



# The Financial Services Commission Issues the NFT Guidelines

2024.06.12

On June 10, 2024, the Financial Services Commission (the “FSC”) issued its first guidelines (the “NFT Guidelines”) specific to non-fungible tokens (“NFTs”). Highlighting that the FSC plans to exclude qualified NFTs from the application of the Virtual Asset Users Protection Act (the “Virtual Asset Act”) that will take effect on July 19, 2024, the FSC offers guidance for classifying NFTs separately from virtual assets to “help improve predictability and remove obstacles in the application” of the Virtual Asset Act.

Please find below a high-level summary of the NFT Guidelines:

- The NFT Guidelines state that the legal nature of an NFT must be determined on a case-by-case basis and the actual substance of the underlying digital asset (and not their format or technology). This includes reviewing the overall structure of issuance and distribution, terms and conditions, marketing activities and services related to such NFT.
- To assess the legal nature of an NFT, the first question is whether it could be deemed as a security under the Financial Investment Services and Capital Markets Act (the “Capital Markets Act”) by reference to the Security Token Guidelines released by the FSC in February 2023. If the NFT does not appear as a security, the next question is whether it could be a virtual asset regulated under the Virtual Asset Act by reference to the NFT Guidelines.
- The FSC plans to define an NFT that falls outside of the scope of “virtual assets” under the Virtual Asset Act as “a digital identifier that is unique and irreplaceable (non-fungible), used mostly for the purpose of content collection or verification of transactions between users, which cannot be used as payment methods for goods or services”.
- The NFT Guidelines emphasize that it is likely for digital assets (regardless of whether being named as NFTs) to be deemed as virtual assets if they fail either the “singularity” or “irreplaceability” test. Some examples that the FSC has presented include NFTs that are: (i) mass-produced and therefore exchangeable, (ii) subject to fractionalization with little to no uniqueness, (iii) used as a direct or indirect means of payment for goods or services, or (iv) interchangeable or linked with virtual assets (including cases where it is possible to receive goods or services priced in other types of virtual assets using such NFTs).
- Conversely, digital assets are likely to qualify as NFTs if they (i) are primarily for fostering non-economic values or

uses, such as for identification purposes, (ii) have little to no economic value or (iii) are not interchangeable or transferrable.

- The FSC has urged any person engaged in issuance, distribution or management of NFTs to closely examine the legal nature of such NFTs based on their “practical characteristics” in advance of the Virtual Asset Act taking effect and ensure compliance with the relevant laws and regulations, including but not limited to Capital Markets Act and Virtual Asset Act.

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With a dedicated group of professionals who truly understand the technology, business and regulatory climate, Shin & Kim has extensive experience in advising on the legal nature of virtual assets and NFTs. The key professionals in Shin & Kim’s Virtual Asset Practice Group are Hyun-il Hwang, Ryonho Kang, Jaecheong Oh, Mooni Kim and Sanghyeok Lee.

[\[Korean version\]](#) NFT(Non-Fungible Token)가 가상자산에 해당하는지 여부를 판단할 수 있는 가이드라인이 마련되었습니다

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