



DRAFT BILL PROPOSED FOR INTRODUCTION OF REGULATORY FRAMEWORK FOR FINANCIAL BENCHMARKS

BACKGROUND

The FSC proposed a draft bill to introduce a regulatory framework to financial benchmarks. The new legislation was enacted in response to global regulatory moves in which major countries including the UK, EU, Australia and Japan adopted IOSCO's Principles for Financial Benchmarks into their benchmark regulations. The extra-territorial effect of the EU Benchmark Regulation (BMR), which requires third party country administrators to be authorized by either one of the following three ways – endorsement, recognition or equivalence, prompted the need for Korea to introduce a corresponding regulatory regime in compliance with international standards. Domestically, there is a need as well for Korea to create a new regulatory regime for improving the accuracy and credibility of financial benchmarks and better protect financial consumers.

Against this backdrop, the draft bill is intended to:

- empower the FSC to designate financial benchmarks recognized as having a significant impact on financial markets as “significant benchmarks” to be subject to the new regulatory and supervisory framework;
- stipulate conduct requirements for setting, publishing and using “significant benchmarks”; and
- provide legal grounds for the FSC to impose corrective orders or penalties against any activities that could harm the accuracy and credibility of “significant benchmarks.”

The proposal, open for public comments from June 18 until July 30, will be submitted to the National Assembly in September 2018.

KEY PROVISIONS

▶ Definition of a “financial benchmark”

A financial benchmark is defined as a reference index used to determine the amount of payable to a counterparty of a financial contract or the value of a financial instrument; or an index used to calculate such amount or value.

▶ Designation of a “significant benchmark”

The new legislation is to empower the FSC to designate financial benchmarks recognized as having a significant impact on financial markets as “significant benchmark”, considering the value of financial transaction using the benchmark or the availability of substitutes for the benchmark.

▶ Registration of administrators¹ of significant benchmarks

Administrators who intend to provide ‘significant benchmarks’ are required to register with the FSC. For registration, they are required to formulate operational rules² to ensure the accuracy and credibility of such benchmarks. The adoption and revision of such operational rules shall be subject to review by an internal committee of the administrator and then approval by the FSC.

▶ Suspension or termination of provision of significant benchmarks

Any administrator of significant benchmarks who intends to suspend or terminate the provision of such benchmarks shall report to the FSC six months before the date of suspension or termination of its operations. The FSC may order the transfer of such operations to other eligible administrators; or the continuation of such operations for a certain period of time not exceeding 24 months, if deemed necessary for protecting financial consumers and financial market stability.

▶ Conduct requirements for administrators and users of significant benchmarks

Administrators of significant benchmarks are required to publicly disclose their operational rules and regularly review the appropriateness and compliance of the rules to ensure the accuracy and credibility of financial benchmarks. The new legislation also stipulates corrective measures that administrators may take if they found any misconduct from monitoring of their compliance with operational rules.

If any administrator intends to change its methodology of calculation or suspend the provision of significant benchmarks, it should publicly disclose the reason behind such decision and the date of change or suspension; and gather opinions from relevant parties before it proceeds with such a decision.

Users of significant benchmarks are required to formulate contingency plans in the event that the provision of such benchmarks was interrupted and provide a counterparty of a financial contract with explanation of such matters.

¹ ‘Administrators’ refers to entities which determine, publish and provide financial benchmarks.

² The operational rules shall include (i) the methodology of determining significant benchmarks and explanation about the benchmarks; (ii) standards and procedure to comply with obligations of benchmark administrators; (iii) standards and procedure for executives and employees of administrators to prevent any possible conflict of interest; operational rules and procedure for outsourcing the administrator’s tasks; and (iv) details about the composition and operation of an internal committee established for management of significant benchmarks.

▶ Prohibition of manipulation of significant benchmarks

The new legislation clearly stipulates that contributors of input data to significant benchmarks and administrators of such benchmark shall not engage in any of distortion, manipulation and other unlawful activities. It also bans any activities that could undermine the accuracy and credibility of significant benchmarks, as a result of their failure of due diligence.

▶ Measures to ensure the effectiveness of the law

Under the new legislation, the FSC is empowered to issue orders in regard with the submission of input data, publication and use of significant benchmarks, if it considers the accuracy and credibility of such benchmarks could be undermined. The FSC is also empowered to impose penalties for manipulation of significant benchmarks and levy a fine against undue profits earned from unlawful activities.