



Fintech 2019

First Edition

Editors:

Barbara Stettner & Bill Satchell

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PREFACE

Welcome to the first edition of *Global Legal Insights – Fintech*. In less than a generation, the financial system has gone from one based predominantly on paper cheques and manually balanced ledgers, to one where cheques are digital and ledgers are increasingly balanced through the ether using blockchain technology. Even the very idea of money is being redefined. Perhaps the only thing that is certain is that the financial markets of the future will not resemble the rapidly changing world we live in today.

News of new technologies in the financial markets, commonly known as “Fintech”, is constant. Potential breakthroughs range from the small – an improved system for processing payments – to the profound – news that global commodities markets are adopting smart contracts to trade and track shipments in real-time without the use of a traditional clearinghouse or intermediaries. It is a constant challenge for practitioners to keep pace with these developments.

Understanding the legal and regulatory implications of Fintech compounds the challenge faced by market participants in three significant ways.

- Fintech is borderless. New technologies naturally seek the broadest audience and application possible, which means operating across borders and in numerous jurisdictions, each with its own code of laws and customs that can be ignored only at great peril. Understanding and embracing Fintech means understanding and embracing a global mindset, difficult though that is in practice.
- Fintech is everywhere. New financial technologies sometimes come in a discrete, easy-to-identify package (e.g., Bitcoin), but more often they infiltrate and change well-established systems and processes in novel and unexpected ways. The line between old and new is rarely clear. This makes interpreting the legal and regulatory issues that arise from new applications of Fintech particularly challenging.
- Fintech is changing the rules. Even though most Fintech represents a combination of new ideas and existing markets, the result is fundamentally changing the way financial markets operate. Laws and regulations are struggling to catch up. While they do, new and potentially innovative products and services continue to be judged against old and often inappropriate standards, leading to delay, inefficiency, and frustration. The regulatory system is changing, but what replaces it come in the form of an entirely new system or a series of new rules and interpretations that allow the system to adapt incrementally?

By providing a comprehensive and systematic overview of the relevant laws and regulations across 26 key jurisdictions, paired with targeted chapters analysing important and timely subjects that should be of interest to practitioners, this publication is meant to offer critical perspective in an otherwise disorienting environment. New technologies will continue to emerge, and the tools available to regulators will continue to evolve in response. As that happens, resources like this are necessary to provide a fixed frame of reference from which to understand what is new, what is important, and how to respond.

We would like to thank all of the authors for their invaluable contributions and hope that this book will be a valuable resource.

Barbara Stettner and Bill Satchell,
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Korea

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Approaches and developments

Fintech, the term introduced and created by combining the words finance and technology, is no longer a new or innovative concept to us. Considering that the term refers to the adoption of information and communication technology to improve accessibility and speed of finance services, the word is almost perfectly self-explaining. Although Korea is well-known for the world’s top-level internet network infrastructure and smartphone penetration rate, development of the fintech industry was slow due to strict financial regulations. As fintech became a global trend, the government started to encourage the development of fintech by amending legislation and benchmarking foreign fintech players.

In August 2013, the Financial Investment Services and Capital Markets Act (the “FISCM Act”) allowed for the adoption of a robo-advisor in discretionary investment businesses, which are businesses managing and operating, at their own discretion, an investor’s financial assets considering such investor’s purpose of investment or financial status. A robo-advisor is required to satisfy certain conditions on the part of the investor, such as the direct analysis of an investor’s propensity, their investment in at least two items, the readjustment of their portfolio in every quarter, their evaluation by qualified external experts and more, in order to give advice on investment and manage assets. In April 2019, the FISCM Act extended the range of the business covered by robo-advisors to collective investments businesses, which manage assets pooled by inviting two or more persons.

