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Korea

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Approaches and developments

The Financial Services Commission (“FSC”) of the Republic of Korea has announced that, consistent with one of its key initiatives of 2022, it will improve the relevant systems and establish infrastructure to facilitate the digital transformation of finance. Such policy support by the FSC is expected to promote the continued growth and development of the fintech industry in Korea in alignment with the development of such technology.

The institutional trend is to create a base for the development of the fintech industry, such as the amendment of laws related to data promoting access and use of data, the adoption and implementation of a financial “regulatory sandbox” system (i.e., a system that temporarily exempts regulation for financial services recognised for their novelty) and the implementation of open banking. Likewise, the new government starting in May 2022 has announced that it will enable diverse business models by facilitating the integration of financial and other sectors by setting innovation of digital finance as one of the 110 national tasks.

Korea’s financial industry has traditionally been subject to strict regulations. As the policy of separation of industrial and financial capital is in effect, foreign fintech companies should pay close attention to the Korean regulatory system when entering the Korean market.

Fintech offering in Korea

Payment and remittance

Simple payment is a form of payment made through the registration of the payment information, such as a credit card or bank account number on a mobile device, and entry of a password or fingerprints on the device. To facilitate such a payment method, the Korean government took measures such as simplifying the e-commerce payment in July 2014 and abolishing the obligation to use public certificates in March 2015. The simple payment service is regulated as a payment gateway (“PG”) under the *Electronic Financial Transactions Act* (the “EFTA”).

In a simple remittance, users can transfer to the recipient via phone numbers or social media accounts the amount prepaid through methods such as account transfer through a mobile device. The use of simple remittance has been facilitated as Korea simplified security procedures such as abolishing public certificates in March 2015 and allowing financial companies to provide simple remittance services with passwords instead of their security cards or one-time passwords (“OTPs”). While the *EFTA* also stipulates electronic funds transfer services, these have practically lost their significance and have been privatised. Under the *EFTA*, most of the simple remittance services providers are instead registered as service providers for “the issuance and management of electronic prepayment means”.

Robo-advisors

The Korean government has allowed using robo-advisors to provide financial advisory and management services to general investors in May 2017 and to operate syndicate financial facilities (funds) in April 2019. In line with the increase in individual stock investment participation since the COVID-19 pandemic in early 2020, there has been a significant increase in the number of subscribers to and the number of assets managed by robo-advisors that provide financial advisory and management services even to this date.

Direct bank

Since its announcement in 2015 to introduce a direct bank, FSC has permitted Kbank, Inc. to start its direct banking business in 2016 and KakaoBank Corp. in 2017. Although innovative Information and Communications Technology (“ICT”) companies had difficulty entering the banking industry due to the separation of banks and commerce in Korea, the *Act on Special Cases Concerning Establishment and Operation of Internet-Only Bank* was passed in 2019 to lower the barrier. With FSC further permitting TossBank Corp. to start its banking business in 2021, there are now three direct banks operated in Korea.

P2P lending

On November 26, 2019, the Korean government passed the *Act on Online Investment-linked Financial Business and the Protection of Users*, which is the first law in the world to regulate peer-to-peer (“P2P”) lending as a separate law. This law stipulates matters required for the registration and supervision of P2P lending and the protection of users thereof so it can be deemed as having prepared a regulatory foundation for the sound development of P2P lending. Persons intending to operate P2P lending must register with the FSC, retain capital of at least KRW 500 million (note that the minimum capital requirement increases in accordance with the size of the loan) and have a debt ratio of less than 200%.

