

IN-DEPTH

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SOUTH KOREA



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In-Depth: Fintech Law (formerly The Financial Technology Law Review) provides a global overview of the fast-evolving fintech sector. It covers the most salient points of law and practice in each jurisdiction, including key licensing and other regulatory requirements, common business models and digital markets, intellectual property, data protection and much more.

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Explore on **Lexology** 

South Korea

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Introduction

The Korean government has been supportive of the fintech industry and has promoted the industry to secure national competitiveness. This government drive can be instantiated by the amendment to the Regulations on Supervision of Electronic Financial Transactions in 2015 to allow simplified payment service business models, which were first introduced to the Korean market in 2014 and the introduction of the 'open banking' system in 2019. As part of this effort, the Financial Services Commission (the FSC) regularly holds a meeting with market participants to hear their suggestions and requests regarding regulatory regime and government support. At the same time, the FSC enforces its regulatory policy of 'the same function, the same regulation'.

There is no law or regulation in Korea that directly defines, and sets forth the rules and licences applicable to fintech businesses. However, there is a set of laws and regulations that is applicable to a specific type of financial services, such as banking, capital markets or insurance, and if a fintech company provides a financial service, the laws and regulations that are applicable to that service apply. Furthermore, there are laws inherently related to services provided by fintech companies, including the Electronic Financial Transactions Act, the Act on Special Cases concerning the Establishment and Operation of Internet-only Banks and the Act on Online Investment-linked Financial Business and Protection of Users, which may apply if a fintech company provides the relevant services.

To meet the needs for legislative support, such as legislation of amendments to the relevant laws, the Korean government has adopted, pursuant to the Special Act on Support for Financial Innovation (the Special Act), which was signed into law in 2018 and entered into force in 2019, the financial regulatory sandbox programme (the sandbox programme), which exempts a designated fintech company from the legal requirements otherwise applicable to its services for a certain period of time. Recent amendments to the Special Act provide that such designated fintech companies are entitled to request amendments to the relevant laws after the period of their respective designation under the sandbox programme.

Lastly, the increased use of blockchain technologies has accelerated and diversified the digitalisation of financial services and has created a new financial environment. In connection with this trend, the Korean government continues to have legislative discussions concerning digital assets, including setting up the regulatory framework for the issuance and trading of security tokens, and also has set up legislation to regulate digital assets for the purposes of user protection and regulation of unfair trading.

In line with the Korean government's policy direction, tax benefits for the fintech industry have also been effective since 2020. The Restriction of Special Taxation Act was amended in December 2019 to add the fintech industry to the list of industries eligible for tax reductions for startups and small and medium enterprises. The Act also provides a number of tax exemptions to encourage investment in venture companies.

Year in review

The Act on Protection of Virtual Asset Users, which aims to protect virtual asset users and regulate unfair trading of virtual assets was enacted on 18 July 2023, and will take effect from 19 July 2024.

In addition, the guidelines with respect to security tokens were announced by the FSC in February 2023, and it is expected that it will be possible to issue securities under the Financial Investment Services and Capital Markets Act (the FSCMA) using distributed ledger technology, and amendments to the Electronic Securities Act and the FSCMA have been proposed to the National Assembly in this regard.

In addition, the revised Electronic Financial Transactions Act, which was amended in September 2023 and is scheduled to take effect in September 2024, has strengthened the regulation of electronic prepayment means businesses by expanding the scope of such businesses that are subject to the law.

Regulation

i Licensing and marketing

Before fintech companies launch marketing campaigns for their services, they need to first have their services reviewed to determine whether any licence is necessary under Korean law.

As mentioned above, there is no separate licence required for fintech services, and thus there is no special fintech licence. However, pursuant to the regulatory sandbox programme, fintech companies may apply for the designation of an innovative financial service for their services, and once they are designated as such, their services may be exempted from certain regulatory requirements relevant to the fintech services (including the laws related to financial institutions, financial services and data privacy) for two years, which may be extended for two additional years. Fintech companies may achieve this designation by meeting the review criteria, including the innovativeness of the service, benefits to consumers, availability of a regulatory exception, and customer protection and risk management measures. Furthermore, for up to one and half years before the expiry of the designation period, the participants may request the authorities to improve the relevant laws and regulations; otherwise, fintech companies are required to comply with law, including the laws governing financial services. Below are the key laws applicable to financial services.

