Prior Notice of Changes in the Regulations on Delegation of Information Processing and IT Facilities of Financial Companies

On June 10, 2015, the Financial Services Commission (the "FSC") announced certain changes to the Regulations on Delegation of Information Processing and IT Facilities of Financial Companies (the "Regulations"). The changes are aimed at significantly reducing the burden on the financial companies with respect to delegation of information processing. The following is a summary of the proposed changes to the Regulations.

1. Streamlining the Regulatory Framework: IT Facilities·Information Processing -> Information Processing

Under the current Regulations, a financial company is required to report any delegation of information processing to the Financial Supervisory Service (the "FSS") and obtain the FSC's prior approval to any delegation of IT facilities. Such cojunctive requirements have been criticised for being unnecessarily complex and redundant.

Accordingly, the proposed changes seek to streamline the regulatory framework by abolishing the approval requirement for delegation of IT facilities, leaving only the FSS reporting requirement (draft Article 7).

2. Report of Delegation of Information Processing: Advance Report -> *Ex Post Facto* Report

Under the current Regulations, we note that the delegation of any type of information processing is subject to the reporting requirement noted above regardless of the nature and protective value of the information. A financial company must report to the FSS before delegating processing of not only the financial transaction information of individual customers but also the financial transaction of corporate customers and information relating to internal operations (human resource, budget, etc.). Such procedure imposes excessive burden on financial companies and is, to a certain extent, inconsistent with the intent and purpose of the Personal Information Protection Act and Use and the Protection of Credit Information Act, which extend legal protection only to personal information related to individuals.

In this regard, the proposed changes provide for, as a default rule, an ex post facto report for delegation of information processing, except for financial transaction information of individual customers on the basis that it warrants stronger regulatory supervision (draft Article 7).

3. Delegation to an Offshore Third Party and Sub-delegation

Based on the current Regulations, in the case of a delegation of information processing to an offshore third party, such third party must be the head office, a branch office or an affiliate of the foreign financial company. Sub-delegation is also prohibited, unless approved by the FSS in limited circumstances. The foregoing restrictions have been regarded as imposing heavier burden on financial companies when compared to other countries that are generally more lenient. In particular, it has been pointed out that the criteria and standard for sub-delegation are largely vague and unclear.

Accordingly, the proposed changes seek to remove the above restriction on delegation to an offshore third party, thereby permitting delegation to third parties such as IT firms (draft Article 4(1)). Sub-delegation is also permitted subject to the same standards applicable to delegation. The proposed changes prescribe certain obligations on the third party such as an obligation to protect information, an obligation to keep the FSS informed, a duty of supervision and inspection, and joint and several liability for losses (draft Article 4(4)).

4. Standard Terms for Delegation

The current Regulations require that delegation must be made in accordance with the standard terms for delegation set out in the Regulations. The proposed changes, however, only require a basic set of items to be included in the relevant delegation agreement such as the access control to data, allocation of responsibility between the delegating party and the delegate regarding any harm to users, duty to accept supervision and inspection by the regulatory authority, jurisdiction, etc (draft Article 4(3)).

As noted above, the proposed changes will significantly relax the requirements with respect to the delegation of information processing of financial companies. Such changes would not only allow for more efficient delegation of information processing but also enhance the overall competitiveness of the financial industry as a result of reduced cost and improved management efficiency.

Should you have any questions regarding any of the foregoing, please feel free to contact us at any time.

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