The year 2015 was a boom one for internet banks and easy payment in Korea. In June, the Financial Services Commission (“FSC”) announced that it will start to give permission to internet banks which provide banking services through electronic apparatus in a non-facing and automated manner; three such entities applied for internet bank permission in October. Two out of three applicants, the K Bank and the Kakao Bank, finally passed the tests and started business in 2017. The frontiers had to meet all the conditions and qualifications for conventional banks under the Banking Act, but the Special Act on Establishment and Operation of Internet-Only Banks (the “Internet-Only Bank Act”) was enacted in 2018 to lower the hurdles further. Further, in March 2015, the authorised certificate, which has been long criticised as a major hindrance to the development of Korean fintech technology and the market, became non-mandatory in the electronic financial transaction. As a result, Korea’s major corporations such as Samsung, Naver, SK, Shinsegae, and Lotte each and separately rushed to launch their own easy payment application in 2015. Now, the Korean easy payment application market is very competitive, with more than 50 applications.

Application of the blockchain, one of the hottest and innovative fintech ideas, to the Korean financial market is being discussed and sought in various ways. For example, a blockchain-

based certification system is being developed to substitute the conventional authorised certificate and a blockchain based local currency called No-Won Coin was launched and is currently in use. Further, numbers of “altcoins”, which refers to cryptocurrencies other than Bitcoin, and cryptocurrency exchanges have newly appeared. It is no secret that cryptocurrency has been a hit in Korea and a massive amount of cryptocurrency transactions were made in the last two years. Now, the Korean government is planning to announce regulations on taxation of cryptocurrencies, ICO, and more.

Fintech offering in Korea

The easy payment system has been the most competitive and disrupting item to enter the Korean traditional financial services market. A survey showed that in 2017, only 24.3% of transactions were made in cash and 41.3% were made by credit card. The Korean credit card system is based on the so-called “three party model” in which a credit card issuer also acts as a credit card acquirer at the same time. A credit card issuer should issue credit cards to customers, recruit merchants, review and approve each request for payment from merchants, pay such amounts to merchants, gather and process bills for transactions so far made between merchants and customers, and collect such amounts from respective customers.

Because the burden of a credit card issuer is so high and costly, credit card issuers started to delegate credit card acquirer transaction processing works to a Value Added Network (“VAN”), and VANs soon became a unique and customary practice in the Korean traditional credit card market. In 2015, the Specialized Credit Finance Business Act (the “SCFB Act”) was amended to govern VAN business. The Electronic Financial Transactions Act (the “EFT Act”) is also applicable to VANs but it does not impose any meaningful obligation on VANs. VANs recruit merchants on behalf of credit card issuers, provide payment terminal devices and network to merchants, transfer requests and approval for payment between merchants and credit card issuers, and collect, categorise and report bills to credit card issuers so that they can collect such amount from the customers. In return, VANs receive fees from credit card issuers. VANs did reduce the cost and improve the service quality when the network and system for credit card was poor, but now the needs of VANs are decreasing and even being criticised as the reason for the rise of fee rates related to credit card payments.

In online markets, Payment Gateway (“PG”) steps in. PG recruits merchants, stores and confirms customers’ credit card and personal information, and transfers requests and approvals for payment between merchants and credit card issuers, and collects, categorises and reports bills to credit card issuers through VANs. The difference is that PG contracts directly with merchants, and with credit card issuers as representatives of merchants. There is no direct contractual relationship with merchants and credit card issuers. Thus, merchants pay fees to PG, not credit card issuers, and PG pays fees to credit card issuers. Because PG still deals with credit card issuers through VANs, PG disrupts VANs but does not completely replace them. PG is governed under the EFT Act, and is also regulated under the SCFB Act as a merchant.

As the online market and the number of smartphone users grew rapidly, security became a huge issue, because customers have to input a large amount of critical information such as credit card numbers, expiry dates, passwords and social security numbers for online transactions. Further, the mandatory use of the authorised certificate, together with the heavy Active X security program in online shopping mall transactions exceeding approx. 300 USD, of internet banking, was slowing down the speed of online transactions and making online

shopping less attractive to users. Consequently, the easy payment system appeared, which enables online payments using an online ID and password after credit card information is registered. VANs, PG, credit card issuers and new fintech companies have been striving to develop new easy payment systems, and competition intensified after the mandatory use of the authorised certificate was abolished. And now, the App-to-App Payment system, which transfers money from a user's account to the other user's account directly, is being named as a payment system to replace credit card payments. The App-to-App Payment system has merits over traditional credit cards on various points. It has a lower fee rate – almost a quarter of that of credit cards, as PGs and VANs do not intervene in the payment process, the recipient does not need to download the application or have payment terminals, and transactions can be made between private persons.