The Financial Investment Services and Capital Markets Act

Under the FSCMA, any acts of a service provider to provide advice on investments may amount to an 'investment advisory business' if the investor makes his or her own investment decision, or to a 'discretionary investment business' if the investor gives the service provider the discretion to make the investment decision partially or entirely on behalf of the investor. Thus, an automated digital advisory or asset management company may be regarded as engaging in either an investment advisory business or discretionary investment business, all of which require the registration with the Korean financial authority in accordance with the FSCMA. Furthermore, although the FSCMA includes provisions specifically applicable

to robo-advisers, most of the requirements apply in the same manner. Of course, if a fintech company offers a service that amounts to any of the other businesses that require licences under the FSCMA, the fintech company must obtain the necessary licence.

The Credit Information Use and Protection Act

Pursuant to the amendment to the Credit Information Use and Protection Act (the Credit Information Act), which came into force in August 2020, the regulatory regime over credit information businesses was restructured and the personal credit information management business (MyData Business) and the professional individual credit evaluation business were introduced. In particular, after the introduction of MyData Business, companies were able to provide asset management services highly tailored to an individual based on diverse information available such as shopping patterns. To engage in these businesses, fintech companies must obtain the requisite licences in accordance with the Credit Information Act.

The Electronic Financial Transactions Act

The Electronic Financial Transactions Act applies to electronic financial businesses, including payment gateway (PG) services and electronic prepayment means issuance and management services. Unless one of the exceptions thereunder applies, a fintech company which operates such services is required to be registered for its electronic financial business under the Electronic Financial Transactions Act.

The Act on Online Investment-linked Financial Business and Protection of Users

In respect of peer-to-peer lending, the Act on Online Investment-linked Financial Business and Protection of Users (the Online Investment Act) applies, and pursuant to this law, peer-to-peer lending has been legalised. If a company wishes to engage in peer-to-peer lending, the company may do so by registering its online investment-linked financial business.

The Act on Reporting and Using Specified Financial Transaction Information

If a person wishes to engage in a 'virtual asset' (as defined in this Act) business, they are required to file a report with the Korean financial authority under the Act on Reporting and Using Specified Financial Transaction Information. Recently, the Act on Protection of Virtual Asset Users was established, and will take effect on 19 July 2024. This Act is designed to facilitate and strengthen the protection of the virtual asset users and set in place certain restrictions on unfair trade practices in the virtual asset market. Also, the financial authority stated that they will reflect the regulations on entry into the virtual asset business, and issuance and disclosure of virtual assets through additional legislation, and accordingly, it is necessary to keep an eye on related legislative development.

There is no separate law specifically regulating the marketing of fintech services. However, the Act on Fair Labeling and Advertising may apply to general advertising issues, and with respect to services related to financial products, advertising regulations under the Act on Financial Consumer Protection must be complied with.

ii Cross-border issues

There is no passporting of a fintech licence under Korean law. Even if a fintech company is licensed in a foreign jurisdiction, it does not automatically allow it to engage in regulated activities in Korea.

With respect to cross-border issues, first, it is necessary to analyse whether foreign fintech companies are subject to Korean law. Most of the Korean financial laws and regulations apply to a service provided by a foreign company in a foreign jurisdiction if the effect of the service extends to Korea, meaning that the service is offered to the Korean market or residents in Korea. Although there is no specific rule to determine whether the effect of a service extends to Korea, the financial authority announced in August 2022 that a foreign virtual asset business entity may be subject to Korean law if it engages in such a business towards Koreans. Such engagement can be confirmed by several factors, including whether they provide a Korean language option, whether there has been a marketing campaign targeted to Koreans, and whether they provide a payment or settlement option in Korean won. Generally, in relation to reverse-inquiries, the FSCMA expressly excludes passive business activities (reverse-inquiries) from the scope of licensing under the FSCMA, whereas other financial laws, including the Act on Reporting and Using Specified Financial Transaction Information, do not set forth any explicit provisions regarding reverse-inquiries. However, it is generally understood that a licence under Korean law is not required if there are no active business activities in Korea.