Virtual asset

In March 2020, the Korean government amended the *Act on the Reporting and Use of Certain Financial Transaction Information* to comply with guidelines such as those of the Financial Action Task Force on Anti-Money Laundering (“FATF”) and prevent criminal activities such as money laundering. The amended act became effective on March 25, 2021, newly defining “virtual assets” and creating obligations for Virtual Asset Service Providers (“VASPs”) to report to the Korean Financial Intelligence Unit (“KoFIU”). In order to report as a VASP, the entity must first receive a certificate for its Information Security Management System (“ISMS”) from Korea Internet Security Agency (“KISA”) and its representatives and executives must not have been sentenced to more than a fine in violation of Korea’s financial laws. Further, if a VASP intends to make transactions in KRW, the VASP must additionally obtain a deposit and withdrawal account with its owner name verified from a bank in Korea. Foreign business operators should note that they are obliged to report as VASPs in Korea if they (i) market to Korean residents, (ii) provide services in the Korean language, and (iii) make transactions in KRW.

Regulatory and insurance technology

RegTech: The attempts to manage or comply with financial regulations using digital technology continue in Korea. The Financial Security Agency (“FSA”) offers the following services on the “Financial Security RegTech Portal” site: (i) a “compliance service” that provides a web-based security evaluation tool to financial institutions; (ii) a “reporting service” whereby reports may be submitted and managed; (iii) an “information provision

service” whereby information such as financial security laws are provided; (iv) a “business support service” that provides advice on financial security; and (v) a “cyber response service” that provides training to respond to cyberattack incidents.

In the discussion of RegTech in Korea, money laundering prevention is an essential component. Among many, the Financial Supervisory Service (“FSS”)’s guideline requires financial companies to implement a system that automatically extracts those who are subject to Currency Transaction Report (“CTR”) and Suspicious Transaction Report (“STR”) from the financial transactions. In particular, in the case of STRs, the agency requires financial companies to reasonably set STR rules that function as standards to automatically detect the STR subjects.

InsurTech: In the Korean insurance sector, the use of cutting-edge technologies (e.g., Internet of Things, big data and artificial intelligence) is becoming more frequent in providing services including product development, contract execution and customer management. The Korean insurance companies are using big data, the Internet of Things and other new technologies at the product development stage to develop and launch customised products, such as Behavior-Based Insurance (“BBI”) and Usage-Based Insurance (“UBI”), as well as a fintech platform that compares and recommends insurance products. For insurance payment management, the companies are simplifying relevant procedures such as offering an online service system for billing and paying insurance policies and utilising AI in customer service.

Korea’s *Insurance Business Act* restricts those who can engage in recruitment for the insurance business to insurance planners, insurance agents, insurance brokers and executives and employees of insurance companies. Accordingly, there is also a question of whether recruitment through AI will be possible. Under the current law, recognising AI itself as a recruiter is difficult. Under the current laws, AI can be used as an auxiliary for recruitment activities. However, it cannot become the subject of performing obligations for the recruitment activities, such as recruiting for insurance products required under the *Financial Consumer Protection Act* and the *Insurance Business Act*.

Regulatory bodies

- As in the cases of other financial sectors in Korea, the key regulators in the fintech industry are the FSC and the FSS. The FSC is a government agency under the direct control of the Prime Minister and is in charge of the overall financial policy and system, various licences of financial institutions and supervision of the soundness of institutions handling foreign exchange affairs. Most of the licences for various financial businesses related to fintech require approval by the FSC.
- The FSS is a special, non-capital corporation established under a special Act. While it is not a public institution, it is a key organisation that conducts supervision and regulation of the financial sector in Korea. The FSS performs various tasks including inspection of services and assets of diverse companies, such as banks, financial investors, insurance companies, credit finance companies and others that hold financial licences, and impose legal sanctions according to the inspection results.
- The KoFIU, an organisation under the FSC, generally deals with Anti-Money Laundering (“AML”) and Combating the Financing of Terrorism (“CFT”) takes charge of special financial information laws, receives STRs and CTRs from financial companies and others and oversees the relevant processes. Recently, the *Act on the Reporting and Use of Certain Financial Transaction Information* imposed obligations

on VASPs to report on virtual asset exchanges and accordingly, virtual asset exchanges were included in KoFIU's AML and CFT systems and the KoFIU performs regular AML and CFT inspections of VASPs.

