

Cabinet Office Ordinance on Clearing Institution for Interbank Funds Transfer

(Cabinet Office Ordinance No. 5 of March 1, 2010)

Pursuant to the provisions of the Payment Services Act (Act No. 59 of 2009) and the Order for Enforcement of the Payment Services Act (Cabinet Order No. 19 of 2010) and for the purpose of enforcing said Act and said Order, the Cabinet Office Ordinance on Clearing Institution for Interbank Funds Transfer is issued as follows.

Chapter 1 General Provisions (Article 1 – Article 4)

Chapter 2 Business (Article 5 – Article 9)

Chapter 3 Supervision (Article 10 – Article 13)

Chapter 4 Miscellaneous Provisions (Article 14 – Article 16)

Supplementary Provisions

Chapter 1 General Provisions

(Definition)

Article 1 The terms "Clearing Services for Interbank Funds Transfer" and "Clearing Institution for Interbank Funds Transfer" as used in this Cabinet Office Ordinance mean Clearing Services for Interbank Funds Transfer and Clearing Institution for Interbank Funds Transfer as referred to in Article 2 of the Payment Services Act (hereinafter referred to as the "Act"), respectively.

(Route of Written Application for License)

Article 2 A person intending to obtain a license pursuant to the provisions of Article 65, paragraph (1) of the Act must submit a written application for license through the Commissioner of the Financial Services Agency.

(Matters to be Stated in Written Application for License)

Article 3 The matters to be specified by Cabinet Office Ordinance as referred to in Article 65, paragraph (1), item (vi) of the Act shall be the name of the accounting auditor.

(Documents to Be Attached to Written Application for License)

Article 4 Documents to be specified by Cabinet Office Ordinance as referred to in Article 65, paragraph (2), item (vii) of the Act shall be the following documents:

(i) If the person intending to obtain a license is a stock company, the following

documents:

- (a) a document stating the name or trade name or other name and the address or location of major shareholders (meaning a shareholder who holds voting rights constituting ten percent or more of all shareholders' voting rights (excluding voting rights of the shares which cannot be exercised for all matters that are subject to a resolution at a general meeting of shareholders, and including the voting rights of the shares for which the shareholder shall be deemed to have voting rights under the provisions of Article 879, paragraph (3) of the Companies Act (Act No. 86 of 2005); the same shall apply in Article 13, paragraph (2), item (vii)) and the number of voting rights held by them;
- (b) a document stating an outline of the parent corporation (meaning a corporation or other organization holding the majority of the voting rights (meaning the voting rights referred to in sub-item (a)) held by all shareholders of the person intending to obtain a license; the same shall apply in the following item) and the subsidiary corporation (meaning a corporation or other organization whose majority of voting rights (in the case of a stock company, excluding the voting rights of the shares which cannot be exercised for all matters that are subject to a resolution at a general meeting of shareholders, and including the voting rights of the shares for which the shareholder shall be deemed to have voting rights under the provisions of Article 879, paragraph (3) of the Companies Act) held by all the shareholders, members, or equity investors are held by the person who intends to obtain a license; the same shall apply in said item);
- (c) a curriculum vitae and an extract of the certificate of residence or any substitute document thereof of directors and company auditors (in the case of a company with committees, directors and executive officers; the same shall apply in sub-item (c)) and a document with which each of said directors and company auditors pledges to the effect that such person does not fall under any of Article 66, paragraph (2), item (iv), sub-items (a) through (e) of the Act;
- (d) in the case of a company with accounting advisors, a curriculum vitae (if an accounting advisor is a corporation, a document stating the history of said accounting advisor) and an extract of the certificate of residence or any substitute document thereof of accounting advisors (if the accounting advisor is a corporation, the certificate of registered matters of said accounting advisor or any substitute document thereof) and a document with which each of said accounting advisors pledges to the effect that such person does not fall under any of Article 66, paragraph (2), item (iv), sub-items (a) through (e) of the Act; and
- (e) a document stating a description of the business of which each of directors

- (in the case of a company with committees, executive officers) is in charge.
- (ii) if the person who intends to obtain a license is a general incorporated association, the following documents:
 - (a) a document stating the name or trade name or other name and address or location of members, and the number of voting rights held by them;
 - (b) a document stating an outline of the parent corporation and subsidiary corporation;
 - (c) a curriculum vitae and an extract of the certificate of residence or any substitute document thereof of board members and auditors and a document with which each of said board members and auditors pledges to the effect that such person does not fall under any of Article 66, paragraph (2), item (iv), sub-items (a) through (e) of the Act;
 - (d) a document stating a description of the business of which each of the board members is in charge.
 - (iii) a document stating the status of securing employees who have the knowledge and experience pertaining to the Clearing Services for Interbank Funds Transfer and the status of the assignment of such employees.
 - (iv) a document stating the organization and division of duties of the Clearing Institution for Interbank Funds Transfer.
 - (v) a document stating the expected income and expenditure for the first three years after the commencement of the business.
 - (vi) if the matters listed in Article 71, paragraph (2), item (viii) of the Act are to be specified in the statement of operational procedures, a document stating the other party to the contract and other matters of reference.
 - (vii) documents stating other matters of reference.