If Korean law applies to a certain service, it is advisable to confirm the requirements for obtaining the licences and permits required for the service. Most licences and permits require the applicant to be an entity, branch office or liaison office established in Korea, and, pursuant to the Special Act on Support for Financial Innovation, for a service to be designated as an innovative financial service, it must be provided by a financial company of Korea or a company established in accordance with the Commercial Act of Korea. Thus, if the applicant wishes their service to be designated as such, they may be required to establish a company in Korea. Furthermore, the FSCMA, the Credit Information Act and the Online Investment Act, among other acts, require an applicant, seeking to obtain a licence under the law, to have a certain level of financial stability and social credit of the company's large shareholders. Notably, a foreigner who intends to establish an entity in Korea may be required to file a foreign exchange report under the Foreign Exchange Transactions Act or a foreign investment report under the Foreign Investment Promotion Act.

Digital identity and onboarding

The Korean government has established and maintains the resident registration system, and a resident registration certificate is issued to any individual registered in the system who is 17 years old or older. The national government, local governments, public organisations and business entities are required, in principle, to use an individual's resident registration certificate to confirm the individual's identity when necessary.

Pursuant to the amendment to the Resident Registration Act, which took effect in July 2022, a mobile service is provided to verify one's identity, and if any information contained in one's

resident registration certificate is verified through such mobile service, it has the same legal effect as the confirmation through the resident registration certificate. However, this mobile service assumes the existence of a physical resident registration card, displays the information contained in the resident registration card on the mobile screen, and confirms the authenticity of the information. On the other hand, the revised Resident Registration Act, which was revised in December 2023 and is scheduled to take effect from December 2024, contains the basis for issuing a mobile resident registration card with the same effect as a physical resident registration card. Furthermore, a driver's licence, another commonly used identity document, may be issued on a mobile device. Mobile driver's licences may be issued upon face-to-face identification at a driver test centre or a police station, and a foreign national residing in Korea may obtain the mobile driver's licence if the foreign national has received a foreigner registration card.

Currently, accredited certificates and electronic signatures are commonly used for user authentication in the context of digital transactions. Although the Electronic Signature Act distinguished public accredited certificates from other accredited certificates and provided more benefits to the former, after December 2020, pursuant to the amendment to the said act, the public accredited certificate system was terminated, which encouraged free competition among the relevant service providers. The Act on Real Name Financial Transactions and Confidentiality (the Financial Real Name Act), at the same time, requires real name identification before any financial transactions. The financial authority stated that to conduct such identification non-face-to-face, a multi-factor authentication process is required, using at least two of the following:

1. a copy of the identification document;
2. video call;
3. any of the means of access within the meaning set forth in the Electronic Financial Transactions Act;
4. an existing account; and
5. other methods equivalent to any of the foregoing (including any biometric authentication).

Notwithstanding this requirement, services with a simplified authentication process under the limited conditions have been launched in the market after being designated as innovative financial services.

Separately, the Act on Promotion of Information and Communications Network Utilisation and Information Protection provides for an authentication service that authenticates an individual's identity using substitute information, CI (connecting information), without requiring such individual's resident registration number, and such authentication service is provided by an identity authentication organisation designated by the Korea Communications Commission. Identity authentication organisations so designated include certain wireless service providers, credit card companies and banks.

Digital markets, payment services and funding

i Digital markets

Basically, products and services transactions executed through digital marketplaces are governed by the Act on the Consumer Protection in Electronic Commerce, and the electronic payments made in connection with these transactions are governed by the Electronic Financial Transactions Act.

Previously, the only law regulating digital assets (i.e., cryptocurrency assets) was anti-money laundering related law (i.e., the Act on Reporting and Using Specified Financial Transaction Information), but the Act on Protection of Virtual Asset Users was enacted in July 2023 and is scheduled to take effect in July 2024 as mentioned above (see below for more information on the matters related to digital assets).

ii Crowdfunding and peer-to-peer lending

The FSCMA requires a person who intermediates crowdfunding to register as a crowdfunding broker, which is a small licence of investment brokerage business. With respect to securities issued by way of crowdfunding, investors are required to deposit such securities with the Korea Securities Depository or otherwise safeguard them immediately upon issuance. Investors are prohibited from, in principle, selling or otherwise transferring the securities within six months after the date on which such securities are deposited or safeguarded, save for exceptions under law such as selling to professional investors. With respect to peer-to-peer lending, the Online Investment Act applies and has been in force since August 2020.

