving of funds, between the head office, branch offices, local offices or other offices of a juristic person which are located in the Republic of Korea (hereinafter referred to as "offices" in this item) and offices located in a foreign country, which are related to the establishment, enlargement or increase, or management, etc. of such offices, with the exception of such a case as referred to in item (a) (excluding giving and receiving of funds which are related to expenses necessary for the maintenance of offices and ordinary transactions and which are prescribed by the Presidential Decree); and
- (i) Other transactions or acts which are similar to those as referred to in items (a) through (h) and which are prescribed by the Presidential Decree.

(2) If distinction between a resident and a nonresident as referred to in paragraph (1) 12 and 13 is not obvious, such distinction shall be conformed to the Presidential Decree.

#### Article 4 (Striving for Facilitation of Foreign Transactions, etc.)

(1) The Minister of Finance and Economy shall strive for the facilitation of foreign exchange transactions and other foreign transactions by imposing restrictions as referred to in this Act only within required minimum limits.

(2) The Minister of Finance and Economy shall strive for the creation of the basis of stable demand for and supply of foreign exchange and the stabilization of the foreign exchange market, and shall devise policies therefore.

#### Article 5 (Exchange Rate)

(1) The Minister of Finance and Economy may determine the basic exchange rate in foreign exchange transactions, rate of purchase and sale of foreign exchange, and arbitrated exchange rate (hereinafter referred to as the "basic exchange rate, etc."), if it is necessary for harmonious and orderly foreign exchange transactions to do so.

(2) If the Minister of Finance and Economy determines the basic exchange rate, etc. pursuant to paragraph (1), residents and nonresidents shall perform transactions in conformity with such basic exchange rate, etc.

#### Article 6 (Suspension, etc. of Foreign Exchange Transactions)

(1) The Minister of Finance and Economy may, pursuant to the Presidential Decree, take measures as provided in any of the following subparagraphs, if such measures are deemed inevitable on account of the outbreak of natural calamities, wars, conflicts of arms, grave and sudden changes in domestic and foreign economic conditions, or other situations equivalent thereto:

1. Temporary suspension of payment, receipt (hereinafter referred to as the "payment, etc."), or the whole or a part of transactions to which this Act applies;  
or
2. Imposition of an obligation to safekeep, deposit or sell means of payment or precious metals in or to the Bank of Korea, government agencies, the foreign exchange equalization fund, or financial institutions.

(2) In a case deemed to fall under any of the following subparagraphs, the Minister of Finance and Economy may, pursuant to the Presidential Decree, take measures to put any person who intends to perform capital transactions under an obligation to obtain permission, or to put any person who performs capital transactions under an obligation to deposit part of means of payment acquired in such transactions in the Bank of Korea, the foreign exchange equalization fund or financial institutions:

1. In a case where international payments and international finance are confronted or are liable to be confronted with serious difficulty; or
2. In a case where the movement of capital between the Republic of Korea and a foreign country brings or is liable to bring on serious obstacles in carrying out currency policies, exchange rate policies and other macroeconomic policies.

(3) Measures as provided in paragraphs (1) and (2) may be taken for not more than six months unless there exist special grounds, and if grounds of such measures cease to exist, such measures shall be cancelled without delay.

(4) Measures as provided in paragraphs (1) through (3), shall not apply to investments by foreigners as provided in subparagraph 4 of Article 2 of the Foreign Investment Promotion Act.

#### Article 7 (Obligation of Recovery of Claims)

The Minister of Finance and Economy may, pursuant to the Presidential Decree, require residents holding claims against nonresidents to collect such claims and to recover them to the Republic of Korea, if it is deemed necessary for the stabilization of the foreign exchange market, etc. to do so.

### **CHAPTER ㄱ INSTITUTION TO DEAL WITH FOREIGN EXCHANGE AFFAIRS, ETC.**

#### Article 8 (Registration, etc. for Foreign Exchange Affairs)

(1) Any person who intends to make a business of foreign exchange affairs, shall prepare capital, facilities and professional human resources sufficient to conduct such affairs and register such affairs with the Minister of Finance and Economy in advance, pursuant to the Presidential Decree: *Provided*, That this shall not apply to any financial institution with respect to which the Minister of Finance and Economy deems such registration unnecessary by taking contents of affairs in consideration, and which is prescribed in the Presidential Decree.

