

National Assembly Passes FISCMA Revision Bill

On March 5, 2013, the Legislation and Judiciary Committee of the National Assembly passed a bill (the “Bill”) proposing changes to the Financial Investment Services and Capital Markets Act (“FISCMA”). The Bill introduces a clearing system for financial investment agreements and amends relevant provisions of the FISCMA to set out certain exceptions with respect to listed companies in accordance with the amendments to the Commercial Code which took effect in April, 2012. The proposed changes aim to establish sound market order while keeping pace with the needs of the rapidly changing financial industry.

1. Central Counter-Party Clearing House (Article 166(3), 323(2)-(20) of the Bill)

To reflect the G20 nations’ agreement at the G20 summit to mitigate counter-party risk in the over-the-counter (“OTC”) derivatives market, the Bill proposes to establish a Central Counter-Party Clearing House to clear sales and purchases of OTC derivatives that carry default risk great enough to significantly impact the domestic capital market (Article 166-3 of the Bill).

The Central Counter-Party Clearing House, more commonly known as the OTC central counterparty (“CCP”), plays a key role in the system of clearing financial investment agreements. It engages in the business of centrally clearing multiple financial transactions through the netting of rights and obligations under such transactions, through various means such as acquiring obligations or replacing existing obligations with new ones.

To operate a CCP, a license to operate a clearing business for financial contracts must be obtained, depending on the type of contracts to be managed by the CCP. Further, establishment and operation of a CCP will be subject to strict regulation by the Financial Services Commission (Article 323(2) - (20) of the Bill).

The domestic OTC market has expanded in recent years, and its size as of the end of 2011 amounted to KRW 690.4 trillion. But, there has been no adequate risk management system for the market. Accordingly, the introduction of a central clearing system through the CCP is expected to address this need by mitigating counter-party risk, largely reducing the size of settlements and risks through netting of transactions among multiple parties and procuring safer and more effective OTC transactions.

In particular, if interest rate swaps, which make up the largest portion of the OTC market, were to be mandatorily cleared through the CCP, a significant improvement in the settlement safety of the OTC market would be achieved.

2. Amendments to FISCMA Provisions for Listed Companies (Article 165(9) of the Bill)

In accordance with the amended Commercial Code, the Bill proposes to abolish certain provisions of the FISCMA that impose greater restrictions on listed companies as compared to non-listed companies with respect to retirement of stock by profit. In addition, the Bill proposes to exempt listed companies from their disclosure obligations under Article 418(3) of the Commercial Code by providing for an exception in the case where a report on material changes submitted to the FSC is publicly notified upon issuance of new shares by way of third party allotment (Article 165(9) of the Bill).

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