The Online Investment Act requires a person who wishes to engage in the peer-to-peer lending business to register with the FSC as an online investment-linked financial business entity. Under the Online Investment Act, online investment-linked financial business entities are subject to certain obligations and restrictions such as public disclosure, interest rate limit and prohibition from lending to itself or any of its large shareholders.

Additionally, for peer-to-peer lending, investors may not, in principle, transfer to a third party their rights to receive principal and interest thereon, with certain exceptions such as transferring such right to professional investors.

iii Payment services

Registration with the FSC is required if a digital payment service amounts to a 'business of issuing and managing debit payment means', 'business of issuing and managing electronic prepayment means', 'electronic payment settlement agency business (PG)', 'business of receiving deposits for settlement of purchase payment' or 'electronic bill payment and presentment business', all within the respective meanings set forth in the Electronic Financial Transactions Act. Notwithstanding, financial institutions such as banks and credit card companies are exempted from the registration requirement.

The revised Electronic Financial Transactions Act, which was enacted in September 2023 and is scheduled to take effect in September 2024, expands the scope of regulated electronic prepayment means, strengthens the protection of prepaid money, and establishes rules for the refund of electronic prepayment means and the conduct of electronic prepayment means business operators to resolve regulatory blind spots

on electronic prepayment means that have been consistently raised. The small deferred payment business (which is similar to buy now, pay later (BNPL) services), which has been allowed under the regulatory sandbox system, has been stipulated as a business that can be operated by an electronic prepayment means business operator with the prior approval of the FSC.

Lastly, under the leadership of the financial authority, the open banking system was fully implemented as of 18 December 2019 pursuant to which fintech companies and banks may wire transfer funds to or see the wire transfer information with all banks by way of open application programming interfaces (APIs) without any separate arrangement with an individual bank.

Cryptocurrencies, initial coin offerings (ICO) and security tokens

In Korea, 'virtual assets' are currently regulated by the Act on Reporting and Using Specified Financial Transaction Information which regulates money laundering. However, the Act on Protection of Virtual Asset Users was established on 18 July 2023 and will take effect on 19 July 2024. This Act on Protection of Virtual Asset Users defines virtual assets and virtual asset operators, and according to the recently proposed Enforcement Decree, the Supervisory Regulations of the Act, the scope of 'virtual assets' further excludes electronic bonds, mobile vouchers, deposit tokens issued by central bank digital currency (CBDC) networks, and non-fungible tokens (NFTs) that are unique and cannot be substituted for each other (excluding those that can be used as a payment means) from the scope of virtual assets, so it is necessary to keep an eye on the legislation of those subordinate regulations going forward.

That said, the Act on Protection of Virtual Asset Users does not separately regulate the entry of virtual asset businesses, and accordingly, the same reporting obligations under the Act on Reporting and Using Specified Financial Transaction Information shall apply. Also, additional legislation will likely be enacted in the future to regulate the entry of virtual asset businesses and the issuance and disclosure of virtual assets.

Separately, a token can also be categorised as a 'security' under the FSCMA depending on its substance (i.e., terms and conditions), subject to regulation of the FSCMA. Recently, the issue of whether or not a token qualifies as a security under the FSCMA has become an issue for fractional investment businesses, and there has been a demand for the issuance and distribution of atypical securities (i.e., investment contract securities, and non-monetary beneficiary certificates) and the issuance of those in the form of tokens.

The FSC issued guidelines on the issuance and distribution of security tokens on 6 February 2023. The guidelines provide principles for determining whether digital assets are 'securities' and explain when they are likely to fall within the definition of securities, introduce the method of recording the issuance of token securities in distributed ledger technology as a form of securities issuance under the Act on Electronic Registration of Stocks, Bonds, Etc. (the Electronic Securities Act), and provide other measures to improve the system for the issuance and distribution of security tokens. Currently, amendments to the Electronic Securities Act and the FSCMA are pending in the National Assembly.