Toss and Kakaopay are the leading App-to-App Payment service providers, and the Korean government launched the Zero Pay platform beta version in December 2018. Zero Pay is a QR code transaction platform introduced by the Seoul Metropolitan Government to lighten the financial burden on small businesses by avoiding credit card fees. The Korean government is encouraging the use of Zero Pay, offering tax benefits. If App-to-App Payment successfully takes market, then VAN, PG, and credit card issue business will be disrupted greatly. However, one should not be too optimistic about App-to-App Payment, as it is a system fundamentally based on debit payment of which payment can be made up to the bank balance, making it much less attractive to people who are used to the credit card system.

Regulatory and insurance technology

RegTech is a word created by combining regulatory and technology. It is a service which enhances the regulatory process by utilising technologies such as artificial intelligence (“AI”), blockchain, big data and cloud computing. For example, RegTech can collect and analyse big data in relation to credit card transactions, share data and report to authorities through cloud computing and store data using blockchain, and have AIs monitor transactions in real time.

The Korean government has consistently manifested its willingness to encourage financial companies to develop and adopt RegTech since 2017, and launched the RegTech Development Council in October 2018 accordingly. The Council announced that RegTech is the breakwater which blocks risks from fintech innovation waves, and it will construct infrastructure to enhance the development and use of RegTech. Also, it will run a pilot test for Machine Readable Regulation, which translates financial regulations to machine language, starting from the EFT Act.

The Financial Security Institute, a financial security-specialised organisation founded to create a safe and reliable financial environment and to contribute to the establishment of a convenient financial environment for financial consumers and financial institutions, launched a RegTech platform in January 2019. This platform provides an automated compliance management service, an automated financial security reporting service, a search and notice service on intelligence regulation, and financial security support.

InsurTech is a combination of the words insurance and technology, and which refers to the utilisation of technology to make the insurance industry cheaper and more efficient. A few pieces of legislation are obstacles to InsurTech in Korea. The first relates to the separation of industrial and financial capital. Insurance companies cannot have fintech subsidiaries, so they can develop InsurTech only by partnership with fintech companies. The Medical Service Act strictly limits the medical service to be provided by doctors, nurses and other

qualified medical persons. Some InsurTechs analyse health data, discount premiums based on such health information, and provide health information to the insured. Because such analysis and notification may be construed as diagnosis, which is a medical service, it is risky to operate such types of InsurTech in Korea.

Further, there are other regulations making certain InsurTechs which are active in other jurisdictions unavailable in Korea. Yet regardless of such restrictive regulation, insurance companies are starting to introduce InsurTech. For example, robotic process automation learns the patterns of how computer documentation works and automatically writes reports, manages contracts and such. The company Dentinote makes the insured take a picture of his or her teeth to check their condition, and the insurance company discounts premiums in return. But still, InsurTech in Korea remains at a premature level.

Regulatory bodies

In general, the FSC and the Financial Supervisory Service (the “FSS”) are the major regulatory authorities in the fintech industry. The FSC is the government regulatory authority which assumes primary responsibility for rulemaking and licensing, while the FSS principally conducts supervision of the financial industry, including prudential supervision, capital market supervision, consumer protection, and other activities delegated by the FSC. Although the FSS is an organisation under the FSC, which is a governmental body, it is not itself a governmental body. The FSS is a specially legislated supervisory authority staffed by private sector employees who are not part of the government civil service system. This two-tier system is devised to reduce the risk of the government attempting to deprive the freedom and take control of financial companies.

