Special Measures to Eliminate Cryptocurrency Speculation

On December 28, 2017, just 15 days after the government had announced the "Emergency Measures on Cryptocurrency" on December 13, 2017, the Korean government held a meeting among the vice ministers of the Ministry of Strategy and Finance, the Ministry of Justice, the Financial Services Commission, the Ministry of Science and ICT, the Fair Trade Commission, the Korea Communications Commission and other concerned ministries and commissions and announced the following special measures to thwart cryptocurrency speculation.

1. Introduction of Real-Name Trading in Cryptocurrency Transactions

To begin with, Korean banks will no longer be permitted to open new virtual accounts for cryptocurrency exchanges. Furthermore, as soon as a detailed plan is developed, the virtual accounts of existing users will be transferred to banks where the user's identity can be verified.

Secondly, banks will now be required to conduct a comprehensive inspection of payment settlement services of cryptocurrency exchanges and suspend any payment settlement service that fails to comply with the Emergency Measures that was announced by the Korean government on December 13, 2017 (which essentially prohibits financial institutions from owning, purchasing, issuing securities for or investing in cryptocurrencies). In addition, banks will have increased responsibilities to prevent money laundering using cryptocurrency exchanges. Until real-name trading is fully established and adopted by the cryptocurrency exchanges, banks must undertake strict customer due diligence (CDD) and file suspicious transaction reports (STR). If any transaction on a cryptocurrency exchange is reported as suspicious, the Financial Intelligence Unit (FIU) will review and analyze the transaction, and if the source of the funds is unclear or money laundering activity is suspected, the relevant materials must be provided to law enforcement agencies such as the National Tax Service.

2. Crackdown and Strict Punishment of Cryptocurrency Related Crimes

The police and the prosecutor's office announced that they will come down heavily on cryptocurrency-related crimes such as price manipulation in the trading and brokering of cryptocurrencies and will place all suspects of cryptocurrency-related crimes under arrest for investigation as well as seek the maximum punishment permitted under the law for cryptocurrency-related crimes. Under the banner of the "2018 Cryptocurrency-related Crimes Crackdown Plan", the police and prosecutor's office announced that they will be especially hard on (i) any illegal fundraising using cryptocurrency as a medium including pyramid schemes and fundraising without regulatory approval, (ii) investment fraud under the pretext of mining cryptocurrency, (iii) violations of the Foreign Exchange Transactions Act, such as illegal foreign exchange transactions of cryptocurrencies, (iv) concealment of criminal proceeds through cryptocurrency transactions and (v) illegal activities by cryptocurrency exchanges.

3. Investigation of Unfair Standardized Contracts and Regulation of Online Advertisements

The Fair Trade Commission is currently investigating the presence of any unfair terms in the standardized contracts used by the four largest cryptocurrency exchanges (Bithumb, Coinone, Korbit and Coinplug) and announced that it will expand its ex-officio investigation to include all cryptocurrency exchanges in order to impose stricter sanctions, including corrective orders and fines. In addition, the Korea Communications Commission announced that it will launch a campaign for businesses to self-regulate to prevent online advertisements of cryptocurrencies being displayed on portal sites or other public online spaces.

4. Review of Possible Shutdown of Cryptocurrency Exchanges

The Korean government announced that it is considering shutting down cryptocurrency exchanges through the enactment of "Special Act for Shutdown of Cryptocurrency Exchanges". This legislation is expected to have particularly significant ripple effects and the Korean government is considering two types of shutdown options: (i) a shutdown of only the cryptocurrency exchanges that do not meet requirements set by the Korean government (e.g., investor protection measures, anti-money laundering obligations and data security requirements) with a focus on "investor protection," and (ii) a shutdown of all cryptocurrency exchanges with a focus on "preventing excessive speculation."

5. Economic Policy regarding Cryptocurrency

In addition to the above measures, according to the "2018 Economic Policy Direction" announced at the National Economic Advisory Council and the Expanded Economic Ministers' Meeting, the Korean government will likely prohibit minors and non-residents from trading in cryptocurrencies and will start a joint task force composed of various government agencies and stakeholders from the private sector from 2018 to establish a detailed plan for taxation of cryptocurrency transactions by reviewing and analyzing taxation cases and tax-source identifying methods used in other major countries.

Considering the various government measures and expected policy moves noted above, we recommend any operator of a cryptocurrency exchange to (i) promptly review the terms and conditions of their standardized contract and modify any term that may be considered unfair under Korea's fair trade laws, (ii) establish a market monitoring system to monitor any illegal activities such as price manipulation and (iii) formulate a plan to implement a real-name trading system to ensure cryptocurrency transactions are not used to conceal criminal proceeds.

Should you have any questions regarding any of the foregoing, please feel free to contact us at any time.

Contacts

Junghee Cho Partner	TEL. 82 2 316 1624	E-Mail. jhcho@shinkim.com
Hyun-il Hwang Associate	TEL. 82 2 316 4453	E-Mail. hihwang@shinkim.com
Su Ho Jeong Associate	TEL. 82 2 316 1787	E-Mail. shjeong@shinkim.com
Jae Wook Jeong Associate	TEL. 82 2 316 1797	E-Mail. jwjeong@shinkim.com
Clara Miri Kang Foreign Attorney	TEL. 82 2 316 1755	E-Mail. cmkang@shinkim.com