(2) Only financial institutions may conduct foreign exchange affairs, and financial institutions which conduct foreign exchange affairs, may conduct such affairs within the scope having direct relations with their own affairs pursuant to the Presidential Decree.

(3) Any person, who intends to make a business of only affairs as provided in any of the following subparagraphs (hereinafter referred to as "money change affairs") among foreign exchange affairs notwithstanding the provisions of paragraph (1), shall prepare facilities necessary for conducting money change affairs and register

such affairs with the Minister of Finance and Economy in advance, pursuant to the Presidential Decree:

1. Purchase and sale of foreign currency; or
2. Purchase of a traveler's check issued in a foreign country.

(4) If any financial institution which has registered foreign exchange affairs pursuant to main sentence of paragraph (1) and any person who has registered money change affairs pursuant to paragraph (3) (hereinafter referred to as a "money changer"), intend to modify matters prescribed by the Presidential Decree among those which have been registered or to cease foreign exchange affairs or money change affairs, they shall, in advance, report such modification or cessation to the Minister of Finance and Economy pursuant to the Presidential Decree.

(5) Any financial institution which has registered foreign exchange affairs pursuant to paragraph (1) (including any person who does not register such affairs pursuant to proviso of paragraph (1); hereinafter referred to as an "institution to deal with foreign exchange affairs"), shall obtain the authorization of the Minister of Finance and Economy in making a contract concerning affairs to which this Act applies with foreign financial institutions, if such authorization is deemed necessary for the sound development of the national economy and maintenance of international peace and security, etc. and is prescribed by the Presidential Decree.

(6) Matters necessary for an institution to deal with foreign exchange affairs and a money changer conducting their affairs, shall be prescribed by the Presidential Decree.

#### Article 9 (Affairs of Brokerage of Foreign Exchange, etc.)

(1) Persons who intend to make a business of the brokerage of purchase and sale, interchange, and lending of foreign exchange (excluding foreign currency securities), that of derivative financial transactions, or affairs related thereto (hereinafter referred to as "affairs of brokerage of foreign exchange"), shall prepare capital, facilities and professional human resources sufficient to conduct affairs of brokerage of foreign exchange and obtain the authorization of the Minister of Finance and Economy, pursuant to the Presidential Decree.

(2) If persons who have obtained the authorization for affairs of brokerage of foreign exchange pursuant to paragraph (1) (hereinafter referred to as "companies for brokerage of foreign exchange"), intend to merge or dissolve them, to cease, transfer or take over the whole or a part of their business, or to modify any important matter prescribed by the Presidential Decree among matters which have been authorized, they shall obtain the authorization of the Minister of Finance and Economy or report such merger, dissolution, cessation, transfer, taking over, or modification to the Minister of Finance and Economy, in accordance with the classification prescribed by the Presidential Decree.

(3) For the purpose of the faithful performance of affairs of brokerage of foreign exchange, the Minister of Finance and Economy may, pursuant to the Presidential Decree, have companies for brokerage of foreign exchange deposit guaranty money in an institution designated by him.

(4) If companies for brokerage of foreign exchange intend to conduct affairs of brokerage of foreign exchange in a foreign country, they shall obtain the authorization of the Minister of Finance and Economy pursuant to the Presidential Decree.

(5) Matters necessary for companies for brokerage of foreign exchange conducting their affairs, shall be prescribed by the Presidential Decree.

#### Article 10 (Obligation of Confirmation in Conducting Affairs)

An institution to deal with foreign exchange affairs, a money changer, and a company for brokerage of foreign exchange (hereinafter referred to as an "institution to deal with foreign exchange affairs, etc."), shall confirm whether transactions with or payment to their customers, etc. is permitted or reported under this Act in performing transactions to which this Act applies with such customers: *Provided*, That this shall not apply to negligible transactions which are determined and announced by the Minister of Finance and Economy.

#### Article 11 (Supervision of Affairs and Regulation for Maintenance of Soundness, etc.)

(1) The Minister of Finance and Economy may supervise affairs of an institution to deal with foreign exchange affairs, etc. (including business offices of an institution to deal with foreign exchange affairs, etc. which are located in a foreign country; hereinafter the same shall apply in this Article), and may issue any order necessary for such supervision.