The FSC has the statutory authority to draft and amend financial laws and regulations and issue regulatory licences to financial institutions. For example, anyone who wishes to run an internet banking business should obtain permission from the FSC under the Banking Act following the detailed procedure and conditions decided and announced by the FSC. Similarly, the FSC has the authority to give a licence for a robo-advisor business under the FISCMA Act and an easy payment business under the EFT Act. In addition, the FSC supervises foreign exchange transactions and leads the government’s anti-money laundering and counter-terrorism financing efforts.

Prudential supervision is the main objective of the FSS. The FSS regularly carries out both targeted and full-scope examinations to evaluate financial firms’ financial health, risk management, internal controls, management competence, and compliance with rules and regulations. Consumer protection is another goal of the FSS. The FSS provides consumer complaint resolution services and consumer education programmes. Consumers can file complaints with the FSS against financial services firms through the consumer complaint resolution service and seek mediation and resolution. Because the FSS is more focused on prudential supervision than consumer protection, new legislation for consumer protection and the establishment of a separate organisation specialised for consumer protection thereunder has been long discussed, but it has not been ratified yet.

Key regulations and regulatory approaches

The regulations regarding fintech in Korea can be classified into the following topics:

- **Banking business:** the Banking Act deals with inherent banking business, which is defined as business with lending funds raised by bearing debts owed to many and

unspecified persons, by the receipt of deposits or the issuance of securities and other bonds; while the Internet-Only Bank Act, introduced in September 2018, includes special regulations for internet-only banks that mainly conduct banking business via electronic financial transactions. The special rules included in the Internet-Only Bank Act are as follows: first, any person who intends to obtain authorisation for banking business shall have capital of at least 100 billion KRW (provided that a local bank's required capital may be at least 25 billion KRW); while internet-only banks only require 25 billion KRW. Second, a non-financial business operator may hold up to 34% of the total number of outstanding voting stocks of a bank, instead of 4% (with some exceptions) as stipulated in the Banking Act, as the Internet-Only Bank Act eases the restrictions on stockholding by non-financial business operators. The restrictions on stockholding by non-financial business operators intend to prevent the non-financial sector from controlling the financial sector, but have hindered convergence and innovation between information and communications technologies ("ICT") and financial business. However, some regulations from the Internet-Only Bank Act are found to be stricter than those of the Banking Act. For example, internet-only banks may only lend funds to a company that is a small or medium-sized enterprise, and to a person who is a large stockholder of such company.

- Payment and settlement service: the operation and management of the payment and settlement system is mainly based on the Bank of Korea Act and its sub-regulations, "Rules for the Operation and Management of Payment Systems". A payment service provider may provide services by participating in the "Payment and Settlement System", such as a large-scale payment system operated by the Bank of Korea, a small payment system operated by the Korean Financial Telecommunications & Clearings Institute ("KFTC"), etc. Payment service providers shall observe the Banking Act, FISCMA Act, SCFB Act, EFT Act, etc. applicable to its own types of payment and settlement service. In relation to payment and settlement services with non-cash and paperless payment methods, the SCFB Act contains a regulation for credit card businesses, and the EFT Act deals with electronic financial transactions with electronic payment means. The EFT Act defines "electronic payment means" as an electronic funds transfer, electronic debit payment means, electronic prepayment means, electronic currency, a credit card, an electronic bond or other means of payment by electronic means.

The EFT Act stipulates issuance and management of electronic payment means, permission and registration of electronic financial business, and measures ensuring the safety of electronic financial transactions and protection of users. Most fintech payment services are treated as "electronic payment settlement agency services", which are services that are rendered to transmit or receive payment settlement information in purchasing goods or using services by electronic means, or to execute as an agent or mediate the settlement of prices thereof. Also, most fintech remittance services are treated as "issuance and management of electronic prepayment means business", as prepayment means are used to remit funds between different bank accounts.

However, it is impossible for many fintech companies to directly participate in the payment and settlement system, because transactions using the electronic payment means under the EFT Act are executed through the accounts of financial companies, such as banks or a few securities firms. Moreover, a transfer of funds between deposit accounts can only be done by participating in the KFTC-operated payment system, which requires a membership with KFTC, a non-profit corporation, under the KFTC regulations. As it is difficult for fintech companies to directly participate in the

payment system, an open banking system is being promoted as an innovation. (See “Introducing open Application Programming Interface for open banking”.)

