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Newsletter

Fintech Group

South Korea Enacts World's First Law on P2P Financing

The Act on Online Investment-Linked Financing and User Protection (the "P2P Financing Act") passed the plenary session of the Korean National Assembly on October 30, 2019 and was promulgated on November 26, 2019.

The P2P Financing Act is a legislation proposed to regulate the online investment-linked financing, namely, the P2P financing, which is known as one of the representative areas of the Fin-Tech industry. The P2P Financing Act aims to resolve the existing problems such as insufficient investor protection in the P2P financing industry, resulting from the industry being regulated by the "Act on Registration of Lending Business, etc. and Protection of Finance Users" and P2P Lending Guidelines in the absence of legality or legal effectiveness specifically intended for the P2P financing industry, and also to set forth regulations in compliance with the true nature of the P2P financing business which is different from the credit business.

The enactment of the P2P Financing Act has a significant meaning - it is not only the outcome of the Fin-Tech industry's efforts over the past three years, but it is also the first P2P financial regulation in the world the establishment of which marks the birth of a new financial business in Korea for the first time in the last 17 years.

The P2P Financing Act will take effect 9 months after being promulgated.

Lee & Ko has been providing advice on the P2P Financing Act since the initial stages of preparing its proposal to the relevant P2P lending businesses and Association. Through various channels, including the National Assembly and government hearings, we have actively engaged in activities to increase the necessity and understanding of the P2P Financing Act.

The key contents of the P2P Financing Act and matters requiring your special attention are as follows.

1. Key Contents of P2P Financing Act

- A person who intends to engage in the P2P financing business shall satisfy the requirements for registration, such as having equity capital of KRW 500 million or more, etc., and register with the Financial Services Commission (the "FSC").
- P2P financing business operators shall disclose matters concerning the transaction structure, current financial and management status, amount of loans and default rate, etc. and will be subject to certain restrictions in terms of interest rates and commissions.
- P2P financing business operators may make principal investment within a limited scope, but instead, shall be prevented from providing connected lending to P2P financing business operator and its major shareholder, etc., providing loan before soliciting investors and mismatching the maturity of investment with that of lending, etc.
- P2P financing business operators shall provide investors with information concerning connected lending including borrower information. For the purpose of protecting investors against the risk of P2P financing business operator's embezzlement or bankruptcy, the investment, etc. will be separately kept at an independent institution, and the P2P Financing Act also provides provisions guaranteeing the bankruptcy remoteness in case of P2P financing business operator's bankruptcy.
- To secure the soundness of P2P financing business operators, the P2P Financing Act prevents the operators from concentrating on a single borrower and also prescribes investment limits for investors.
- The P2P Financing Act enables the assignment and assumption of the right to receive principal and interest under certain restrictions, to ensure that the investors collect their investment prior to maturity.
- The P2P Financing Act expressly allows financial institutions to make an investment in P2P lending, however, also sets provisions to prevent them from evading regulations by taking advantage of the P2P financing business.
- The P2P Financing Business Association will be established under the P2P Financing Act and the P2P financing companies are obliged to join the association.

2. Matters Requiring Your Special Attention

- The P2P Financing Act defines the P2P financing not as a type of simple lending business, but as a type of financing business performed by credit financial institutions, and, considering the 'platform' aspect of this business, allows the business operators to engage in concurrent and/or incidental business so that they can extend their business in the future. Please pay attention to the concurrent and/or incidental business provisions to be further established in the Enforcement Decree or other regulations to check whether the platform of the P2P financing business operator is extendable and, if it is, how much it can be extended.
- Financial companies planning to enter the P2P financing business should examine the entry requirements, whether the P2P financing business would have synergistic effect with its current business, as well as the extendibility and constraints regarding the same.
- Financial companies considering to enter the mid-interest rate market should pay attention to the provisions under the P2P Financing Act allowing them to make an investment in certain P2P instruments. There are situations that, according to the interpretation of laws and regulations, whether these companies can or cannot make an investment in the P2P instruments is unclear, and the P2P Financing Act intends to provide a more clear legal solution in such uncertain situations. So, it should be reexamined whether such investment is allowed under the P2P Financing Act and other laws and regulations.
- Companies currently engaging in the P2P financing business should check the registration requirements and schedules under the P2P Financing Act (which can be applied from 7 months after the promulgation of the Act) and examine the newly established regulations on business activities to determine whether they should alter the structure of their product or add supplementary items to sales procedures, etc.
- In particular, since the P2P Financing Act delegates many powers of rule-making on important matters to sub-regulations, it is necessary to carefully review the provisions of sub-regulations including the Enforcement Decree of the P2P Financing Act, the advance notice of draft of legislation of which will be made in December.

As the FSC has announced that it would actively collect opinions from the industry and non-government experts in the enactment procedures of the sub-regulations including the Enforcement Decree, it is also necessary to pay attention to the enactment of sub-regulations and to suggest opinions for your business.

Should you need any assistance in the area of the P2P Financing Act, please do not hesitate to contact Lee & Ko.

For more information pertaining to this newsletter, please contact the attorneys identified on the right.

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