Chapter 2 Business

(Application, etc., for Approval of Other Business)

Article 5 (1) A Clearing Institution for Interbank Funds Transfer intending to obtain the approval under Article 69, paragraph (1) of the Act must submit a written application stating the following matters to the Commissioner of the Financial Services Agency:

- (i) type of the business for which the approval is sought; and
 - (ii) the scheduled date of commencement of said business.
- (2) The following documents must be attached to the written application set forth in the preceding paragraph:
- (i) a document stating a description of the contents and methods of said business;
 - (ii) a document stating a description of the organization having jurisdiction over said business and the assignment of the personnel in said business;

- (iii) rules concerning the operation of said business; and
 - (iv) a document stating the expected income and expenditure for the first three years after the commencement of said business.
- (3) If an application for approval set forth in paragraph (1) is filed, the Commissioner of the Financial Services Agency must examine whether the application involves any risk of causing hindrance to the proper and secure provision of the Clearing Services for Interbank Funds Transfer.

(Notification of Abolition of the Approved Business)

Article 6 A Clearing Institution for Interbank Funds Transfer making a notification under Article 69, paragraph (2) of the Act must submit a written notice stating the following matters:

- (i) type of the business for which approval was obtained pursuant to the provisions of Article 69, paragraph (1) of the Act;
- (ii) date of abolition of said business; and
- (iii) reason for the abolition of said business.

(Application, etc., for Approval of the Entrustment of Part of the Clearing Services for Interbank Funds Transfer)

Article 7 (1) A Clearing Institution for Interbank Funds Transfer intending to obtain the approval under Article 70, paragraph (1) of the Act must submit a written application stating the following matters to the Commissioner of the Financial Services Agency:

- (i) the trade name or other name and address of the other party to which business is entrusted (hereinafter referred to as "Trustee" in this Article);
 - (ii) the contents and the scope of the business to be entrusted;
 - (iii) entrustment period;
 - (iv) the contents of the conditions attached to the contract for the entrustment of said business as measures to ensure the proper and secure provision/conduct of said business by the Trustee; and
 - (v) criteria for the selection of the Trustee.
- (2) The following documents must be attached to the written application set forth in the preceding paragraph:
- (i) a written statement of reasons;
 - (ii) a document stating the description of the contents of the contract for the entrustment of said business;
 - (iii) a document pledging to the effect that the Trustee does not fall under any of the conditions listed in Article 66, paragraph (2), items (ii) and (iii) of the Act;
 - (iv) a document pledging that the Trustee's directors and company auditors (including board members, auditors, and other persons equivalent thereto

- and in the case of a company with committees, directors and executive officers; hereinafter the same shall apply in this Article) do not fall under the conditions listed in Article 66, paragraph (2), item (iv) of the Act;
- (v) certificate of registered matters of the Trustee;
 - (vi) the articles of incorporation of the Trustee;
 - (vii) a document stating the description of the method for implementing the business to be entrusted;
 - (viii) business reports, balance sheets and profit and loss statements of the Trustee for each of the last three years or any substitute thereof;
 - (ix) a document stating the names of the directors and company auditors of the Trustee;
 - (x) an extract of the certificate of residence of directors and company auditors of the Trustee or any substitute document thereof;
 - (xi) a curriculum vitae of directors and company auditors of the Trustee;
 - (xii) if the Trustee is a company with accounting advisors, a document stating the names of the accounting advisors of the Trustee, an extract of their certificate of residence or any substitute document thereof (if an accounting advisor is a corporation, the certificate of registered matters of said accounting advisor) and their curriculum vitae (if an accounting advisor is a corporation, a document stating the history of said accounting advisor), and a document pledging to the effect that any of said accounting advisors does not fall under the conditions listed in Article 66, paragraph (2), item (iv) of the Act (if an accounting advisor is a corporation, a document pledging to the effect that said accounting advisor does not fall under the conditions listed in item (iii) of said paragraph);
 - (xiii) a document stating a description of the business of which each of the directors (including board members and other persons equivalent thereto and in the case of a company with committees, executive officers) is in charge; and
 - (xiv) documents stating other matters of reference.
- (3) If an application for approval set forth in paragraph (1) is filed, the Commissioner of the Financial Services Agency must examine whether the application satisfies the following criteria:
- (i) the entrustment involves no risk of causing hindrance to the proper and secure provision/conduct of the Clearing Services for Interbank Funds Transfer;
 - (ii) the Trustee is a corporation with social credibility and has a proper plan with regard to the entrusted business and is able to perform the business in a reliable manner;
 - (iii) the Trustee does not fall under any of the conditions listed in Article 66, paragraph (2), items (ii) or (iii) of the Act;