- Money-lending business: the SCFB Act and Act on Registration of Credit Business, etc. and Protection of Finance Users are applicable to credit loans or money-lending businesses without receipt of deposits, contrary to banks. Among the above, the SCFB Act deals with credit card business, facility-leasing business, installment-financing business, and new technology venture capital business. Meanwhile, the Act on Registration of Credit Business, etc. and Protection of Finance Users is composed of regulations on credit business and loan brokerage business. Also, the credit business mentioned in the Act on Registration of Credit Business, etc. and Protection of Finance Users is primarily a business that lends small amounts of money to low-credit consumers.

However, there are no specific laws to regulate the peer-to-peer (“P2P”) financing platform. A P2P lending business model can be interpreted as a credit business or loan brokerage business depending on the specific business model’s characteristics. A credit business or a loan brokerage business is required to register with the competent authority having jurisdiction over the business’ office, such as the Special Metropolitan City Mayor, Metropolitan City Mayor, etc. On the other hand, if the platform simply relays information between borrowers and lenders online and is not involved in the direct loan contract-making process, such platform may not be considered as a credit business or loan brokerage business. A P2P financing platform that is neither a credit business nor loan brokerage business is usually connected to “a credit business linked to online loan information” registered under the Act on Registration of Credit Business, etc. and Protection of Finance Users. Also, a credit business linked to online loan information must observe the “P2P loan guideline” of the FSC, which provides duties of public notice, unsound or high-risk business restrictions, security standards, and management of conflict.

Meanwhile, bills concerning the regulation of P2P financing are currently pending at the National Assembly as of June 2019.

- Financial investment service and asset management: the FISCMA Act includes regulations for financial investment instruments, such as securities and derivatives, and financial investment business that is classified as investment trading business, investment brokerage business, collective investment business, investment advisory business, discretionary investment business and trust business. Among the financial investment businesses, crowdfunding with issuance of securities is relevant to “investment brokerage business” under the FISCMA Act, where a “crowdfunding broker” is defined as an investment broker engaging in the online brokerage of public offering or sale of debt securities, equity securities and investment contract securities issued by a person who is within the requirements of the Presidential Decree and the Support for Small and Medium Enterprise Establishment Act, etc., on another person’s account in whose name by the method prescribed by Presidential Decree. Meanwhile, personalised asset management and robotic adviser services with AI are related to “investment advisory business” or “discretionary investment business” that use electronic investment advisory devices under the FISCMA Act.
- Insurance: the Insurance Business Act is applicable to InsurTech as well as traditional insurance business. Any person who intends to be an insurance agency shall apply for registration with the FSC. However, an electronic financial business entity is not allowed to run an insurance agency except for a “specific product non-life insurance agency”, which is a non-life insurance agency that solicits insurance products relevant

to a person's business where such person's business mainly focuses on the sale of specific goods or the provision of specific services.

