

# Payment and Settlement Systems in Korea—Legal Perspective

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# I. Payment and Settlement System in Korean Law

- No comprehensive regulatory laws on P/S system
  - No legal definition of P/S system
  - *Banking Act* (deposit, exchange business)
  - *Specialized Financial Business Act* (credit card, debit card, prepaid card)
  - *Electronic Financial Transactions Act* (electronic payment instruments: electronic funds transfer, electronic debit payment instruments, electronic prepayment instruments, electronic money, credit card, electronic bond, etc)

- BOK's function for management and oversight of the P/S system (BOK Act s 81)
  - P/S system operated by the BOK
  - P/S system operated by institutions other than the BOK

- Classification of the P/S system by the BOK
  - Large value settlement system
  - Small value settlement system
  - Securities settlement system
  - Foreign exchange settlement system

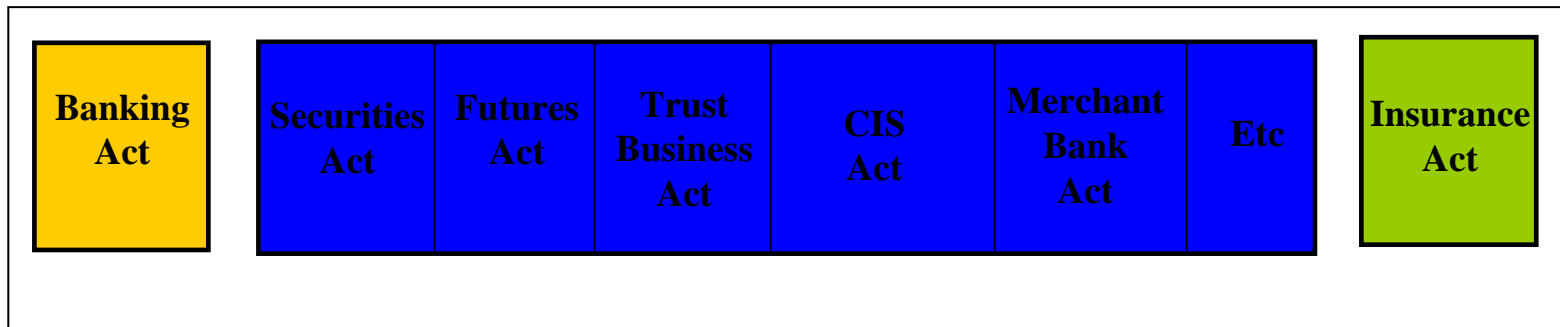
## II. Money transfer business by financial investment firms

- Regulatory reform in Korea

- the *Capital Markets and Financial Investment Services Act* 2007

- *Enacted on 3 Aug 2007, Effective on 4 Feb 2009*

< Before Consolidation >



< After Consolidation >



- Under the *Capital Markets and Financial Investment Services Act 2007*, money transfer business permitted for financial investment firms (s 40④)
  - Issue of the hottest debate during the enactment process
  - (1) Banking sector :
    - (i) “payment and settlement business is one of the core businesses of banks”
    - (ii) “investment banking sector is inherently riskier than commercial banking sector”
  - (2) Securities sector :
    - (i) “payment and settlement business is not one of the core businesses of banks”
    - (ii) “no risk – safety guard for the payment instrument, investor’ s deposit”
  - (Con) “payment and settlement business using only *bank deposit* as payment instrument is one of the core businesses of banks”
    - difference between investor’ s deposit and bank deposit?



- Payment instrument
  - Investor's deposit to financial investment firms
    - “money deposited by investors in connection with purchase, sale, or other transactions of financial investment products”
    - Cf. bank deposit
  - (1) [100% separation from the relevant payment institution, that is, financial investment firms]
  - (2) [control on the investor's deposit's management, such as government bonds]

– *Capital Markets and Financial Investment Services Act 2007 s 74 (Separate Custody of Investors' Deposits)*

(1) A broker or dealer shall deposit or entrust investors' deposits ... separately from its own property in a securities finance company. [100% separation]

(7) A depository institution shall manage investors' deposits through a method falling under any of the following subparagraphs:

1. To purchase Government bonds or municipal bonds;

2. ... [control on the investor's deposit's management]

- Payment services
  - Limited to small value, ceiling amount not yet fixed)
  - Limited to retail, not wholesale

- The case of insurance companies
  - Draft Bill amending the *Insurance Business Act*
    - Money transfer business permitted
  - Payment services
  - Payment instrument?

# III. Payment and Settlement System in Korean Law

- Need of comprehensive regulatory law on P/S system
- *Scope*
  - *Payment instrument:*
  - *Payment services:*
  - *P/S system:*
- *Regulator*
  - *FSC/FSS*
  - *BOK*