- The FSA, a non-profit corporation was founded in 2015 at the initiative of the FSC by integrating some departments of Korea Financial Telecommunications & Clearings Institute, Koscom Corp., and the FSA. It ensures the security of the financial sector and operates through the membership fees of financial companies. It operates the Information Sharing and Analysis Center (“ISAC”) for the financial sector based on applicable laws and regulations, primarily ensures the financial security control that detects cyber threats, evaluates the security of the financial companies’ legally mandated self-evaluation of security, and performs other tasks, such as the research of financial security policies and provision of education on security, to support the security of financial companies.

Key regulations and regulatory approaches

1) Laws on data

In Korea, the collection and use of data are regulated by the *Personal Information Protection Act* (“PIPA”), *Credit Information Use and Protection Act* (“**Credit Information Act**”), and *Act on Promotion of Information and Communications Network Utilization and Information Protection, Etc.* (collectively, the “**Three Data Laws**”). The amendment to the Three Data Laws in January 2020 provides legal grounds for the use of big data and the emergence of new innovative players such as MyData. The details are as follows.

- A. The concept of pseudonymised information was introduced and the basis for combining data was provided to facilitate the commercial use of pseudonymised information. The pseudonymised information refers to information that has been processed in ways to make it impossible to identify a specific individual without using additional data. It can be used without the consent of the data subject for the preparation of statistics (including for commercial purposes), research and the preservation of public records. Further, pseudonymised information held by different companies may be combined by professional institutes with secure facilities.
- B. As the specifications for credit information business license units were subdivided, entry restrictions were greatly relaxed. The revised *Credit Information Act* subdivided the credit information business into (i) personal credit rating business, (ii) individual business owner credit rating business, (iii) corporate credit inquiry business, and (iv) credit inquiry business, and thereon significantly reduced the entry restriction for each business. In addition, a professional personal credit rating business that only uses non-financial information, such as records of online shopping, utility bill payment and social media information, has been launched as a professional, non-financial credit bureau. Likewise, the individual business owner’s credit rating business was also established (as an individual business owner of credit bureau) to reflect the peculiarity of loans made to individual business owners, such as small enterprise owners and small-scale businessmen. In the case of corporate credit inquiry business which tends to provide diverse services, such businesses were subdivided into (i) corporate information inquiry business, (ii) corporate credit rating provision business, and (iii) technical credit rating business. The requirement of capital was relaxed in accordance with the regulatory needs for each licence category and in light of the fact that these businesses generally need less information protection than individuals do.

C. The right to request the transmission of personal credit information was introduced to enhance a data subject's right to self-determination. A personal credit information management business (MyData) was also introduced for businesses that integrate credit information in a certain way based on the data subject's exercise of his/her rights and provide such information to the data subject. The companies that intend to run a personal credit information management business must obtain permission from the FSC and must satisfy the following requirements: (i) retain a minimum capital of KRW 500 million; (ii) have the suitable physical facilities (system and facility requirements for safe data processing of credit information); (iii) obtain the approval of suitability of a major shareholder; (iv) meet feasibility standard of business plans; (v) have proper qualifications of employees and executives; and (vi) have the required expertise.

2) Laws on electronic financial transactions

The *EFTA*, which regulates digital finance, has not changed much since it was enacted in 2006 when smartphones were not as popular. As such, it has received criticism for not actively embracing recent changes in the financial environment that arose due to the fourth Industrial Revolution and post COVID-19. Currently, revisions to the *EFTA* are pending in the National Assembly. The proposed revisions introduce a system of comprehensive payment service providers so that companies, such as Naver Pay and Kakao Pay, can provide accounts to consumers and introduce a payment order delivery business called "MyPayment" that performs transfer functions, such as transfers between the accounts and remittance from a single app. Comprehensive payment service providers can directly open accounts for consumers and provide all services related to their accounts, such as payroll transfers, card payments and insurance premium payments, as well as payments of utility bills. As a consequence, these providers are expected to provide almost all services that banks provide, except for deposits and loans. Further, the revisions stipulate that all electronic payment transactions should be cleared through external clearing firms to ensure big tech companies' transparent management of amounts recharged by their users.

