

Cabinet Office Order on Clearing Institution for Interbank Funds Transfer

(Cabinet Office Order 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 the relevant Act and Order, the Cabinet Office Order on the Clearing Institution for Interbank Funds Transfer is issued as follows.

Chapter I General Provisions (Article 1 - Article 4-2)

Chapter II Business (Article 5 - Article 9)

Chapter III Supervision (Article 10 - Article 13)

Chapter IV Miscellaneous Provisions (Article 14 - Article 16)

Supplementary Provisions

Chapter I 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 Order 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 matter to be specified by Cabinet Office Order as referred to in Article 65, paragraph (1), item (vi) of the Act is the name of the accounting auditor.

(Documents to Be Attached to Written Application for License)

Article 4 Documents to be specified by Cabinet Office Order as referred to in Article 65, paragraph (2), item (vii) of the Act are to 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 is deemed to have voting rights under the provisions of Article 879, paragraph (3) of the Companies Act (Act No. 86 of 2005); the same applies 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 applies in item (ii)) 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 is 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 applies in item (ii));
 - (c) the following documents pertaining to directors and company auditors (in the case of a company with committees, directors and executive officers):
 - 1. a curriculum vitae;
 - 2. an extract of the certificate of residence or any substitute document thereof;
 - 3. if the name that was used before marriage was stated together with the current name in a written application for license set forth in Article 65, paragraph (1) of the Act, and the document set forth in 2. does not certify the name that was used before marriage, a document certifying the name before marriage;
 - 4. a document in which each of the relevant directors and company auditors pledge to the effect that the person does not fall under any of Article 66, paragraph (2), item (iv), (a) through (e) of the Act;
 - (d) in the case of a company with accounting advisors, the following documents pertaining to the accounting advisors:
 - 1. a curriculum vitae (if an accounting advisor is a corporation, a document

- stating the history of the accounting advisor);
2. an extract of the certificate of residence (if an accounting advisor is a corporation, the certificate of registered matters of the relevant accounting advisor) or any substitute document thereof;
 3. if the name that was used before marriage was stated together with the current name in a written application for license set forth in Article 65, paragraph (1) of the Act, and the document set forth in 2. does not certify the name that was used before marriage, a document certifying the name before marriage;
 4. a document in which each of the relevant accounting advisors pledges to the effect that the person does not fall under any of Article 66, paragraph (2), item (iv), (a) through (e) of the Act;
- (e) a document stating a description of the business of which each of the directors (in the case of a company with a nominating committee, etc., each of the 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 the board members and auditors pledges to the effect that the person does not fall under any of Article 66, paragraph (2), item (iv), (a) through (e) of the Act;
 - (d) if the name of board members and auditors that was used before marriage was stated together with the current name in a written application for license set forth in Article 65, paragraph (1) of the Act, and the extract of the certificate of residence or any substitute document thereof set forth in sub-item (c) does not certify the name that was used before marriage, a document certifying the name before marriage;
 - (e) 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 knowledge and experience pertaining to the clearing services for interbank funds transfer and the status of the assignment of the relevant 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; and
- (vii) documents stating other matters of reference.

(A Person Being Unable to Properly Perform Their Duties due to a Mental or Physical Disorder)

Article 4-2 A person specified by Cabinet Office Order prescribed in Article 66, paragraph (2), item (iv), (a) of the Act is a person that is unable to adequately carry out the cognition, decision making, and communication necessary for properly performing their duties due to mental impairment.

Chapter II Business

(Application 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 the relevant 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 the relevant business;
 - (ii) a document stating a description of the organization having jurisdiction over the relevant business and the assignment of the personnel in the relevant business;
 - (iii) rules concerning the operation of the relevant business; and
 - (iv) a document stating the expected income and expenditure for the first three years after the commencement of the relevant 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 the relevant business; and
- (iii) reason for the abolition of the relevant business.

(Application 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 the relevant business as measures to ensure the proper and secure conduct of the relevant 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 the relevant 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 to the effect that the trustee's directors and company auditors (including board members, auditors, and other persons equivalent thereto, referring to directors in the case of a company with an audit and supervisory committee, and referring to directors and executive officers in the case of a company with a nominating committee, etc.; hereinafter the same applies 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 (if an accounting advisor is a corporation, the certificate of registered matters of the accounting advisor) or any substitute document thereof, their curriculum vitae (if an accounting advisor is a corporation, a document stating the history of the accounting advisor), and a document pledging to the effect that none of the relevant accounting advisors 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 the accounting advisor does not fall under the conditions listed in item (iii) of the referenced 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 a nominating committee, etc., each of the 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 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 and company auditors, and accounting advisors 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 the relevant 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 the sub-entrustment and other conditions to the effect that trustee take measures to ensure the proper and secure provision of the relevant business.

(Important Matters with Regard to Contracts with Foreign National)

Article 8 Important matters to be specified by Cabinet Office Order as referred to in Article 71, paragraph (2), item (viii) of the Act are 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 Order as referred to in Article 71, paragraph (2), item (ix) of the Act are 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 collateral, and other settlement methods.

Chapter III Supervision

(Application 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)

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 are to 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 the referenced paragraph: the documents listed in paragraph (2), item (iii) of the referenced Article;

(ii) in the case of a change in the matters listed in Article 65, paragraph (1), item (iv) of the Act: the following documents:

(a) the documents listed in Article 65, paragraph (2), item (iii) of the Act;

(b) the documents listed in Article 4, item (i), (c) (excluding 3.) or item (ii), (c); and

(c) if the name that was used before marriage was stated together with the current name in a written notice set forth in the preceding paragraph, and the document set forth in (b) (limited to the document listed in Article 4, item (i), (c), 2. or the extract of the certificate of residence or any substitute document thereof set forth in item (ii), (c) of the referenced Article) do not certify the name that was used before marriage, a document certifying the name before marriage;

(iii) in the case of a change in the matters listed in Article 65, paragraph (1), item (v) of the Act: the following documents:

(a) the documents listed in Article 65, paragraph (2), item (iii) of the Act;

(b) the documents listed in Article 4, item (i), (d) (excluding 3.); and

(c) if the name that was used before marriage was stated together with the current name in a written notice set forth in the preceding paragraph, and when the document set forth in (b) (limited to the document listed in Article 4, item (i), (d), 2.) does not certify the name that was used before marriage, a document certifying the name before marriage.

(Books and Documents)

Article 12 Pursuant to the provisions of Article 78, a clearing institution for interbank funds transfer must 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 collateral;

(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 applies).

Chapter IV Miscellaneous Provisions

(Application 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 the referenced 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 the relevant 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 the 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 the 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 the clearing institution for interbank funds transfer the authorization under paragraph (1); the same applies if an application for authorization under paragraph (1) is filed by a clearing institution for interbank funds transfer deemed necessary to be subject to either the referenced 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, repealed, 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 is to endeavor to render the disposition for the application related to the approval referred to in the proviso to Article 69, paragraph (1) of the Act or for the application related to the authorization referred to in Article 76 or Article 83 of the Act within one month from the day on which the 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 the 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 the application;

(ii) the period required for the applicant to change the contents of the application; and

(iii) the period required for the applicant to add materials that are found to be necessary for the examination pertaining to the application.