(2) The Minister of Finance and Economy may, pursuant to the Presidential Decree, impose necessary restrictions on affairs of an institution to deal with foreign exchange affairs, etc., if such restrictions are deemed necessary for the maintenance of the stabilization of the foreign exchange market and soundness of an institution to deal with foreign exchange affairs, etc.

#### Article 12 (Revocation of Authorization, etc.)

(1) If an institution to deal with foreign exchange affairs, etc. violates this Act or any order issued under this Act, the Minister of Finance and Economy may take the following measures pursuant to the Presidential Decree:

1. Revocation of the registration or authorization as referred to in Articles 8 and 9;
2. Restriction of affairs, or suspension of a part or the whole of affairs; and
3. Suspension or restriction of affairs in respect of any business office which commits such violations.

(2) If the Minister of Finance and Economy intends to revoke the registration or authorization pursuant to paragraph (1) 1, he shall hold a hearing.

### **CHAPTER ㊦ FOREIGN EXCHANGE EQUALIZATION FUND**

#### Article 13 (Foreign Exchange Equalization Fund)

(1) In order to facilitate foreign exchange transactions, the foreign exchange equalization fund shall be established as the fund as provided in Article 7 of the Budget and Accounts Act.

(2) The foreign exchange equalization fund shall be created with the following financial resources:

1. Contributions from the Government;
2. Funds created by issuing bonds under the foreign exchange equalization fund;

3. Prereceipts or temporary loans from any foreign government, any foreign central bank, or other residents or nonresidents;
4. Prereceipts as provided in Article 6 (1) 2 and (2); and
5. Other funds necessary for the facilitation of foreign exchange transactions as prescribed by the Presidential Decree.

(3) The foreign exchange equalization fund shall be operated with the following methods:

1. Purchase and sale of foreign exchange;
2. Deposits in or lending to the Bank of Korea, any foreign government, any foreign central bank, or domestic and foreign financial institutions;
3. Payment which is temporarily made on behalf of the State before the State makes payment with reserve funds or revised supplementary budgets for the purpose of the redemption of foreign currency debts of an institution to deal with foreign exchange affairs guaranteed by the State; and
4. Other methods which are deemed necessary for the facilitation of foreign exchange transactions and which are prescribed by the Presidential Decree.

(4) If debts are paid by the foreign exchange equalization fund on behalf of the State pursuant to paragraph (3) 3, the Government shall take measures to make up for such payment.

(5) The creation and operation of the foreign exchange equalization fund as provided in paragraphs (2) and (3), may be made with means of domestic or foreign payment.

(6) The foreign exchange equalization fund shall be operated and managed by the Minister of Finance and Economy.

(7) The Minister of Finance and Economy may issue bonds under the foreign exchange equalization fund.

(8) Matters necessary for the operation and management of the foreign exchange equalization fund, the amount of interest to be paid for prereceipts and the issuance of bonds under the foreign exchange equalization fund, etc., shall be prescribed by the Presidential Decree.

(9) The Minister of Finance and Economy may, pursuant to the Presidential Decree, issue a certificate of deposit for the funds deposited in the foreign exchange equalization fund under paragraph (2). In this case, the Minister of Finance and Economy may determine purposes for which such a certificate of deposit may be used.

#### Article 14 (Redemption of Principal and Interest of Bonds under Fund)

(1) The principal and interest accruing from the issuance of bonds under the foreign exchange equalization fund, may be redeemed with an annual settlement surplus in general accounts in accordance with the procedures as provided in Article 47 of the Budget and Accounts Act.

(2) A sum redeemable with an annual settlement surplus in general accounts under paragraph (1), shall be a sum calculated by adding or subtracting any profit and loss caused by the operation of the foreign exchange equalization fund other than the interest accruing from bonds under the foreign exchange equalization fund, to or from such interest.