3) Laws on crowdfunding

A. P2P securities

In June 2000, the FSC prepared the "Crowdfunding Development Plan" so that crowdfunding can be used more widely to finance innovative companies. Accordingly, the *Enforcement Decree of the Financial Investment Services and Capital Markets Act* was revised to (i) expand the annual issuance limit of crowdfunding from KRW 1.5 billion to KRW 3 billion, (ii) remove regulations that restricted the use of crowdfunding for the project investment in the cultural, new technology development and industrial property rights projects and expand the scope of eligible projects, (iii) ease the shareholding ratio of small- and medium-sized enterprises in projects eligible for crowdfunding project investment, and (iv) strengthen the registration maintenance requirement for the crowdfunding brokers (i.e., online micro-investment brokers) to establish sound market order and strengthen investor protection.

B. P2P lending

With the implementation of the *Act on Online Investment-Linked Financial Business and Protection of Users* in June 2021, online investors were obligated to be registered and in turn, P2P financial users became better protected. The act contributed to the enhancement of trustworthiness and the sound development of

the P2P financial industry. However, there have also been criticisms that it limits market growth, in that securing investment may be difficult due to the excessive restrictions, such as investment limits on individual investors.

As of April 2022, 44 online investment-linked financial companies are registered under the relevant law. Major registration requirements include (i) retaining equity capital of at least KRW 500 million, (ii) furnishing computer facilities, professional personnel, communication facilities, etc., (iii) preparing internal control devices, such as user protection devices, and (iv) providing information on major shareholders, such as their investment capacity, financial status and social credit.

4) **Special Act on Support for Financial Innovation**

In April 2021, the *Special Act on Support for Financial Innovation* was revised. Due to this revision, businesses designated as innovative financial services by the FSC can be granted an additional exemption period. While such businesses enjoy the period of exemption from applicable regulations, they can make requests to the heads of administrative agencies related to the FSC to improve the applicable regulations. These requests should be made at least three months before their exemption period expires. Upon receiving such a request, the FSC may extend the exemption period by one year and six months. The *Special Act on Support for Financial Innovation* largely hinges on the regulatory sandbox and designated agent system and the key contents are as follows.

1) Regulatory sandbox system

The financial regulatory sandbox is a system that provides a special exemption from regulation or support by designating innovative financial services, to promote the development and improvement of innovative financial services through the revitalisation of the fintech industry and thereon increase the convenience of financial consumers. Here, the “innovative financial services” refer to services provided in the course of performing a financial business or related business in which the content, method and form differentiate from those of the existing financial services. For a designated period, the innovative financial service providers provide financial services designated as innovative financial services by the FSC and receive special exemption from the various regulations that otherwise would have applied to the innovative financial services.

Korean regulatory sandbox is operated in conjunction with temporary permits and fast verification systems that focus on special cases:

- A. Special cases: Government allows demonstration projects in the market under certain conditions if (i) there are no standards or requirements suitable for businesses using new technology in the laws and regulations that grant permission, (ii) it is not appropriate to apply as it is, or (iii) it is impossible to seek permission, etc. under other laws. When the safety and effectiveness of the projects are proven according to the empirical results, the government will fundamentally improve regulations by reorganising relevant regulatory laws.
- B. Temporary Permit: the relevant governmental authorities temporarily permit market launches and amend the relevant laws in cases where, while there is no safety problem with the new technology, the existing laws lack necessary standards or the application of such laws would be inappropriate.
- C. Fast verification: the relevant government authorities are required to respond within 30 days from the date when a business using new technology has applied for fast verification on regulation for determination of the applicable regulation

so that its uncertainty in conducting business is minimised, and applicable regulations are deemed non-existent where relevant government authorities do not respond within such period.

From January 2019 to December 2021, a total of 632 projects were approved, and the number of approvals is increasing each year. With the amendment of relevant regulations, the legal basis for regulatory sandboxes has been established in six areas: ICT integration; innovative finance; special regulation-free zones; smart city; and special research and development zones.