- Foreign exchange transactions: in order to engage in foreign exchange affairs such as payment, collection and receipt between the Republic of Korea and a foreign country, a company shall observe the Foreign Exchange Transactions Act. Pursuant to the Foreign Exchange Transactions Act, a financial company, etc., who is a financial company under the Act on the Establishment, etc. of the FSC and other relevant laws, may perform foreign exchange affairs by registering itself with the Minister of Strategy and Finance in advance, with its capital, facilities and professional human resources sufficient to perform such affairs. However, if a company that is not a financial company, etc. intends to engage in foreign exchange affairs, it may register its business by fulfilling easier requirements than a financial company, etc. and execute only a limited amount of transactions. In addition, in accordance with the EFT Act, companies that have been authorised or registered as businesses issuing and managing electronic currencies, electronic prepayment means or electronic payment settlement agency services can also register with the Minister of Strategy and Finance for other specialised foreign exchange business and provide payment services overseas.
- Financial data protection: the Credit Information Use and Protection Act stipulates principles and standards related to the use and protection of credit information, while the Personal Information Protection Act provides regulations for the processing and protection of personal information, and the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc. deals with protecting personal information when using information and communications services. Regarding financial data protection, the Credit Information Use and Protection Act has priority, while the Personal Information Protection Act, the Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., the EFT Act and the Act on Real Name Financial Transactions and Confidentiality become applicable to any matters that are not provided in the Credit Information Use and Protection Act.
- Financial innovation support: on April 1, 2019, the Special Act on Financial Innovation Support was enacted with the purpose of promoting the development of innovative financial services. The Special Act on Financial Innovation Support is applicable in preference to other finance-related laws, such as the Banking Act, FISCMA Act, SCFB Act, ETC Act, Credit Information Use and Protection Act, Personal Information Protection Act, Act on Promotion of Information and Communications Network Utilization and Information Protection, etc., and so forth. The Special Act on Financial Innovation Support provides the designation of innovative financial service by the FSC and support of innovative financial services, the responsibility of designated innovative financial service providers, and matters concerning designated agents who can be entrusted with the work of a financial company. Designated innovative financial services providers must inform the customer in advance that the service is in test operation and that unexpected risks may arise and, furthermore, obtain consent from its users about providing innovative financial services. Also, designated innovative financial services providers shall not only indemnify a customer against damages caused by the provision of services, but shall also be insured against liability for damages.

Meanwhile, Korea has incorporated the financial supervisory system as advised by international bodies.

- Korea joined the Financial Action Task Force on Money Laundering (“FATF”) in October 2009, and complies with their recommendations. In an effort to prevent money laundering, the Act on Reporting and Using Specified Financial Transaction Information includes the definition for money laundering, and criminalisation of money laundering is included in the Act on Regulation and Punishment of Criminal Proceeds Concealment and Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, etc. Moreover, regarding cryptocurrencies, the FSC provides a cryptocurrency-related anti-money laundering guideline. In addition, Korea will receive a reciprocal evaluation on the operation of AML/CFT (Anti-Money Laundering/Countering the Financing of Terrorism) starting from January 2019 until February 2020, under the FATF Mandate.
- As the UN has adopted the International Convention for the Suppression of the Financing of Terrorism 1999, as a member of the UN, Korea also implemented the Act on Prohibition Against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction in December 2008.
- As the Basel Committee on Banking Supervision (“BCBS”) enacted the “International Agreement on Self-Capital Measurements and Standards” in July 1988, Korea also introduced the concept of the equity ratio for risk-weighted assets as part of the management guidance standard for banks in 1992, and implemented the equity capital reserve system considering market risks in January 2002. As the BCBS announced the Basel III in December 2010, as a member of the Basel Committee, Korea also implemented the Basel III gradually from December 2013. Furthermore, the BIS-based equity capital ratio was also introduced in 1998 to mutual savings banks, and non-banking financial companies.

To address the new developments in the area of fintech, the following attempts are being made by government and financial authorities.

- Introducing the principle of technology neutrality in authentication: the EFT Act and sub-regulations were amended in March 2015 to abolish the obligation to use the authorised certificate, so that various authentication technologies could be used in electronic financial transactions. This amendment introduced the principle of technology neutrality according to which the law refuses to enforce the use of particular technologies or services, but promotes competition in certification technologies.
- Introducing the Virtual Test-Bed: the Virtual Test-Bed system was introduced to enable pre-testing of financial services in a virtual environment that is similar to the actual financial market. In August 2016, the KFTC established the world’s first joint fintech open platform (“Open API + Test bed”) at an open platform centre, which supports infrastructure and provides consulting for evaluating the normal operation of fintech services on a financial network. Also, the FSC implemented the Robo-Advisor Test Bed system in August 2016. Operation of the Test-Bed is carried out by Koscom, a company that builds and operates computer systems for the capital market, where its shareholders are composed of the Korea Exchange, the Korea Securities Depository, and 14 securities companies. The TestBed consists of a pre-examination, a main review and the deliberation of the final civilian review committee. The pre-examination verifies the specifications and algorithms of a company, and examines the capacity of the algorithm’s portfolio yielded by the investor’s inclination, based on hypothetical investor information. The main review requires actual funds to be operated for six months on a portfolio derived from the pre-examination, in order to

verify the stability of the algorithm and also to conduct a system review of security and stability. Passing the Test-Bed review allows the robo-advisor to conduct consultations or to operate customer assets directly without the involvement of professionals in the future, and it also allows the use of Test-Bed pass results and performance in the company's investment advertising.