From the tax law perspective, although there were no clear regulations regarding the taxation of virtual assets in the past, the ground rules regarding the taxation of virtual assets and the related matters thereto were provided with the amendment to tax-related laws in December 2020. However, regulations related to the direct taxation of virtual assets have been suspended until the end of 2024, and only some regulations governing the evaluation method of virtual assets have been in effect since 2022 and are currently in force.

Notably, the Corporate Tax Act, which has been following the negative (inclusive) system in handling income generated from virtual assets, even before the above-mentioned amendment to the tax-related laws in December 2020, serves as the statutory basis for taxation for domestic (corporate) income, and that the Inheritance and Gift Tax Act, since the taxable object of inheritance and gift taxes is inclusively stipulated thereunder, serves as the statutory basis of taxation for inheritance and gift taxes. However, the Income Tax Act follows the positive system and income generated from virtual assets is not enumerated under the act and accordingly, income generated from the virtual asset by an individual (resident) was deemed the taxable income identified under the amended tax laws.

Finally, the amended Adjustment of International Taxes Act includes the virtual asset-related accounts within the scope of foreign financial accounts subject to reporting obligations and includes virtual asset service providers (VASPs) within the scope of foreign financial companies handling such foreign financial accounts subject to reporting obligations. However, the National Tax Service recently announced an official stance that crypto assets held through non-custodial and decentralised crypto wallets are not subject to such foreign financial account reporting.

Other new business models

i Self-executing contracts (smart contracts)

There is not yet any law that explicitly regulates smart contracts in Korea. However, the interpretation of smart contracts shall follow the general principles applying to contracts, and there is a possibility of smart contracts conflicting with a number of laws. For example, smart contracts may conflict with the Act on the Regulation of Terms and Conditions. For example, Article 9(1) of the above act invalidates contractual provisions that exclude or restrict the exercise of a customer's rights of termination of the contract, and smart contracts' automatic execution mechanism may conflict with such rights.

In addition, because there is no special correction mechanism for self-executing contracts, only existing dispute resolution means such as litigation, arbitration or mediation can be used. As a result, it will be possible to issue judgments to reinstate contracts that have actually been executed, judgments on the trigger of enforcement, etc., but there may be problems with how to enforce such judgments if cooperation is not received from those authorised to execute them on the network.

ii Fully automated investment process

A person who is registered as an investment adviser under the FSCMA may be entrusted with the entire investment judgment of an investor and operate financial investment

products, including the acquisition and disposal of financial investment products, and may use electronic investment advice devices in this process. However, in the case of an electronic investment advice device, the investor's investment propensity must be analysed in consideration of the investor's investment purpose, financial situation, and investment experience, and the specified requirements must be complied with, such as having an infringement accident and disaster prevention system.

iii Artificial intelligence

Since 2020, the FSC has formed the AI Working Group for the financial sector to discuss the actual use and difficulties of, inter alia, using artificial intelligence (AI) in the financial industry and the regulatory considerations, and has been conducting research to prepare the AI guideline. Accordingly, on 8 July 2021, through the '1st Digital Finance Council Data Subcommittee Meeting,' the FSC announced the 'Financial Sector AI Guideline'.

In addition, the FSC emphasised that it will:

1. ensure that high-quality big data necessary for AI development and learning can be seamlessly acquired through the establishment of a 'Financial AI Data Library';
2. develop a support system for the financial industry to proactively use AI, such as the publication of the 'AI Development and Utilisation Guideline for 5 Key Financial Sectors'; and
3. establish a related support system so that social trust in AI is improved, such as 'AI testbed' and AI security verification support.

In addition, the FSC released the 'AI Security Guidelines for the Financial Sector' in 2023, providing specific considerations with respect to security for each stage of AI model development.

Currently, AI-related bills are pending in the National Assembly, so it is necessary to keep an eye on the legislative development in the future.

iv Websites comparing products or providing information about financial products

Platform services that compare or provide information on financial products are being provided by certain fintech companies, and there have been discussions on whether these services constitute 'brokerage' or merely 'advertising' of financial products. Financial authorities believe that it is likely to constitute 'brokerage' (depending on the specific facts) if it compares and recommends financial products or provides specific information to strongly induce a person to subscribe to such a financial product.