- (iv) Directors, accounting advisors, and company auditors of the Trustee do not fall under any of the conditions listed in Article 66, paragraph (2), item (iv) of the Act; and
- (v) if the Trustee is to sub-entrust the entrusted business in whole or in part to another person, the contract for entrustment of said business must include conditions to the effect that the Clearing Institution for Interbank Funds Transfer is able to confirm the business performed by the person who accepts said sub-entrustment and other conditions to the effect that Trustee take measures to ensure the proper and secure provision of said business.

(Important Matters with Regard to Contract with Foreign National, etc.)

Article 8 Important matters to be specified by Cabinet Office Ordinance as referred to in Article 71, paragraph (2), item (viii) of the Act shall be the following matters:

- (i) Matters concerning the provision of the means of communication; and
- (ii) Matters concerning the provision of the business pertaining to information processing.

(Matters to be Stated in the Statement of Operational Procedures)

Article 9 The matters to be specified by Cabinet Office Ordinance as referred to in Article 71, paragraph (2), item (ix) of the Act shall be matters related to the method of the netting calculation of the Unsettled Obligations, etc. (meaning the Unsettled Obligations, etc. referred to in Article 73, paragraph (2) of the Act), the method of appropriation of security, and other settlement methods.

Chapter 3 Supervision

(Application, etc., for Authorization of Amendment of the Articles of Incorporation or Statements of Operational Procedures)

Article 10 (1) A Clearing Institution for Interbank Funds Transfer intending to obtain the authorization under Article 76 of the Act must submit a written application for authorization stating the following matters to the Commissioner of the Financial Services Agency:

- (i) the contents of and the reason for the amendment; and
- (ii) the scheduled date of the amendment.

(2) The following documents must be attached to the written application for authorization set forth in the preceding paragraph; provided, however, that submission of the document set forth in item (ii) is not required for a written application for authorization of amendment of statement of operational procedures:

- (i) a comparison table for the existing and amended articles of incorporation or

- statements of operational procedures;
 - (ii) the minutes of a general meeting of shareholders or members and any other documents proving that the necessary procedure has been completed; and
 - (iii) documents stating other matters of reference.
- (3) If an application for authorization set forth in paragraph (1) is filed, the Commissioner of the Financial Services Agency must examine whether the application conforms with laws and regulations and whether it is sufficient for the proper and secure provision of Clearing Services for Interbank Funds Transfer.

(Notification of Change in the Amount of the Stated Capital, etc.)

Article 11 (1) A Clearing Institution for Interbank Funds Transfer making a notification under Article 77 of the Act must submit a written notice stating the following matters to the Commissioner of the Financial Services Agency:

- (i) the contents of the change
 - (ii) the date of the change
- (2) The documents to be specified in the following items for the categories respectively prescribed therein shall be attached to the written notice set forth in the preceding paragraph:
- (i) in the case of a change in the matters listed in Article 65, paragraph (1), item (ii) of the Act (excluding the amount of net assets) or the matters listed in item (iii) of said paragraph: The documents listed in paragraph (2), item (iii) of said Article;
 - (ii) in the case of a change in the matters listed in Article 65, paragraph (1), item (iv) of the Act: The documents listed in paragraph (2), item (iii) of said Article and the documents listed in Article 4, item (i), sub-item (c) or item (ii), sub-item (c); and
 - (iii) in the case of a change in the matters listed in Article 65, paragraph (1), item (v) of the Act: The documents listed in paragraph (2), sub-item (iii) of said Article and the documents listed in Article 4, item (i), sub-item (d).

(Books and Documents)

Article 12 A Clearing Institution for Interbank Funds Transfer must, pursuant to the provisions of Article 78, prepare transaction records and other books and documents pertaining to the Clearing Services for Interbank Funds Transfer for the purpose of clarifying the processing and calculation of the Clearing Services for Interbank Funds Transfer and preserve them for seven years from the date of preparation.

(Reports)

Article 13 (1) Pursuant to the provisions of Article 79 of the Act, a Clearing

Institution for Interbank Funds Transfer must prepare a written report on the Clearing Services for Interbank Funds Transfer using the appended form and submit it to the Commissioner of the Financial Services Agency within three months from the end of each business year.