### **CHAPTER ㉞ PAYMENT AND TRANSACTIONS**

#### Article 15 (Permission of Payment, etc.)

(1) The Minister of Finance and Economy may require residents and nonresidents who intend to make any payment from the Republic of Korea to a foreign country, or residents who intend to make any payment to nonresidents or to take any receipt from nonresidents to obtain permission in making such payment, etc. pursuant to the Presidential Decree, in a case where such permission is deemed to fall under any of the following subparagraphs:

1. In a case where it is especially necessary for the maintenance of the balance of international payments;
2. In a case where it is inevitable for the faithful fulfillment of obligations under treaties concluded by the Republic of Korea and generally recognized international laws and rules; or

3. In a case where it is necessary for contributing especially to international endeavor for the maintenance of international peace and security.

(2) The provisions of paragraph (1) shall not apply to residents or nonresidents who intend to make payment, etc. as provided in any of the following subparagraphs:

1. Payment, etc. related to capital transactions permitted or reported under Articles 6 (2) and 18; or
2. Payment, etc. related to export or import of goods recognized under the Foreign Trade Act.

(3) Any resident or nonresident who intends to perform transactions or acts which have to be permitted or reported under this Act, shall not make any payment, etc. related to such transactions or acts without obtaining such permission or making such report.

#### Article 16 (Report of Methods of Payment, etc.)

In a case where a resident falls under any of the following subparagraphs in settling any claim and debt caused by transactions or acts between a resident and a nonresident or between nonresidents (excluding a case where any person who has obtained permission or has made report under Article 18, makes the payment, etc. in conformity with such permitted or reported methods), he shall, in advance, report methods of payment, etc. for such settlement to the Minister of Finance and Economy pursuant to the Presidential Decree: *Provided*, That this shall not apply to ordinary transactions determined by the Minister of Finance and Economy:

1. In a case where he makes any settlement by entering on the credit or debit side of accounts, such as setoff;
2. In a case where he makes any settlement after such a period as determined by the Minister of Finance and Economy expires;
3. In a case where he makes any payment, etc. to a person who is not a party concerned in the transaction in question, or he is not a party concerned in the transaction in question, who makes any payment, etc. to a nonresident who is a party concerned therein; or

4. In a case where he makes any payment, etc. without going through an institution to deal with foreign exchange affairs.

Article 17 (Permission, etc. of Export and Import of Means of Payment, etc.)

The Minister of Finance and Economy may, pursuant to the Presidential Decree, have any resident or nonresident who intends to export or import means of payment, precious metals or securities obtain permission to export or import such means of payment, precious metals or securities, or report such export or import to a customhouse, if such permission or report is deemed necessary for ensuring the effectiveness of this Act and is prescribed by the Presidential Decree.

Article 18 (Report, etc. of Capital Transactions)

(1) Any person who intends to perform capital transactions, shall report such capital transactions to the Minister of Finance and Economy pursuant to the Presidential Decree: *Provided*, That this shall not apply to negligible or standardized capital transactions designated by the Minister of Finance and Economy pursuant to the Presidential Decree.

(2) Notwithstanding the provisions of paragraph (1), any person who intends to perform capital transactions falling under any of the following subparagraphs, shall obtain the permission of the Minister of Finance and Economy:

1. Contracts for deposits or trust between a resident and a nonresident;
2. Contracts for lending of money or guarantee of debts which a resident makes with a nonresident;
3. Derivative financial transactions, or contracts for the purchase and sale of means of foreign payment between a resident and a nonresident;
4. Acquisition of securities or any right related thereto by a resident from a nonresident;
5. Capital transactions which are not provided in subparagraphs 1 through 4 and which are performed by a resident other than a juristic person established for profit; or
6. Other capital transactions which are similar to those as provided in subparagraphs 1 through 4 and which are prescribed by the Presidential Decree.

(3) Notwithstanding the provisions of paragraph (2), capital transactions falling under any of the following subparagraphs, may be an object of report as provided in paragraph (1), or may be excepted from an object of permission and report, in accordance with the classification as prescribed by the Presidential Decree:

1. Transactions which are performed by an institution to deal with foreign exchange affairs, etc. as its own affairs and which are determined by the Minister of Finance and Economy;
2. Transactions falling under any of the following items which are performed by any company for brokerage of foreign exchange or futures trading businessman as prescribed in the Futures Trading Act as a broker:
  - (a) Derivative financial transactions; or
  - (b) Contracts for purchase and sale of means of foreign payment between a resident and a nonresident;
3. Direct overseas investments made by a juristic person established for profit;
4. Transactions in which a resident acquires securities or any right related thereto from a nonresident and in which any securities company as prescribed in the Securities and Exchange Act or consignment company as prescribed in the Securities Investment Trust Business Act carries out purchase and sale on consignment, brokerage, and sale as an agent; or
5. Other transactions which are deemed to fail to bring on any obstacle in ensuring the effectiveness of this Act even though relevant capital transactions are performed without obtaining permission and which are designated by the Minister of Finance and Economy.

