

A. Status of Regulation

1. Name of the jurisdiction being commented upon

Republic of Korea

2. Legal definition of the term "swap"

The Financial Investment Services and Capital Markets Act ("FSCMA") that came into effect in February 2009 defines the term "derivative" as below. In particular, interest rate swap (IRS) and other swap contracts are captured in Article 5-1-iii.

Article 5: Derivatives

1. The term "derivatives" in this Act means a contractual right falling under any of the following sub-paragraphs:
 - i. A contract in which it is agreed to deliver money or similar at a specific time in the future, which shall be computed on the basis of underlying assets, the price of the underlying assets, an interest rate, an indicator, a unit, or an index based on any of the aforesaid factors;
 - ii. A contract in which the parties agree to grant, by either party's "unilateral expression of willingness, a right to effectuate a transaction of delivering and accepting money or similar, which shall be computed on the basis of underlying assets, the price of the underlying assets, an interest rate, an indicator, a unit, or an index based on any of the aforesaid factors; and
 - iii. A contract in which the parties agree to exchange money or similar during a certain period of time in the future at a predetermined price, which shall be computed on the basis of underlying assets, the price of the underlying assets, an interest rate, an indicator, a unit, or an index based on any of the aforesaid factor.

3. Are Swaps included within the scope of any statute, regulation, or other legal requirement in the jurisdiction?

Yes

4. What type of counterparty may enter into a Swap? Do any limitations apply?

There is no limitation on the type of counterparty who may enter into a swap. However, an ordinary investor may enter into a swap only for the

purpose of hedging risk associated with his asset or debt (see Article 166-2 below). An ordinary investor means any investor other than a professional investor. More specifically, most individuals and companies intending to trade OTC derivatives are treated as ordinary investors, as they usually lack sophisticated knowledge of derivatives.

Publicly-held companies are generally treated as a professional investor when trading financial investment instruments. However, when trading OTC derivatives, they are treated as an ordinary investor unless they explicitly indicate their willingness to be treated as a professional investor.

When financial investment companies sell a new OTC derivative to ordinary investors, they must undergo prior review by the Korea Financial Investment Association, a self-regulatory organization for the investment industry, until 2012.

Article 166(2)-1-i

Where an ordinary investor is a counterparty of trading over-the-counter derivatives, intermediating or arranging transactions or acting by proxy for that purpose, such trading shall be limited to cases where the ordinary investor makes transactions for the purpose of avoiding risk prescribed by Presidential Decree. In such cases, an investment trader or investment broker shall confirm the type and amount of risk that the ordinary investor intends to avoid through trading of over-the-counter derivatives and shall keep relevant material.

6. If Swaps are regulated:

a. Who determines which instruments, transactions, or agreements should be regulated as Swaps?

e. Is regulatory oversight of the Swap market conducted by one single regulatory authority or divided among different regulatory authorities? If the latter, please identify each relevant regulatory authority and describe its responsibilities and jurisdiction.

The Financial Services Commission (FSC) and the Financial Supervisory Service (FSS) may determine the scope of regulated Swaps. The FSC and the FSS supervise and examine all financial services companies as the integrated financial supervisory authorities. The FSC formulates government financial policies and carries out financial market supervision, and the FSS principally carries out examination and supervision of financial services firms.

b. Which Swaps, if any, are required to be executed on an organized market, on an electronic execution facility, or on any

other type of market?

c. Which Swaps, if any, are required to be cleared by a central counterparty and, for those required to be cleared, how are the trades of non-clearing participants cleared?

There is no specific regulation on the clearing of swaps through a central counterparty (CCP). Korea's regulators are working to amend the FSCMA to create a legal basis for the creation of a CCP in Korea. Once the amended FSCMA is passed, which swaps will be cleared through a CCP will be determined.

d. Which Swap transactions, if any, are required to be reported to a data repository or other entity, the public, or regulatory authorities?

Swap dealers are required to report their transactions data (trading volume, notional amount and so on) to the FSS on both monthly and quarterly basis using the forms and templates developed by the FSS. An electronic reporting system is in place for swap dealers.

f. How does the regulatory framework regulate potential systemic risk created by Swaps? Does it, for example, create a new oversight body or designate certain entities as systemically important?

The analysis of reports from swap dealers enables the regulators to obtain critical market information such as sharp rises in the volume of certain swap transactions and major swap counterparties. Furthermore, the reports from swap dealers also include their quarterly stress testing results for OTC derivatives.

h. How are cross-border Swap transactions regulated? Does the Swap regulatory framework apply to persons located outside of the jurisdiction doing business with persons located within the jurisdiction, and, more generally, to cross-border Swap activities?

The FSCMA applies to every swap transaction that involves a domestic counterparty. Therefore, a foreign swap dealer intending to enter into a swap with a domestic client must obtain a license from Korea's financial regulators. However, the following exceptions are provided for under the Enforcement Decree of FSCMA.