- (2) The following documents must be attached to the written report set forth in the preceding paragraph.
- (i) Financial statements, business reports, and supplementary schedules referred to in Article 435, paragraph (2) of the Companies Act or Article 123, paragraph (2) of the Act on General Incorporated Association and General Incorporated Foundation (Act No. 48 of 2006);
 - (ii) Audit reports referred to in Article 381, paragraph (1) of the Companies Act or Article 99, paragraph (1) of the Act on General Incorporated Association and General Incorporated Foundation;
 - (iii) Accounting audit reports referred to in Article 396, paragraph (1) of the Companies Act or Article 107, paragraph (1) of the Act on General Incorporated Association and General Incorporated Foundation;
 - (iv) Schedule of tangible fixed assets;
 - (v) Schedule of collaterals;
 - (vi) Schedules of various other accounts;
 - (vii) A document stating the name or trade name or other name and address or location of major shareholders or members and the number of voting rights held by them; and
 - (viii) A document stating the trade names or other names of the Clearing Participants (meaning the Clearing Participants referred to in Article 71, paragraph (2), item (ii) of the Act; hereinafter the same shall apply).

Chapter 4 Miscellaneous Provisions

(Application, etc., for Authorization pertaining to Resolutions of Abolition or Dissolution of the Clearing Services for Interbank Funds Transfer)

Article 14 (1) A Clearing Institution for Interbank Funds Transfer intending to obtain the authorization under Article 83 of the Act must submit to the Commissioner of the Financial Services Agency a written application by attaching the following documents:

- (i) a document stating the reasons for abolition or dissolution of the Clearing Services for Interbank Funds Transfer;
- (ii) the minutes of the general meeting of shareholders or members (if a resolution of the general meeting of shareholders or members is deemed to have been passed pursuant to the provisions of Article 319, paragraph (1) of the Companies Act or Article 58, paragraph (1) of the Act on General Incorporated Association and General Incorporated Foundation, a document

- proving that said provisions apply to the proposed abolition or dissolution);
- (iii) the balance sheet (including the related notes) and profit and loss statement (including the related notes) pertaining to the last business year and a document clarifying the contents of the assets and liabilities existing at the time of said resolution; and
 - (iv) a document stating the method for completing the Clearing Services for Interbank Funds Transfer; and
 - (v) documents stating other matters of reference.
- (2) If an application for authorization set forth in the preceding paragraph is filed, the Commissioner of the Financial Services Agency must examine whether the application satisfies either of the following criteria:
- (i) the abolition or dissolution of the Clearing Services for Interbank Funds Transfer is unavoidable in light of the status of business and property of said Clearing Institution for Interbank Funds Transfer; or
 - (ii) the abolition or dissolution of the Clearing Services for Interbank Funds Transfer involves no risk of causing hindrance to the assurance of smooth fund settlement between Banks, etc. (meaning the Banks, etc., referred to in Article 2 of the Act) or to the convenience of the Clearing Participants of said Clearing Institution for Interbank Funds Transfer.
- (3) If an application for authorization under paragraph (1) is filed by a Clearing Institution for Interbank Funds Transfer that has been subject to an order to suspend its business in whole or in part pursuant to the provisions of Article 81 or Article 82, paragraph (2) of the Act, the Commissioner of the Financial Services Agency must not grant such Clearing Institution for Interbank Funds Transfer the authorization under paragraph (1); the same shall apply if an application for authorization under paragraph (1) is filed by a Clearing Institution for Interbank Funds Transfer deemed necessary to be subject to such order or rescission of its license under Article 64, paragraph (1) of the Act pursuant to the provisions of Article 82, paragraph (1) or (2) of the Act.

(Notification of Rules Based on the Statement of Operational Procedures)

Article 15 When a Clearing Institution for Interbank Funds Transfer has established, abolished, or changed any rules based on the statement of operational procedures, it must notify the Commissioner of the Financial Services Agency to that effect without delay.

(Standard Processing Period)

Article 16 (1) The Prime Minister or the Commissioner of the Financial Services Agency shall endeavor to process any application for approval made pursuant to the proviso to Article 69, paragraph (1) of the Act or application for authorization made pursuant Article 76 or Article 83 of the Act within one

month from the day on which said application has arrived at the relevant office, and any application for license made pursuant to Article 64, paragraph (1) of the Act within two months from the day on which said application has arrived at the relevant office.

(2) The period referred to in the preceding paragraph does not include the following period:

- (i) The period required to amend said application;
- (ii) The period required for the applicant to change the contents of said application; and
- (iii) The period required for the applicant to add materials that are found to be necessary for the examination pertaining to said application.