

NEWSLETTER

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/ Blockchain Team

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Measures against Unregistered Foreign Virtual Asset Service Providers

The Korean Financial Intelligence Unit under the Financial Services Commission (the KoFIU), on August 18, 2022, announced the “Measures against Unregistered Foreign Virtual Asset Service Providers”, and urged users to be especially cautious in transactions with unregistered virtual asset service providers, as described in more detail below.

1. Domestic Business Activities of Unregistered Foreign Virtual Asset Service Providers

The Act on Reporting And Use of Certain Financial Transaction Information (the CFTIA) applies to the financial transactions of virtual asset service providers (the VASPs) that occur outside Korea but that have a domestic impact (Article 6(2)). Accordingly, foreign VASPs providing services for Koreans are required to report to KOFIU under the CFTIA.

On July 22, 2021, the KoFIU notified and informed the foreign VASPs that are subject to reporting obligations under the CFTIA. Nevertheless, 16 foreign VASPs continued to provide services without reporting to the KoFIU, through providing Korean language-based websites, holding events to attract Korean customers, supporting Koreans to purchase virtual assets with credit cards, and other such activities. The 16 relevant foreign VASPs sold virtual assets to Korean customers directly or through partner companies.

Accordingly, the KoFIU is planning to take necessary measures against the 16 unregistered foreign VASPs.

2. Measures against Unregistered VASPs

The KoFIU has notified the investigation authorities of the 16 foreign VASPs’ violations of the CFTIA, and will also notify the Financial Intelligence Units of the countries in which the unregistered service providers are based. For reference, unregistered illegal business activities carry maximum penalties of imprisonment for no more than 5 years, or a fine not exceeding KRW 50 million, and those engaging in such activities will be restricted from registering as VASPs in Korea for a certain period.

In addition, the KoFIU requested that the Korea Communications Commission and the Korea Communications Standards Commission to block domestic access to the relevant unregistered VASPs, and instructed the registered VASPs to stop trading with the unregistered VASPs, making the transfer of virtual assets to the unregistered VASPs impossible. Furthermore, credit card companies are planning to check and block the unregistered VASPs from purchasing virtual assets using credit cards in Korea.

3. Implications

A list of VASPs registered so far can be found on the KoFIU website (www.kofiu.go.kr). As of August 18, 2022, a total of 35 VASPs have been registered. The financial authorities emphasized that: (1) unregistered VASPs may be exposed to risks such as personal information leakage and hacking, due to inadequate preparation of the information security management system (ISMS), which is one of the requirements for the reports to the KoFIU under the CFTIA; (2) there is a risk that unregistered VASPs may be used as money laundering routes as they are not subject to anti-money laundering management and supervision; and (3) it is important to be especially cautious as information inducing the use of unregistered VASPs is being spread through various channels or media. Therefore, users must check whether the VASP that they use is a service provider that has been legally registered in accordance with the CFTIA.

In addition, through a press release dated July 22, 2021, the KoFIU made it clear that the foreign VASPs must register with the KoFIU in accordance with Article 6(2) of the CFTIA when providing services for Koreans, and presented the standards for determining what constitutes “providing services for Koreans”. The KoFIU’s “Measures against Unregistered Foreign Virtual Asset Service Providers” announcement dated August 19, 2022 shows its strong will to take various measures against unregistered foreign VASPs that violate their reporting obligations under the CFTIA. Accordingly, we believe that a thorough review in relation to foreign VASPs targeting Koreans will be required.

Blockchain businesses may entail cross-border transactions by their very nature. In the future, more diverse virtual asset business types will appear or develop in the blockchain ecosystem. In this regard, we believe that the review and discussion of various areas and viewpoints would be required, such as: the establishment or clarification of virtual asset-related regulations such as the enactment of the (tentatively named) Framework Act on Digital Assets that is being discussed currently; a review and setting of the regulatory direction for cross-border virtual asset businesses; discussions and cooperation between countries or on a global scale; a systemic review including review of foreign exchange transactions regulations; and a comprehensive review of cross-border metaverse-related issues.

Lee & Ko’s Digital Finance Team and Blockchain Team have been providing in-depth advice to domestic and foreign clients in relation to blockchain, NFTs and virtual asset business. If you require any assistance in this regard, please contact Lee & Ko’s Digital Finance Team or Blockchain Team.

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