2) Designated agent system

The designated agent system refers to a system in which fintech companies and others directly provide financial services that were exclusively performed by financial companies, such as banks, specialised financial credit companies, insurance companies, savings banks and credit unions. Once the FSC examines and designates fintech companies that have applied for designated agents to meet the designated requirements, it can conduct tests after the contract between a financial company and the designated agent for delegation has been executed. In other words, if a financial company delegates certain essential tasks, such as depositing income, loan screening and insurance acquisition screening to a fintech company (designated agent), innovative financial services can be tested for up to two years through cooperation between the two companies. Testing is conducted to the minimum extent possible to validate the effectiveness of innovative financial services and in relation to the consumers who gave their consent to the testing.

The criteria of testing are (i) service area – whether the agent intends to primarily provide its services in the domestic financial market, (ii) novelty of service – whether it is sufficiently innovative compared to existing financial services, (iii) consumer benefit – whether it increases convenience to the financial consumers, (iv) inevitability of delegation – whether the services may be provided other than through delegation of financial services, (v) pilot operational readiness – whether a fintech pilot is ready to run demonstration programme after the delegation, and (vi) consumer protection and stability of financial order – whether the delegation of business may hinder the soundness or trustworthiness of the financial company, disrupt the financial order or cause damage to the users.

As the implementation of the system in May 2018, 36 designated agents have been designated throughout eight examination cycles.

Restrictions

Financial laws governing the financial firms in Korea that specify the qualifications and other requirements tend to be strict and conservative. To carry out financial business as a qualified financier in Korea, the interested person needs to obtain prior approval from the relevant financial supervisory agency. Due to such a regulatory environment and development of the IT industry, Korea has a relatively high acceptance of fintech compared to other countries, but as its legal system is directly connected with the financial business environment, Korea may have difficulty in embracing the new services provided by fintech companies.

At the same time, the financial authorities of Korea have taken many efforts to ease the regulations by communicating with the businesses for the growth of the fintech industry. The FSC has newly established the “Financial Innovation Division” in July 2018 to communicate with fintech companies and provide systemic support for financial innovation.

In June 2019, the commission further announced the “Fintech Revitalization and Regulatory Innovation Plan” with related departments, including the Office for Government Policy Coordination as well as the Ministry of Economy and Finance and Ministry of Science and ICT, and stated that it would create an environment to foster global fintech companies through various regulatory innovations. However, the issue of Big Tech monopoly has been raised during the National Assembly’s audit of the executive branch in 2021, such that the discussion of the social need for Big Tech regulation has generally spread to the fintech industry, and financial authorities have thereon indicated their plans to strengthen regulations on fintech by putting forward the principle of “same function, same regulation” as to the financial platforms and the existing financial industries.

Cross-border business

With the introduction of small-sum money exchange in May 2017, fintech companies have entered the foreign currency remittance market that was largely occupied by banks and triggered competition and innovation in the market. The government raised the limit of overseas remittance of small overseas remittance companies from USD 20,000 to USD 30,000 and lowered the capital requirement for registering such businesses from KRW 2 billion to KRW 1 billion to promote innovative growth in the foreign currency sector.

In 2019, non-financial companies, including the fintech companies, have expanded their scope of foreign exchange services, by including services such as the provision and management of electronic cash and pre-paid electronic payment methods, so that people can easily make payments with a mobile phone in foreign stores that are affiliated with simple payment companies. By doing so, the fees incurred in overseas payments are expected to decrease while strengthening the competitiveness of the fintech industry.

With the announcement of the “Plan to Reform Foreign Currency Services” in 2020, the government is making further attempts to alleviate the relevant regulations through the system of fast verification and exemption of regulation on new businesses. Following this system, the restrictions on transaction methods between small overseas remittance companies and customers have been eased and regulations on online currency exchange business have been improved. The system also increased attempts to provide innovative foreign exchange services by banks as well as the fintech companies, and the convenience of consumers is expected to be increased through the provision of the new services.



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