In addition, to 'broker' each financial product, a licence must be obtained under the Act on Financial Consumer Protection or other financial-related laws. In the past, 'brokerage' of deposit products and insurance products has been limited, but recently, the financial authority has designated innovative financial services, allowing companies to provide a comparison platform for deposit products and insurance products under certain conditions.

v Fractional investment business (other new business models)

Recently, there has been an active discussion about the fractional investment business, which allows investors to invest in fractional ownership and have claims on artworks, real estate, music copyrights, etc. In the case of fractional investment related to music copyrights, it takes the form of a trust, which is allowed exceptionally by designation as an innovative financial service, since the current FSCMA allows the issuance of beneficiary certificates for 'monetary trusts' only (the financial authority stated that it will allow the issuance of beneficiary certificates for non-monetary trusts in the future). Investment in artworks is currently carried out in the form of the investment contract security, which is one of the six categories of securities under the FSCMA, and the securities report therefore was recently approved by the financial authority. The fractional investment business is expected to be active.

vi Decentralised finance and decentralised autonomous organisations

Regulatory discussions on decentralised finance (DeFi) in Korea are still ongoing. The regulatory direction for DeFi is being reviewed while follow-up legislation to the Act on Protection of Virtual Asset Users is being discussed. Recently, the financial authorities announced the draft of the Enforcement Decree of the Act on Protection of Virtual Asset Users on 8 December 2023, stating that the regulatory plan for DeFi in the EU is expected to be reviewed by the end of 2024, and that the regulatory plan in Korea will be determined by reviewing global regulatory trends, including the EU's position. In addition, the financial authorities mentioned that they will determine whether regulation of VASPs is applicable regardless of whether the reference to 'DeFi' is used if the operating entity has de facto control and provides similar financial services such as deposits, loans, and staking using virtual assets.

The legal nature of decentralised autonomous organisations (DAOs) may be seen as problematic in Korea. Under the current law, it is difficult for DAOs to be considered corporations upon their establishment under the current Commercial Act, and, based on their nature, they may be recognised as a partnership under the Civil Act (when two or more persons have agreed to carry on a joint undertaking of business by making mutual contribution thereto) or an undisclosed association under the Commercial Act (formed upon agreement between parties that one of them will make an investment in the business of the other and the other will share profits accruing from such business). The uncertainty in the classification of DAOs results from the fact that a DAO is not recognised as one of the five forms of corporate organisations under the Commercial Act.

Intellectual property and data protection

i Intellectual property

Fintech usually has the form of software (computer program) when the financial service is implemented through information technology (IT) with its business model as a characteristic. The business model and software may be protected by the Patent Act, the Copyright Act and the Unfair Competition Prevention and Trade Secret Protection Act under certain requirements.

If the software or business model invented by an employee is deemed an 'employee invention', the ownership and compensation of the intellectual property rights shall be governed by the Patent Act and the Invention Promotion Act, and if the software or business model is deemed a 'work made for hire', the ownership and compensation of the intellectual property rights shall be governed by the Copyright Act. If the software or business model constitutes a trade secret or the result of significant investment or effort, it is protected under the Unfair Competition Prevention and Trade Secret Protection Act.

If there is a provision regarding pre-reserved succession of rights regarding an employee invention between an employee and an employer and a notification by the employer regarding its intention to succeed the employee intellectual property rights, the employer shall have the right over the employee invention, and the employee shall retain the right to claim relevant compensation. Conversely, if the employer decides not to succeed the employee's invention, the employee themselves may apply for and receive a patent on the invention, in which case the employer may have non-exclusive licences for the patent. On the other hand, in the absence of a provision regarding the pre-reserved succession of rights, in principle, other than non-exclusive licences (in the case of a large company, ordinary practice rights are not recognised), the employer may not claim the right over the invention against the employee's will; nonetheless, if the application regarding the invention's intellectual property was filed under the name of the employer (i.e., the company) without explicit objection from the employee in a situation reasonably recognisable by the employee, it is often recognised in practice as the employer having received the succession rights through an *ex post facto* agreement between the employer and the employee.