- Introducing the Test-Bed system in connection with statute: in March 2017, the FSC announced measures to introduce a Test-Bed for financial regulation for an early settlement of innovative financial services. The Test-Bed system introduced by the FSC consists of the FSC's issuance of non-action opinions, test assignment programme through a financial company, and designated agent to which a financial company's business is entrusted. Among them, the issuance of non-action opinions and test assignment programme through a financial company were enforced without specific revisions to law, but the designated agent to which a financial company's business is entrusted was reflected in the Special Act on Financial Innovation Support, which took effect in April 2019.
- Establishment of Quick Response ("QR") Code Payment Standard: in November 2018, the FSC published the QR Code Payment Standard to ensure availability, simplicity and security of payment while issuing, using and destroying QR codes in electronic financial transactions. In particular, the QR Code Payment Standard ensures that the QR code has its own security functions to prevent any forgery or tampering, and also to prohibit the inclusion of sensitive personal or credit information.
- Convergence of the financial and non-financial sectors: the Internet-Only Banks Act amended the principles of segregation between bank capital and industrial capital. (See "Key fintech-related regulations" – Banking business.) Also, the Banking Act and Act on the Structural Improvement of the Financial Industry and Financial Holding Companies Act prohibit financial companies from possessing stock ownership in general, and the only exception would be when the two companies' businesses are related. Of course, the financial company should obtain the FSC's approval or report to the FSC prior to the acquisition of the non-financial company's stock, while the FSC clarified the types of fintech company businesses in which financial companies may invest by issuing an official opinion on the interpretation of the statute in May 2015, in order to stimulate investment in fintech companies. However, due to restrictions under the Insurance Business Act, an insurance company still cannot have a fintech company as a subsidiary.
- Introducing open Application Programming Interface ("API") for open banking: the financial authorities are introducing policies to transform the financial settlement infrastructure from a closed API, which allows access to programs only through APIs within the company or among pre-linked financial firms, to an open API. Through the open API on the financial settlement infrastructure, fintech firms that do not have membership in the existing financial company payment settlement network can also provide payment and remittance services and financial transaction information enquiry services using the open API. The government and the financial authorities are revising laws and encouraging existing financial companies to participate in open banking with open API. As a result, the Joint FinTech Open Platform was established in August 2016 and some payment and data enquiry functions from 16 banks were made available through open API. The FSC also announced in February 2019 that it would promote the open API in various financial industries in the long term, including securities and insurance, in addition to the banking sector.

- Activating the big data industry in the financial sector: the MyData business is in the process of making financial data which is stored in various financial institutions available to users. The revision of the Credit Information Use and Protection Act is pending at the National Assembly to make the use of MyData by customers and the disclosure of financial institutions legally mandatory. In addition, the FSC is introducing the Data Standards API in order to facilitate data retrieval and movement, and it is establishing a database of financial standard information that is open to public in the financial sector, such as DART electronic disclosure.
- Enactment of the Special Act on Financial Innovation Support: the Special Act on Financial Innovation Support was implemented in April 2019 to set an exception to several regulations related to banking, electronic finance and financial data protection, and to lay the legal basis for fintech support policies. Based on the Special Act on Financial Innovation Support, the FSC may designate a fintech service with high innovation and consumer benefits as innovative financial services considering the opinion of the Innovation Financial Review Board and grant necessary regulatory exceptions for market testing, to a limited extent. In addition, the Special Act on Financial Innovation Support provides an incentive for a company designated as an innovative financial service to explore new business opportunities by ensuring such company the exclusive operation rights for the innovative financial service for two years, provided the company obtains the relevant licence for the financial business.