(4) With respect to direct overseas investments and acquisition of overseas immovables or any right related thereto by a resident among matters required to be reported to the Minister of Finance and Economy under paragraphs (1) and (3), the Minister of Finance and Economy may examine contents thereof and determine whether the report is accepted.

(5) With respect to such report as provided in paragraph (4), the Minister of Finance and Economy shall make the determination falling under any of the following subparagraphs and notify a person who has made report of such determination, within such a period of disposing of report as prescribed by the Presidential Decree:

1. Acceptance of report;
2. Refusal of the acceptance of report; and
3. Recommendation of any modification of the contents of transactions.

(6) If the Minister of Finance and Economy has made the determination falling under paragraph (5) 2, any resident who has made report shall not perform the transactions in question.

(7) If any person who has received the notice of recommendation as provided in paragraph (5) 3, accepts such recommendation, he may perform the transactions in question in conformity with such terms or conditions as he accepts, or otherwise he shall not perform such transactions.

(8) If there is no notice concerning whether the report is accepted or the modification is recommended from the Minister of Finance and Economy within such a period of disposing of report as provided in paragraph (5), such report shall be deemed to have been accepted with the lapse of such a period.

## **CHAPTER 3 SUPPLEMENTARY PROVISIONS**

### Article 19 (Administrative Disposition)

(1) If the parties concerned in transactions to which this Act applies, perform such transactions in violation of this Act or any order issued under this Act (excluding any case which falls under Article 12), the Minister of Finance and Economy may give them a warning, suspend or restrict relevant foreign exchange transactions or payment for a period not exceeding one year, or revoke permission.

(2) The provisions of Article 12 (2) shall apply *mutatis mutandis* to the disposition of revocation of permission as provided in paragraph (1).

(3) The criteria of the disposition as provided in paragraph (1) or other necessary matters, shall be prescribed by the Presidential Decree.

### Article 20 (Report and Inspection)

(1) The Minister of Finance and Economy may have residents holding claims against nonresidents report the present condition of such claim holdings to him pursuant to the Presidential Decree, if it is deemed necessary for ensuring the effectiveness of this Act to do so.

(2) The Minister of Finance and Economy may have the Bank of Korea, the Financial Supervisory Service, an institution to deal with foreign exchange affairs, etc., and the parties or other persons concerned in transactions to which this Act applies make necessary report, or may require heads of the administrative agencies concerned to submit pertinent materials or information, if it is deemed necessary for the enforcement of this Act to do so. In this case, heads of the administrative agencies concerned shall comply with such requirement unless there exist special grounds.

(3) The Minister of Finance and Economy may have public officials under his control inspect affairs of an institution to deal with foreign exchange affairs, etc. and the parties or other persons concerned in transactions to which this Act applies, if it is deemed necessary for the enforcement of this Act to do so.

(4) The Minister of Finance and Economy may require an institution to deal with foreign exchange affairs, etc. and the parties or other persons concerned in transactions to which this Act applies to submit materials relevant to their affairs and property, if it is deemed necessary for the efficient inspection to do so.

(5) If any illegal fact is found out as a result of the inspection as provided in paragraph (3), the Minister of Finance and Economy may order that such an illegal fact be corrected, or may take other necessary measures.

(6) The Minister of Finance and Economy may, pursuant to the Presidential Decree, entrust the Governor of the Bank of Korea, the Governor of the Financial Supervisory Service or other persons as prescribed by the Presidential Decree with such affairs as provided in paragraphs (3) through (5) and have any member of the staff under their control conduct such affairs, if it is deemed necessary to do so.

(7) Any person who performs the inspection under paragraph (3) or (6), shall carry a certificate indicating his competence, and shall show it to the persons concerned.