Article 7: Exclusion of Financial Investment Business from Application

3. v. Where a foreign investment trader or a foreign investment broker (referring to a person who runs business equivalent to the investment brokerage business in a foreign country in accordance with laws and regulations of the foreign country; hereinafter the same shall apply) conducts any of the following activities:
- a) Activities of running an investment trading business or an investment brokerage business to make transactions with investment traders or investment brokers;
 - b) Activities of running an investment trading business or an investment brokerage business to make transactions with residents in Korea (excluding investment traders and investment brokers; hereinafter the same shall apply in this item) without inviting to make investments or making an advertisement for investment under Article 57 of the Act (hereinafter referred to as "advertisement for investment") but by receiving trading orders from residents in Korea.

B. Regulatory Requirements for Market Participants

1. How does the regulatory framework address participants in the Swap market? What are the registration or licensing requirements for Swap-related dealers, market participants, intermediaries, or others (individually and collectively, "Participants")?

2. Are any types of Participants in the Swap market excluded or exempted from Swap-related registration or licensing requirements?

3. What is the process for updating, withdrawing, or terminating Swap-related registration or an exemption from Swap-related registration?

Swap dealers must obtain a license from the regulators under the FSCMA. To do this, they must satisfy several licensing requirements such as capital, a feasible and sound business plan, human resources, IT facilities, sound governance, and mechanisms to prevent conflicts of interests.

6. What are the Swap-related business conduct requirements (e.g., interaction with counterparties, disclosure, supervision, reporting, recordkeeping, documentation, confirmation, valuation, conflicts of interest, avoidance of fraud and other abusive practices)?

Swap dealers must comply with the principle of suitability and inform their customers of the details of a financial investment product and other relevant information under the FSCMA. The Korea Financial Investment

Association has also formulated its own business conduct rules and procedures.

After a swap transaction is executed, a swap dealer must inform the counterparty of the value of the swap on a monthly or quarterly basis. It is also required to examine and assess the likelihood of conflicts of interests. If it is not able to reduce the likelihood to a reasonable level, it must not enter into a swap agreement.

Article 46: Principle of Suitability, etc.

1. Each financial investment business entity shall confirm whether an investor is an ordinary investor or a professional investor.
2. Each financial investment business entity shall obtain information about the investment purpose, status of property, experience in investment, etc. of an ordinary investor through interviews, inquiries, etc. before recommending him/her to make an investment, and shall require the ordinary investor to make a signature (including a digital signature under subparagraph 2 of Article 2 of the Digital Signature Act; hereinafter the same shall apply), print his/her name and affix his/her seal, record conversations, or have a confirmation in any other manner specified by Presidential Decree, and keep and maintain the confirmation safely, and shall furnish the investor with the confirmed information without delay.
3. No financial investment business entity shall recommend an ordinary investor to make an investment, if the investment is deemed unsuitable for the investor in light of the investment purpose, status of property, experience in investment, etc. of the investor.

Article 47: Duty to Explain

1. A financial investment business entity shall, whenever it makes an investment recommendation to an ordinary investor, explain the details of the financial investment instrument, the risks contingent upon the investment, and other matters specified by Presidential Decree with such sufficiency as to allow the ordinary investor to understand them.
2. A financial investment business entity shall obtain a confirmation from each ordinary investor, stating that he/she has understood the details as explained pursuant to paragraph 1, in one or more manners, such as providing a signature, printing his/her name and affixing his/her seal, or any other manner prescribed by Presidential Decree.
3. No financial investment business entity shall, when it provides an explanation under paragraph 1, provide false or distorted information (referring to an act of providing a conclusive judgment on an uncertain matter, or information that is likely to mislead an investor to believe any uncertain matter to be certain) while explaining material facts that may produce a significant impact on the investor's reasonable judgment or the value of the relevant financial investment instrument (hereinafter referred to as "material facts") or omit an explanation of any of the material facts.

C. Regulatory Requirements for Organized Markets, Electronic Execution Facilities, and Other Types of Markets

There are not any organized markets and electronic execution facilities for swap transactions, as well as CCP-cleared swaps. As such, there are no relevant legal provisions at the moment. But the establishment of an electronic execution facility would likely require a license from the regulatory authorities.

D. Regulatory Requirements for Central Counterparties

Korea's regulators have proposed an amendment to the FSCMA that would create a legal basis for the establishment of a CCP for OTC derivatives.

E. Regulatory Requirements for Data Repositories

There is no data repository in Korea. However, swap dealers are required to report their transactions data to the FSS on a monthly or quarterly basis. The reporting form includes trading volumes and outstanding amounts by type of underlying asset (i.e., interest rate, currency, equity, credit, commodity, etc.). Especially, credit derivatives such as credit default swaps (CDS), total return swaps (TRS), and credit options (CO) are required to be reported separately whenever such transactions are made. In addition, when swap dealers sell a new exotic derivative, they have to submit documents explaining such new product to the FSS.

F. Regulatory Comparison

In order to harmonize requirements under the Dodd-Frank Act with requirements implemented in other jurisdictions, it appears that economic circumstances of other jurisdictions merit consideration. Especially, regulations of OTC derivatives related a currency shall affect exchange rate policies of other jurisdictions.