Restrictions

In common law countries adopting a principle-based legal system, a financial supervisory service typically has the power to determine the applicability of specific regulations and licensing requirements at its discretion. However, in Korea, there is only limited room for discretion on the part of the financial regulator in determining the requirements and imposition of financial regulations, due to a regulation-oriented legal system and with individual financial business laws. Accordingly, an opinion of a financial regulator is often not anticipated for a legitimate start of a new project as it is not provided by the existing individual financial business law. The National Assembly or the government should revise the individual financial business laws and their sub-regulations.

Also, the establishment of a financial company requires approval from the FSC or registration with the FSC. When the FSC approves the establishment of a financial institution, the FSC not only conducts a Fit and Proper Test for management and majority, but also requires the quantitative requirements set out in the Act for Safe Management of Financial Institutions to be met. For instance, the Banking Act requires large shareholders to have sufficient investment capacity, sound financial position, and social credit.

On the other hand, the Special Act on Financial Innovation Support introduced strong incentives for fintech companies. Businesses designated as innovative financial services enjoy exemptions from various legal restrictions for a certain duration. Furthermore, if a fintech company, designated as an innovative financial service, acquires a licence with the conditions required by the relevant financial law, an exclusive right is guaranteed to such company by prohibiting other companies from providing the same service to the market for two years after entering the market in earnest.

Also, the FinTech Support Center was opened in March 2015 as a department dedicated to the creation of fintech ecosystems. In addition, in order to reduce risks to new businesses without waiting for the revision of the current laws and sub-regulations, the FSC issued non-

actional advice, and the Special Act on Financial Innovation Support introduced a prompt regulatory confirmation system.

Cross-border business

Strict regulations on the finance industry in Korea have been barring foreign fintech companies from entering the Korean market. As the Korean government began to amend or lighten such regulation to encourage the fintech industry, the Korean market opened the door to foreign fintech companies. TransferWise is one of the foreign fintech frontiers to enter the Korean market. As the Foreign Exchange Transaction Act was amended to allow stock, insurance, and fintech companies to carry foreign overseas remittance of small sums, TransferWise partnered with the local company PayGates to launch a beta service for inbound remittances in December 2018. Because TransferWise does not rely on licensed banks and exchange currencies by matching or pairing people with the target currency directly, the exchange process and fee are reduced greatly. It is expected that other global fintech companies will increasingly begin business in Korea, and local and traditional financial companies will need to keep up with the trend and develop fintech technology to survive.

It is not only companies which need to change. To follow the trend, the FSC has been regularly holding the International Financial Cooperation Forum since 2013 to share concerns on financial matters and develop networks between Korean and overseas financial institutions. High-level officials from foreign financial authorities including Bangladesh, Cambodia, China, Indonesia, Laos, Myanmar, Singapore, Vietnam and other ASEAN countries and officials from international organisations including the IMF, World Bank, and UN ESCAP (Economic and Social Commission for Asia and the Pacific) attended the forum to discuss financial issues in the Middle East, Northern Africa and Southeast Asia.

Further, the FSC formed a fintech bridge by signing a regulatory co-operation agreement on sharing information in relation to fintech innovations with the UK's Financial Conduct Authority in July 2016. Under the fintech bridge, Korea received advice on how to devise and operate a sandbox more efficiently and shared experience on cryptocurrency regulations. Korea and the UK upgraded the agreement in June 2018 by agreeing that each financial authority will support a fintech company that wishes to enter into its market if the other financial authority gives referral.

In relation to the supervision and investigation of the fintech industry, the chairman of the FSS emphasised the necessity and importance of cooperation between financial authorities in each country in fintech crimes and unethical actions in September 2018, because fintech technologies, for example, cryptocurrency, have global impact; independent regulation by the respective country will only benefit wrongdoers. Such cooperation is yet to be made, but it not an unrealistic daydream, as the FSC and FSS were approved by the International Organization of Securities Commissions as the tenth regular member of the Enhanced Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (the "EMMoU") on December 2018. The EMMoU is an agreement between financial authorities to cooperate in investigations and prosecutions on unfair trade by sharing audit work papers or financial statements, freezing assets and more.

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