#### Article 21 (Notification, etc. to Head of National Tax Administration, etc.)

Notwithstanding the provisions of other Acts, the Minister of Finance and Economy may directly notify the Head of the National Tax Administration or the Head of the Korea Customs Service of the following matters or order the Governor of the Bank of Korea, heads of institutions to deal with foreign exchange affairs, etc. or heads of

customhouses to whom this Act applies, or other persons as prescribed by the Presidential Decree to notify the Head of the National Tax Administration or the Head of the Korea Customs Service of such matters, and may have any person designated by him (hereinafter referred to as a "concentration institution" in this Article) interchange and make practical use of such matters among institutions to deal with foreign exchange affairs or order a concentration institution to offer such matters to credit information collection agencies as provided in Article 17 of the Use and Protection of Credit Information Act, if it is deemed necessary for ensuring the effectiveness of this Act to do so:

1. Matters concerning the export or import of means of payment, precious metals or securities;
2. Matters concerning the purchase and sale of foreign exchange;
3. Matters concerning the payment and receipt of foreign exchange;
4. Matters concerning capital transactions; and
5. Other matters as determined by the Minister of Finance and Economy.

#### Article 22 (Guarantee of Secrecy of Foreign Exchange Transactions)

A person engaged in affairs related to such permission, authorization, registration, report, notification, brokerage, relay, concentration or interchange, etc. as prescribed in this Act, shall not use any information which he has obtained in connection with such affairs for purposes other than those as prescribed by this Act, or shall not divulge such information to other persons, except for such cases as otherwise provided in Article 4 of the Act on Real Name Financial Transactions and Guarantee of Secrecy.

#### Article 23 (Delegation or Entrustment, etc.)

(1) The Minister of Finance and Economy may, pursuant to the Presidential Decree, delegate or entrust part of his authority as prescribed in this Act to the Financial Supervisory Commission, the Securities Futures Commission, heads of the administrative agencies concerned, the Governor of the Bank of Korea, the Governor of the Financial Supervisory Service, heads of institutions to deal with

foreign exchange affairs, etc., or other persons as prescribed by the Presidential Decree.

(2) Any person in charge of affairs as referred to in paragraph (1) of this Article and Article 20 (6), and an officer or member of the staff under his control (excluding a public official, and a person who is deemed to be a public official by other Acts), shall be deemed to be a public official in the application of the penal provisions as referred to in the Criminal Act or other Acts.

#### Article 24 (Permission by Means of Electronic Documents, etc.)

(1) The Minister of Finance and Economy may, pursuant to the Presidential Decree, make such permission, authorization, notice or notification as prescribed in this Act by means of electronic documents (including the presentation of materials by means of computer networks or computer processing equipments; hereinafter the same shall apply in this Article).

(2) The Minister of Finance and Economy may order an institution to deal with foreign exchange affairs, etc. and other parties to or persons interested in transactions to whom this Act applies to make report or an application, to give information, or to make the notification and presentation of relevant materials by means of electronic documents, if it is deemed necessary for ensuring the effectiveness of this Act to do so.

#### Article 25 (Management of Business, etc.)

(1) The Minister of Finance and Economy may determine the procedure of management of business or payment, etc. and other necessary matters, if it is deemed necessary for ensuring the efficient operation and effectiveness of this Act to do so.

(2) The Minister of Finance and Economy may designate one or more juristic persons or organizations among juristic persons or organizations having a connection with foreign exchange affairs, and may operate them as institutions to relay, concentrate or interchange materials concerning foreign exchange transactions or payment, etc.

#### Article 26 (Relations to Other Acts)

The provisions of Articles 20, 23, 24 and 25 (2) shall apply in preference to the provisions of Article 4 of the Act on Real Name Financial Transactions and Guarantee of Secrecy.