However, in practice, software or a business model developed by employees is more often protected only as a 'work' or 'trade secret' without a separate patent filing, and the Copyright Act stipulates that the employer retains the right over a 'work made for hire' yet does not stipulate the obligation of the employer to separately compensate the employee for that work. In the case of the Unfair Competition Prevention and Trade Secret Protection Act, there is no separate compensation provision for trade secrets developed by employees (however, if a patent application is possible as a job invention, but the application is waived and managed as a trade secret, compensation obligations arise under the Invention Promotion Act). Conversely, since inventions or creation by independent contractors are deemed subcontracts under the Civil Act, the ownership or compensation (generally included in contracts in Korea) depends on the terms of the contracts, but if no agreement can be found regarding the ownership or compensation under exceptional circumstances, the intellectual property rights shall belong to the actual developer or author according to the grand principles of the intellectual property laws of Korea.

ii Data protection

The primary legislation governing data protection is the Personal Information Protection Act (the PIPA) and its accompanying regulations. These regulations control the collection, usage, disclosure and processing of personal information by government agencies, private organisations and individuals. Data handlers must implement appropriate technical, administrative and physical measures to guarantee the security of personal information as specified by the PIPA and its regulations.

For financial organisations or businesses handling personal credit information, there are additional cybersecurity provisions outlined in several sector-specific laws and regulations, such as the Credit Information Act, the Electronic Financial Transactions Act and the Regulations on the Supervision of Electronic Financial Transactions (the EFTA Regulations). Under the Credit Information Act, credit information companies and similar entities must put in place technical, physical and organisational security measures as per the Enforcement Decree of the Credit Information Act. This is to defend against unauthorised access to their credit information computing systems, any alterations, damages, destructions of the stored information and any other potential risks. To ensure the security and reliability of electronic financial transactions, financial companies, electronic financial businesses and subsidiary electronic financial businesses must follow the standards set forth in the EFTA Regulations, as required by the EFTA, regarding the IT sector, including human resources, facilities, electronic devices and expenses incurred for conducting electronic transmissions or processing, and electronic financial affairs and certification methods, including the use of certificates governed by the Digital Signature Act.

On the other hand, the PIPA and the Credit Information Act do not contain explicit provisions on 'profiling', but they do contain provisions on 'automated decision-making'. The revised PIPA, which is scheduled to take effect on 15 March 2024, defines 'automated decision-making' as 'a decision made by processing personal information with a fully automated system (including a system that applies artificial intelligence technology)' and recognises the right of the information subject to refuse or request an explanation from the personal information processor in this regard. In addition, the Credit Information Act defines 'automated evaluation' as 'the act of evaluating an individual credit information subject by processing personal credit information and other information using only information processing devices such as computers without involving therein the evaluation of an employee of a credit information company,' and recognises the right of the individual credit information subject to request an explanation from the personal credit rating company, the right to submit information favourable to the automated evaluation, and the right to request correction or deletion of the information underlying the automated evaluation.

Outlook and conclusions

In particular, in the past year the Act on Protection of Virtual Asset Users, a basic law in the field of virtual assets, was enacted and will take effect in July 2024, and the revised Electronic Financial Transactions Act, which overhauls regulations on electronic financial businesses, is set to be enforced in September 2024. As the subordinate regulations that specify the contents of the above laws are also expected to be amended and take effect this year, these regulatory changes in the fields of virtual assets and electronic financial businesses are expected to have a major impact on the fintech industry in general.

In addition, the use of AI in the fintech sector has been increasing rapidly in recent years. Accordingly, it is necessary to keep an eye on the impact of AI on fintech and its regulatory changes. Until now, financial authorities have taken a self-regulatory approach through issuing guidelines, but influenced by the enactment of the EU AI Act, in Korea, discussions on enacting separate legislation to regulate AI are underway.

In the case of security tokens, the FSC issued guidelines in 2023 to regulate their issuance and distribution, but amendments to the Electronic Securities Act and the FSCMA, including related regulations, are currently being proposed to the National Assembly, and legislative discussions on security tokens are expected to continue this year.

In terms of financial consumer protection, regulations under the Act on Financial Consumer Protection, which came into effect in 2021, are being further refined, while the designation of innovative financial services to resolve conflicts with existing regulations and promote the fintech industry is also expected to continue this year.

Endnotes

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