

FSC PROPOSES RULES CHANGE IN THE ENFORCEMENT DECREE OF THE BANKING ACT

The FSC gave advance notice on April 10 regarding rules change in the Enforcement Decree of the Banking Act, which will be put up for public comment until May 22. The revision bill establishes a specific standard for when a bank should get authorization from the FSC if it closes down or transfers or acquires a major part of its business operation. It also contains a regulatory modification in agreement with upstream legislation and a penalty clause for a specific type of violation.

When Citibank Korea decided to draw back its retail banking operation in 2021, the FSC was not able to proceed with an authorization process since the Banking Act stipulates a bank's closure of the entire part of its business as an area where the FSC could deliver authorization. For the closure of a part of the bank's business operation, the FSC then saw it unlikely that it could give authorization under the purview of the Banking Act.

Nonetheless, given the necessity to protect the rights and interests of consumers, the FSC then gave the order to Citibank Korea to draw up a detailed plan to minimize inconvenience to consumers, protect consumer rights and maintain sound market order and implement its plan faithfully as it was authorized to take such action as prescribed by the Financial Consumer Protection Act.

In March 2023, the Banking Act was amended, however, to subject banks to get authorization from the FSC when they close down not only the entire part of their business but a "major part" of their business operation as well. The amended Banking Act then delegates the authority of determining what constitutes a "major part" to its Enforcement Decree.

Thus, this partial revision proposal for the Enforcement Decree of the Banking Act specifies the "major part" of the bank's business operation to be closed down as a part of business constituting 10/100 or more of the bank's assets and total profits.

Also, considering that the transfer of a part of a business is in essence same as the closure of a part of a business, the revised Enforcement Decree will subject banks to get FSC's authorization when transferring a "major part" of a business constituting 10/100 or more of bank's assets and total profits.

For the acquisition of banking business, on top of the aforementioned standard of assets and total profits, the revised Enforcement Decree will subject banks to get FSC's authorization when the amount of debt acquiring is 10/100 or more of the acquiring enterprise's total debt. The minimum asset, profit and debt standard of

10/100 or above has been adopted taking after the same standard currently being applied to listed companies for their reporting duty as prescribed by the Financial Investment Services and Capital Markets Act (FSCMA) and its Enforcement Decree.

The revised Enforcement Decree also contains a provision that specifically sets the minimum amount of KRW10 billion for loans and payment guarantees extended by an enterprise to a bank for which the bank is required to report at its general shareholders' meeting about certain criteria such as the status of the enterprise whose debt has been restructured in a given fiscal year and the details of its debt restructuring history as there has been upstream legislation of this particular regulation from the supervisory regulation on banking business previously to the Banking Act.

For failure to comply with this reporting duty, the revised Enforcement Decree specifically sets the maximum amount of administrative fine that can be imposed on a bank as up to KRW30 million.

After a period of advance notice from April 10 to May 22, this revision bill will be reviewed by the Ministry of Government Legislation and finalized at the state council meeting before taking effect on September 22, 2023, the same day the Banking Act is scheduled to become effective.

#

For press inquiry, please contact Foreign Media Relations at fsc_media@korea.kr.