### **CHAPTER ㄅ PENAL PROVISIONS**

#### Article 27 (Penal Provisions)

(1) A person who falls under any of the following subparagraphs, shall be punished by imprisonment for not more than three years or by a fine not exceeding two hundred million won: *Provided*, That if the triple of value of objects with respect to which a violation is committed, exceeds two hundred million won, a fine shall not exceed the triple of value of such objects:

1. A person who performs transactions out of accordance with the basic exchange rate, etc. in violation of the provisions of Article 5 (2);
2. A person who makes payment, etc. or transactions in violation of such measures as provided in Article 6 (1) 1;
3. A person who violates an obligation of safekeeping, deposit or sale according to such measures as provided in Article 6 (1) 2;
4. A person who performs capital transactions without obtaining permission according to such measures as provided in main sentence of Article 6 (2) or after obtaining such permission with any falsity or other wrongful methods, or who violates an obligation of deposit;
5. A person who conducts foreign exchange affairs without making such registration as provided in main sentence of Article 8 (1) or after making such registration with any falsity or other wrongful methods (including any person who conducts foreign exchange affairs after making such report of closure as provided in Article 8 (4) with any falsity and any person who conducts foreign exchange affairs in violation of such measures as provided in Article 12 (1) 2 and 3);
6. A person who conducts money change affairs without making such registration as provided in Article 8 (3) or after making such registration with any falsity or

- other wrongful methods (including any person who conducts money change affairs after making such report of closure as provided in Article 8 (4) with any falsity and any person who conducts money change affairs in violation of such measures as provided in Article 12 (1) 2 and 3);
7. A person who conducts affairs of brokerage of foreign exchange without obtaining such authorization as provided in Article 9 (1), (2) or (4) or after obtaining such authorization with any falsity or other wrongful methods (including any person who conducts affairs of brokerage of foreign exchange after making such report of merger, dissolution, transfer, taking over or closure as provided in Article 9 (2) with any falsity and any person who conducts affairs of brokerage of foreign exchange in violation of such measures as provided in Article 12 (1) 2 and 3);
  8. A person who makes payment, etc. without obtaining such permission as provided in Article 15 (1) or after obtaining such permission with any falsity or other wrongful methods, or who makes payment, etc. in violation of the provisions of paragraph (3) of the same Article;
  9. A person who exports or imports the means of payment, precious metals or securities without obtaining such permission as provided in Article 17 or after obtaining such permission with any falsity or other wrongful methods; and
  10. A person who performs capital transactions without obtaining such permission as provided in Article 18 (2) or after obtaining such permission with any falsity or other wrongful methods.
- (2) Attempts to commit a violation of the provisions of paragraph (1) 9, shall be punished.
- (3) Such punishments as provided in paragraph (1), may be imposed concurrently.

#### Article 28 (Penal Provisions)

- (1) A person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than two years or by a fine not exceeding one hundred million won: *Provided*, That if the triple of value of objects with respect to which a violation is committed, exceeds one hundred million won, a fine shall not exceed the triple of value of such objects:

1. A person who fails to retrieve claims to the Republic of Korea in violation of the provisions of Article 7;
  2. A person who makes payment, etc. without making such report as provided in Article 16 or after making false report;
  3. A person who exports or imports the means of payment, precious metals or securities without making such report as provided in Article 17 or after making false report;
  4. A person who performs capital transactions without making such report as provided in Article 18 (1) or (3) or after making false report (including any case of a violation of the provisions of paragraph (6) or (7) of the same Article);
  5. A person who violates the provisions of Article 22.
- (2) Attempts to commit a violation of the provisions of paragraph (1) 3, shall be punished.
- (3) Such punishments as provided in paragraph (1), may be imposed concurrently.

#### Article 29 (Penal Provisions)

(1) A person who falls under any of the following subparagraphs shall be punished by imprisonment for not more than one year or by a fine not exceeding fifty million won: *Provided*, That if the triple of value of objects with respect to which a violation is committed, exceeds fifty million won, a fine shall not exceed the triple of value of such objects:

1. A person who conducts foreign exchange affairs or money change affairs without making such report of modification as provided in Article 8 (4) or after making such report with any falsity;
2. A person who makes a contract without obtaining such authorization as provided in Article 8 (5) or after obtaining such authorization with any falsity or other wrongful methods;
3. A person who conducts affairs of brokerage of foreign exchange without making such report of modification as provided in Article 9 (2) or after making such report with any falsity;
4. A person who performs transactions in violation of the provisions of Article 10;

5. A person who performs transactions or makes payment, etc. in violation of such dispositions as provided in Article 19 (1) (excluding a warning and revocation of permission);
- (2) Such punishments as provided in paragraph (1), may be imposed concurrently.

#### Article 30 (Confiscation and Collection in Lieu of Confiscation)

Foreign exchange and other securities, precious metals, immovables and means of domestic payment acquired by a person who falls under any of subparagraphs of Articles 27 (1), 28 (1) and 29 (1) through such acts as provided therein, shall be confiscated, and if it is impossible to confiscate them, the value thereof shall be collected in lieu of such confiscation.

#### Article 31 (Joint Penal Provisions)

If the representative of a juristic person, or an agent, employee or other employed persons of a juristic person or private person commit such violations as provided in Articles 27 through 29 in connection with the property or affairs of the juristic person or private person, not only such violators shall be punished, but the juristic person or private person shall be punished by a fine as provided in the respective pertinent Articles.

#### Article 32 (Fine for Negligence)

- (1) A person who falls under any of the following subparagraphs, shall be punished by a fine for negligence not exceeding five million won:
  1. A person who fails to make such report of closure as provided in Article 8 (4);
  2. A person who fails to make such report of merger, dissolution, transfer, taking over or closure as provided in Article 9 (2);
  3. A person who fails to make report in violation of the provisions of Article 20 (1) and (2) or has made false report;
  4. A person who fails to comply with such inspection as provided in Article 20 (3) and (6), or refuses, obstructs or evades such inspection;

5. A person who fails to present such materials as provided in Article 20 (4) or presents false materials;
6. A person who fails to make notification in violation of such orders of the Minister of Finance and Economy as provided in Article 21 or makes false notification, or who fails to interchange, make efficient use of or offer materials or interchanges, makes efficient use of or offers false materials; and
7. A person who violates such orders of the Minister of Finance and Economy as provided in Article 24 (2).

(2) A fine for negligence as provided in paragraph (1), shall be imposed and collected by the Minister of Finance and Economy pursuant to the Presidential Decree.

(3) Any person who has an objection against a disposition of a fine for negligence as provided in paragraph (2), may make an objection to the Minister of Finance and Economy within thirty days from the date when he has received the announcement of such a disposition.

(4) If any person who has received a disposition of a fine for negligence as provided in paragraph (2), makes an objection under paragraph (3), the Minister of Finance and Economy shall, without delay, notify the competent courts of the fact that such an objection is made, and the competent courts notified of it shall render the judgment on a fine for negligence as prescribed in the Non-Contentious Case Litigation Procedure Act.

(5) If no objection is made and no fine for negligence is paid within such a period as provided in paragraph (3), it shall be collected in conformity with the example of the disposition on default of national taxes.

#### **ADDENDA**

Article 1 (Enforcement Date)

This Act shall enter into force on April 1, 1999.

Article 2 (Time Limit of Application of Capital Transaction Permission System, etc.)

The provisions of Articles 7, 15 (1) 1 and (2), and 18 (2) and (3) shall be effective until the date as prescribed by the Presidential Decree within the limit of December 31, 2000.

#### Article 3 (Repeal of Act)

The Foreign Exchange Control Act shall be hereby repealed.

#### Article 4 (Transitional Measures concerning Permission, etc.)

Authorization or permission granted or report or registration made under the previous Foreign Exchange Control Act (including any case deemed to obtain authorization) before this Act enters into force, shall be deemed to be authorization or permission granted or report or registration made under this Act.

#### Article 5 (Transitional Measures concerning Penal Provisions, etc.)

The application of the penal provisions and a fine for negligence to any act committed before this Act enters into force, shall be conformed to the previous Foreign Exchange Control Act.

#### Article 6 (Relations to Other Acts and Subordinate Statutes)

If the previous Foreign Exchange Control Act or its provisions are cited in other Acts and subordinate statutes at the time when this Act enters into force and there exist the provisions corresponding to the cited provisions in this Act, it shall be deemed that this Act or the corresponding provisions of this Act are cited in lieu of the previous provisions. In this case, foreign exchange banks or institutions designated for foreign exchange affairs, and money exchangers as prescribed in the previous Foreign Exchange Control Act, shall be deemed to be institutions to deal with foreign exchange affairs, and to be money changers respectively.

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